

## LEGAL UPDATES

### **NCLT: DECLARES RPTS EXECUTED WITHOUT BOARD'S OR, SHAREHOLDERS' CONSENT, ILLEGAL AND IN VIOLATION OF AOA**

A petition for oppression-mismanagement was filed in NCLT by the shareholders of the Company on behalf of the Company's Board of Directors. An issue of Related Party Transactions (RPT) undertaken by the Respondent Company without the Company's Board of Directors or shareholder's permit was raised. The bench was headed by Shri. Anil Kumar B (Member – Technical) and Shri. Ashok Kumar Borah (Member – Judicial). Petitioners (shareholders) claimed that: a) Respondents failed to organise Annual General Meetings (AGM) for several years, b) Financial Statements tabled before the Registrar of Companies (ROC) disclose the breach of Sec. 188 of the Companies Act, 2013 by the RPTs, c) RPTs were undertaken without taking Petitioner's permit, d) in accordance with Articles of Association (AoA), the Respondent Co. should be managed by its Board but in reality, was managed by Managing director (MD) and Petitioner's approval. NCLT clarified that when a company enters into RPTs mentioned under Sec. 188 of the Companies Act, it must have the consent of its Directors. In addition to this, if any RPT goes beyond the monetary limit stated as per Rule 15(3) of Companies (Meeting of Board and its Powers) Rules, 2014, the consent of shareholders would be needed as an ordinary intent. NCLT closely noticed the Respondent Co.'s AoA and observed that the business should be managed by its Directors and the Director acts as trustee on behalf of the Company and stated that AoA is the key element in a company as the entire internal management is done in respect of it. NCLT noted that Respondent Co.'s AGM from the year 2015-16 to 2018-19 was not held; it also highlighted that it is mandatory for each company to call AGM as per the needs and timelines of the company. NCLT concluded that Respondent Co. had failed to prove that notices for calling AGM were issued to shareholders involving petitioners in a way as prescribed by law. Finally, NCLT gave a decision alleging the actions of Respondent Co. were illegal but neither ordered any investigation into matters of Respondent Co. nor imposed any penalty for violating the rules of the Company. The Petition was dismissed.