



Abhay Nevagi & Associates™

Advocates

An ISO 9001:2008 & 27001:2013 Certified Law Firm

NEWSLETTER

ANA/NL/March/2018

Condonation of Delay Scheme 2018 extended till 30.04.2018

Ministry	Ministry of Corporate Affairs
Circular No.	General Circular No. 02/2018
Date	23.03.2018
Act/Scheme	Condonation of Delay Scheme 2018

The Ministry of Corporate Affairs, via Circular dated 23.03.2018, has extended the deadline under Condonation of Delay Scheme 2018 from 31.03.2018 to 30.04.2018. The Scheme is beneficial for Directors of Companies who have failed to file financial statement or annual returns with MCA 21 or even Companies whose names have been struck off from the Register of Companies u/s 248 (5) of the Companies Act 2013.

The Supreme Court held that Section 13(3A) of the SARFAESI Act is mandatory

Appellant: ITC Ltd.	Court: The Supreme Court of India
Respondent: Blue Coast Hotels Ltd. and Ors.	Date of Judgement: 19th March 2018
	Case No.: Civil Appeal No. 2928-2930 of 2018

Supreme Court has held that while recovering secured property from Non-Performing Assets (NPAs), a secured creditor should mandatorily consider the debtor's representation under Section 13 (3A), after the initiation of proceedings under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Section 13 (3A) of the Act enables debtors to make a representation or raise objections after notice is issued to them by creditors under Section 13 (2) of the Act. The creditor is then expected to consider such representation and communicate his views on the same within fifteen days.

Foreign law firms cannot set up offices in India or practice in Indian Courts but can give advice to Indian clients on 'fly in and fly out' mode

Appellant: Bar Council of India Court: The Supreme Court of India	Date of Judgement: 13th March 2018 Respondent: A. K. Balaji and Ors. Case No.: Civil Appeal No. 7875-7879 of 2015
--	--

The Supreme Court has upheld High Court judgment dated 21.02.2012 in AK Balaji v Bar Council of India (BCI) & Ors. with certain modifications. The High Court had earlier held that, foreign lawyers may visit India for a temporary period on a fly in and fly out basis, for the purpose of giving legal advice to their clients in India regarding foreign law. Also, foreign lawyers cannot be debarred to come to India and conduct international commercial arbitration proceedings.

New Section 36 of Arbitration Act shall apply to pending Section 34 Applications as on the date of commencement of the Amendment Act

Appellant: BCCI Court: The Supreme Court of India	Date of Judgement: 12th October 2017 Respondent: Kochi Cricket Pvt. Ltd. and etc. Case No.: Civil Appeal No. 2879-2880 of 2018
--	---

It was clarified that the 2015 amendment made to Section 36 stated that mere filing of appeal would not amount to stay of enforcement proceedings, and further introduced a provision that stay will be conditional depending on furnishing security, if the award relates to payment of money. Before the amendment, one could get a stay of enforcement of award by mere filing of appeal even without any security.

The court has clarified that since execution of a decree pertains to the realm of procedure and that there is no substantive right vested on a judgment debtor to resist execution, Section 36, as substituted, would apply even to pending Section 34 applications on the date of commencement of the Amendment Act.

SC upheld Gujarat High Court's order, enhancing sentence by awarding punishment of "Life imprisonment" u/s 302 IPC to accused against "10 years"

Appellant: Bharat Kumar Rameshchandra Barot Court: The Supreme Court of India	Date of Judgement: 26th March 2018 Respondent: State of Gujarat Case No.: Criminal Appeal Number 448/2018
---	--

Accused found guilty of commission of offence of murder under section 302 of IPC, the only punishment that can be awarded in law is "Death penalty" or "Imprisonment for Life" and "fine". SC Bench expresses surprise that "It is simply unheard of" that a Sessions Judge Sentencing a Murder Convict to Just 10 Year Imprisonment'. Any punishment less than the life imprisonment as prescribed by the law if awarded by the court is per se illegal and without authority of law. Indeed, there is no discretion left to the court apart from awarding punishment except to what is prescribed by Law.

Stay in Criminal/Civil Proceedings not to be granted beyond six months, Further Extension only by a speaking

Appellant: Asian Resurfacing of Road Agency Pvt. Ltd Court: The Supreme Court of India	Date of Judgement: 28th March 2018 Respondent: CBI Case No.: Criminal Appeal Number 1375-1376/2013
---	---

It was held that the speaking order must show that the case was of such exceptional nature and that continuing the stay was more important than having the trial finalized. The Trial Court where order of stay of civil or criminal

proceedings is produced, may fix a date not beyond six months from the order of stay. This is done so that on expiry of stay, proceedings can commence unless order of extension of stay is produced. The bench issued the directives to remedy the situation of proceedings remaining pending for long on account of stay. It said: "Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received, and proceedings are not taken up.

Passive Euthanasia is now legalized in India - SC allows creation of a

Appellant: Common Cause (A Regd. Society) Court: The Supreme Court of India	Date of Judgement: 9th March 2018 Respondent: Union of India and others Case No.: Writ Petition (Civil) 215 /2005 Living Will
--	--

The Apex court stated that the rights of a patient would not fall out of the purview of Article 21 (right to life and liberty) of the Indian Constitution. Going further the court also permitted the removal of life-support systems for the terminally ill or those in incurable comas.

The court has granted permission to individuals to decide against artificial life support by creating a "living will". A five-judge bench issued guidelines in recognition of "living will" made by terminally-ill patients.

These guidelines include as to who can execute the will and under what conditions can the medical board endorse passive euthanasia. The apex court further stated that its guidelines and directives shall remain in force till legislation is brought in force.

Detailed guidelines by Delhi High Court for Bail to under trial prisoners

<p>Appellant: Ajay Verma Court: The Delhi High Court</p>	<p>Next Date of Hearing: 1st May 2018 Respondent: Government of NCT of De Case No.: Writ Petition (Civil) 10689/2017</p>
--	---

The Delhi High Court, in the above-mentioned Writ Petition has issued detailed guidelines for granting of Bail to under-trial prisoners. Apart from laying down detailed guidelines in this regard, the trial courts have been asked to be 'sensitive' and 'vigilant' while deliberating on this issue. These guidelines shall henceforth act as precedent for granting bail to undertrial prisoners.

Prepared By:

The Team of Lawyers at **Abhay Nevagi & Associates, Advocates**

Disclaimer:

This newsletter provides general information and guidance as on date of preparation and does not express views or expert opinions/advice of Abhay Nevagi & Associates, Advocates. Contents of this Newsletter should neither be regarded as comprehensive nor sufficient for making any decisions. No one should act on the basis of information provided in this newsletter without obtaining proper expert professional advice. Abhay Nevagi & Associates, Advocates disclaims any responsibility and hereby accept no liability for consequences of any person acting or omitting or refraining to act on the basis of any information contained herein.