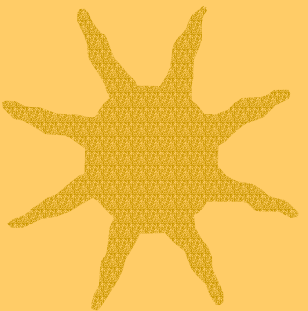
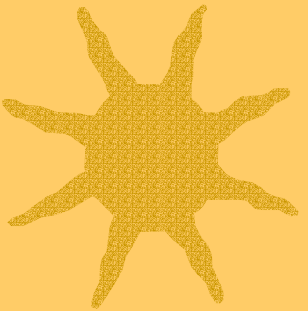




*RECENT DECISIONS IN
COMPANY LAW*

BHARAT BANTHIA
C/O VINOD KOTHARI & CO.
224 AJC BOSE ROAD
KOLKATA – 700017
CONTACT - 22817715

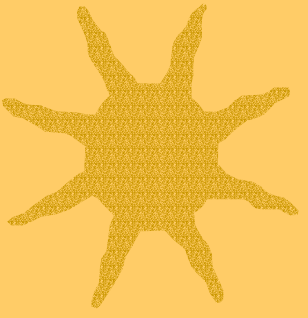
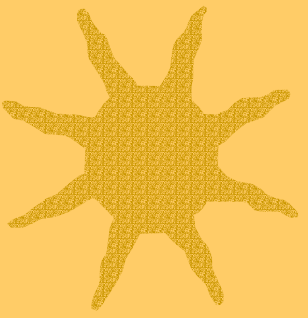
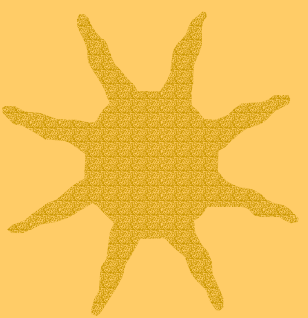
Certain wise little Principles from
Little Buddha which it would be
wise to respect



2/28/2007



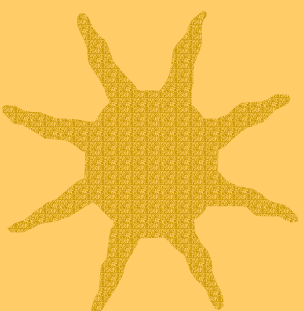
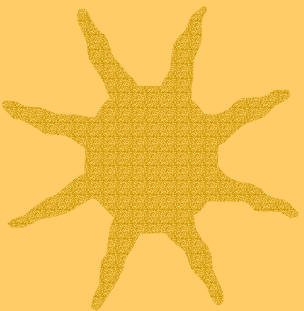
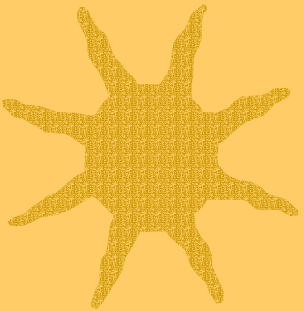
Compromise & Arrangement



- ★ Where transferor company is a wholly owned subsidiary of transferee company, a single application for amalgamation at instance of the transferor company would be sufficient and there would be no need to file a separate application by transferee company – ***Santhanalakshmi Investments P Ltd. In Re. [2006] 65 SCL 406 (Mad)***
- ★ Looking to the scheme of Companies Act or Rules, Ordinarily separate applications are to be filed by transferor and transferee companies for consideration of scheme of amalgamation and question of taking permission for filing joint application would arise only in case where no such objection is raised by registry or by Court [***Jaipur Polyspin Ltd v Rajasthan Spinning and Weaving Mills Ltd. 2006 67 SCL 338 (Raj)***]
- ★ Where reference is pending before BIFR, Company Court has jurisdiction to entertain petition for sanctioning Scheme of Compromise/Arrangement [***Sharp Industries Ltd., In Re. 2006 67 SCL 353 (Bom)***]



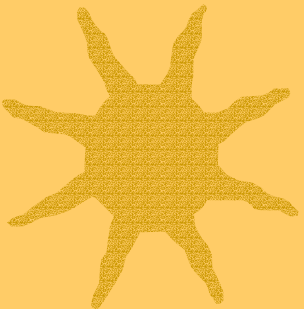
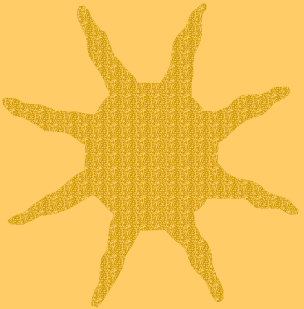
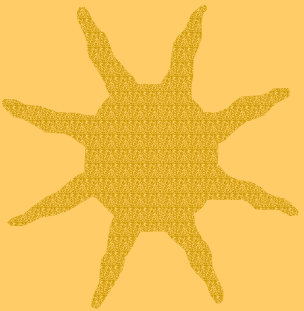
Compromise & Arrangement



- ★ In a case of demerger and transfer of a division, all the unsecured creditors irrespective of whether they are unsecured creditor of the division being transferred should be called for participating in the meeting of unsecured creditor. Hence the applicant company was asked to convene a fresh meeting of all unsecured creditors. [*Birla VXL Ltd. In Re. (Guj) 66 SCL 69*]
- ★ Separate meeting of shareholders and creditors could be ordered by Court even when shareholders and creditors of petitioner transferee company had given their no objection to dispense with their meeting in the matter of consideration and approval of scheme of amalgamation. [*Shyam Basic Infrastructure Projects (P) Ltd., In Re. (Raj) 66 SCL 99*]
- ★ Where equity shareholders and unsecured creditors, but secured creditors, have given their no objection to amalgamation of transferor company with transferee company, the applicants prayer to dispense with the meeting of secured creditors could not be accepted specially when huge amount of debt is due to secured creditors. [*Rajasthan Fasteners (P) Ltd., In Re. (Raj) 66 SCL 102*]



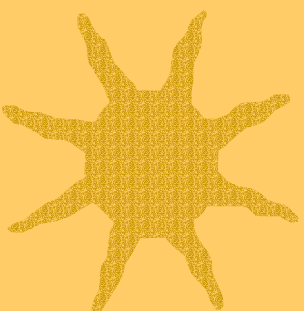
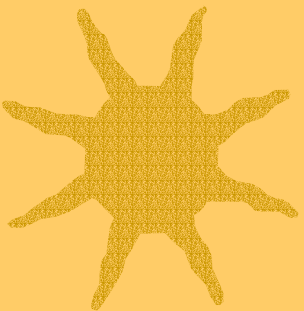
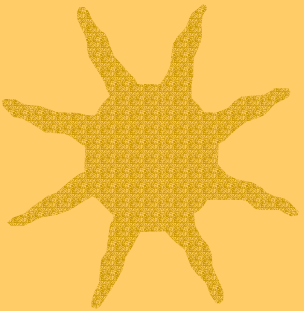
Compromise & Arrangement



- ★ Non compliance with the provisions of clause 24(f), 24(g) and 24(h) of Listing Agreement does not, by itself, bar a company from seeking sanction of a scheme of amalgamation under Section 391 to 394, nor does it entail in automatic dismissal of such a petition. [*Chemidye Mfg. Co. (P) Ltd., In Re. (Bom) 69 SCL 10*]
- ★ There is no bar in the law to a Statutory Auditor carrying on valuation since they are independent persons and it could not be said that valuation report of statutory auditors could not be considered. [*Chemidye Mfg. Co. (P) Ltd., In Re. (Bom) 69 SCL 10*]
- ★ There is no need to comply separately with the provisions of Section 94 and 97 by transferee company to increase its authorized capital and there is no bar on the clubbing of authorized capital of transferor company with transferee company. [*Bysani Consumer Electronics Ltd v Jainsons Corpn. Ltd. (Mad) [2006] 69 SCL 66*] The above decision was held in view of the decision held by Delhi High Court in *Hotel Hot Celdings (P) Ltd., In Re. [2005] 57 SCL 367* and Allahabad High Court in *Jaypee Cements Ltd., In Re. [2004] 52 SCL 801*]



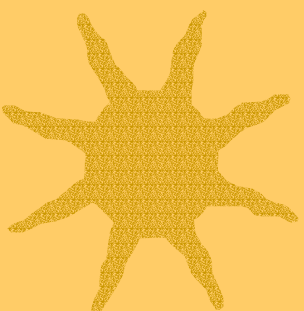
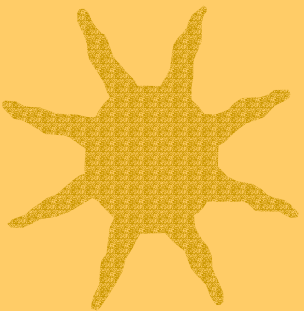
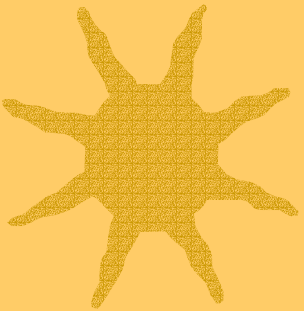
Compromise & Arrangement



- ★ There is no requirement to hold the meetings of shareholders and creditors when both the groups have given their no objection to dispense with the holding of their meetings as required under Section 391 and 394 [***Rajasthan Telecom Company Ltd., In Re (Raj) [2006] 69 SCL 71***]
- ★ A scheme of arrangement proposed by a SICK Industrial Company for its revival and rehabilitation even if opposed by some interested parties can be sanctioned by the High Court and in that event direction given by the exercise of the powers under Section 391 will bind such non consenting parties [***In Re. Pharmaceutical Products of India Ltd. [2006] 70 SCL 93 (BOM)***]



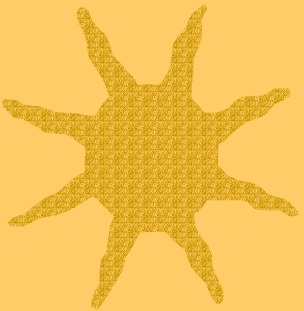
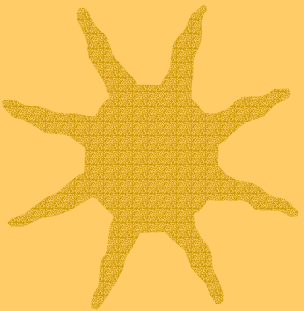
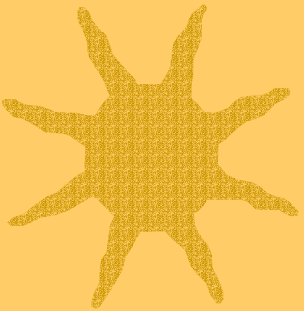
Oppression and Mismanagement



- ★ For maintainability of petition u/s 397/398 of the Companies Act, 1956, there is no requirement of making averments in petition that facts would justify making an order of winding up on just and equitable grounds or that there is a dead lock in the affairs of the company. It is for the CLB to form an opinion as to whether the alleged facts would justify making a winding up order on just and equitable grounds – ***DR. S Mangalam Srinivasan v Mani Forgings (P) Ltd. [2006] 65 SCL 163 (CLB – Chennai)***
- ★ Even if CG applies to CLB, requesting to entertain an application and give direction under Section 397/398 to take action against oppression and mismanagement in a private limited company which is not carrying on any business, CLB can reject Government's application if it is not in public interest or if no case is made out [***Union of India v CRB Resources (P) Ltd. 2006 67 SCL 289 (CLB – New Delhi)***]



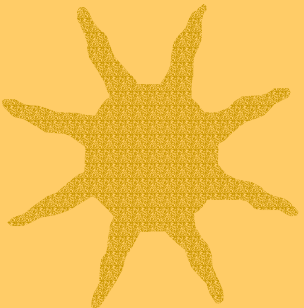
Oppression and Mismanagement



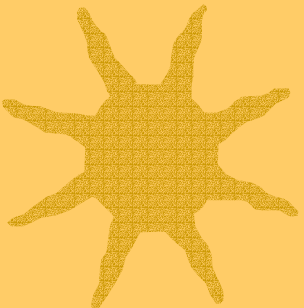
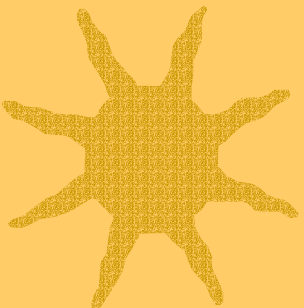
- ★ The scope of the BIFR and CLB are in entirety different. Accordingly, when some of the matters in the company petition u/s 397/398 are under the jurisdiction of BIFR and some under the jurisdiction of CLB the company petition could be bifurcated and dealt with separately and accordingly jurisdiction could be exercised by CLB and BIFR ***[S.S. Organics Ltd. v B. Subba Reddy [2006] 69 SCL 272 (CLB – Chennai)]***
- ★ Petitioners being a group of small shareholders, limitation for filing company petition will begin to run only from the date they had the knowledge of the alleged facts committed by the respondent and not from the date of transactions. ***[Ramesh B Desai v Bipin Vadilal Mehta [2006] 69 SCL 211 (SC)]***
- ★ The issues relating to oppression and mismanagement and non compliance with the statutory provisions could not be granted by the arbitrator and such reliefs are available under the provisions of Section 397/398 of the Companies Act from the CLB alone ***[Sporting Pastime India Ltd. v Kasthuri & Sons. Ltd. [2006] 70 SCL 158 (MAD)]***



Oppression and Mismanagement



- ★ Complaints relating to the transfer of shares have to be agitated in petition under section 111 and not in a petition under section 397/398 would be valid if only transfer of shares was alleged in isolation - [**Hillcrest Realty Sdn. Bhd. v Hotel Queen Road (P) Ltd. [2006] 71 SCL 41 (CLB – New Delhi)**]
- ★ The petitioner having acted upon the deed of arrangement and declaration was bound to act in accordance with various terms of the deed - [**K.S.P. Valli v Richfield Agencies (P.) Ltd. [2006] 71 SCL 33 (CLB – Chennai)**]





Company Court Rules

- ★ Rules are undoubtedly statutorily and forms are to be adopted wherever they are applicable. However, substantial compliance with the same is enough - *[Associated Journal Ltd. v Mysore Paper Mills Ltd. [2006] 69 SCL 311 (SC)]*

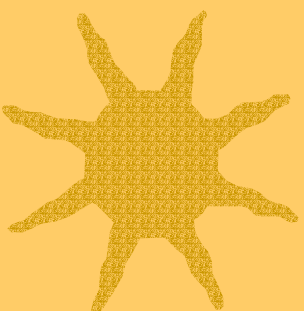
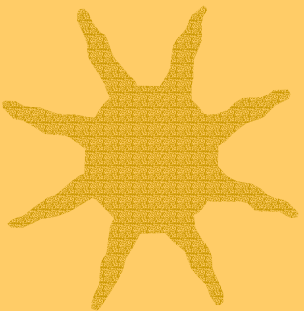


Winding Up

- ★ Official Liquidator has to disburse amount of sale proceeds of assets of a company in liquidation amongst categories as provided under Section 529/530 of the Companies Act – ***S K Bhargava v Official Liquidator [2006] 65 SCL 160 (Rajasthan)***
- ★ For the purpose of Section 529A of the Companies Act, 1956, debt covered by unregistered charge cannot be treated as secured debt – ***AP State Finance Corp. v Mopeds India Ltd. (In Liquidation) [2006] 65 SCL 38 (AP)***
- ★ Where proceedings were pending before BIFR under the provisions of Section 15/16 of SICA, Bar contained under Section 22 would be attracted to the petition filed under Section 433 of the Companies Act, 1956 [***Laxmichand Dayabhai (Exports) Company, Germany v Prestige Foods Ltd. (MP) (2006) 70 SCL 334***]



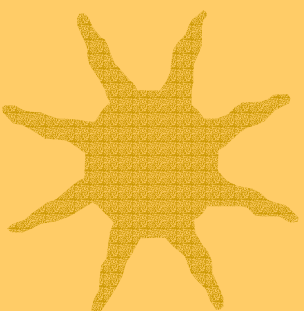
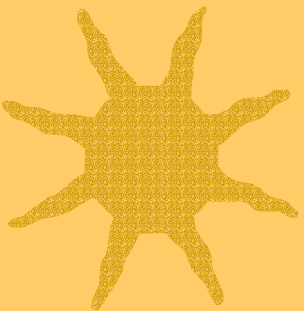
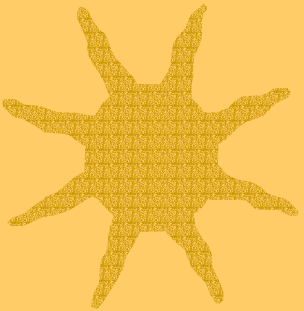
Other Issues



- ★ For failure to deliver share certificates within the prescribed time, ROC is person aggrieved and competent to file complaints – ***Ritesh Export Ltd v ROC [2006] 65 SCL 397(AP)***
- ★ Where shareholders of Company did not raise objection to shifting of registered office to the other state in general body meeting at time proposal being considered by general body said proposal was approved unanimously by shareholders. They could not object to the shifting of the registered office in proceeding under Section 17 of Companies Act – ***Perfect Refractories Ltd. In Re [2006] 65 SCL 204 (CLB – MUM)***
- ★ If there was no employee, who was in receipt of remuneration in excess of that drawn by the MD or WTD or Manager of the Company and held not less than 2% equity shares of the Company at material point of time, company is not liable to submit a statement under Section 217(2A) of the Companies Act showing that there was no such employee during the relevant period – ***Amit Kr. Sen v K A Kao, Deputy Registrar of Companies [2006] 65 SCL 252 (CAL)***



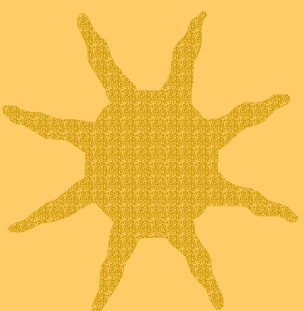
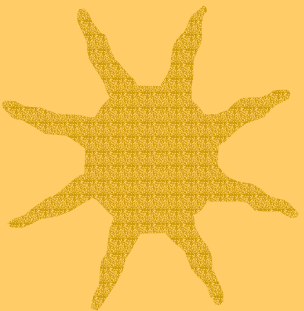
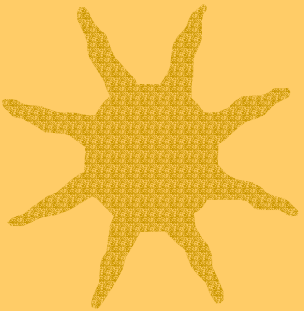
Other Issues



- ★ CLB to be a Court as envisaged in Regulation 47 of CLB Regulations, 1991 in exercise of its inherent power under Reg. 44 is empowered to invoke Section 10 of the Contempt of Courts Act, 1971 for purpose of punishing a person who willfully disobeys its orders, even in absence of any enabling provisions in Companies Act for initiating any action for violation of orders of CLB, more so, when such contempt is not an offence punishable under Indian Penal Code, 1860 [*N Venkataswamy v Sri Suryateja Constructions (P) Ltd. 2006 67 SCL 278 (CLB- Chennai)*]
- ★ Words “any order” under Section 634A of the Companies Act, indicate that all orders made by CLB on an application under Section 397/398 are enforceable like decrees without any limit on nature of order passed by CLB [*Manish Mohan Sharma v Ram Bahadur Thakur Ltd. 2006 67 SCL 91*]
- ★ Prosecution filed by ROC under Section 58A(10) is of criminal nature and therefore CLB could not give any direction for withdrawal of cases. [*Nuchem Ltd. 66 SCL 295 (CLB-New Delhi)*]



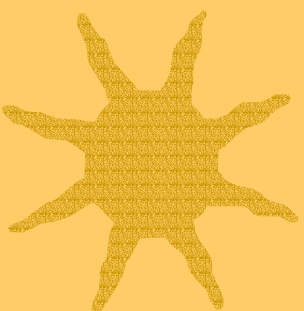
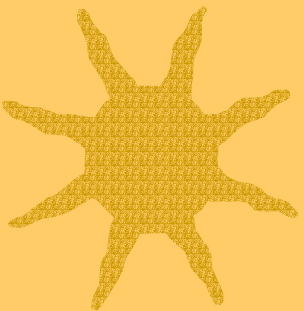
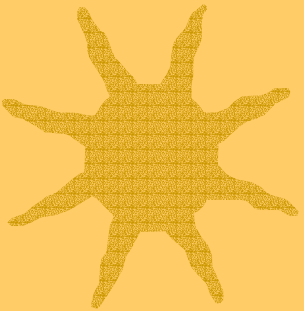
Other Issues



- ★ Mere change in the name of the Company or change of user from carrying on one business to another, it could not be said that fresh transaction took place or erstwhile lessee had transferred its leasehold interest in the favor of appellant and hence appellant is not liable to pay entire stamp fee on supplementary agreement. [*Prasad Technology Part (P) Ltd. v Sub-Registrar (SC) 66 SCL 203*]
- ★ No qualification of shares is needed for initiating an application under Section 247 and a person holding minuscule percentage of shares in company can file application under Section 247. [*Birla Corpn. Ltd. v East India Investment Co. (P) Ltd. (Cal) 66 SCL 180*]
- ★ Where provision of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 are not inconsistent with the Companies Act, 1956, there is no reason why Companies Act, 1956 should have an overriding effect on the 1993 Act and the petitioner was thus allowed to file winding up petition under the 1993 Act. [*Standard Industrial Engg. Co. v Bellary Power (India) (P) Ltd (Kar) [2006] 69 SCL 54*]



Other Issues



- ★ Civil Court has the power to rectify the register of members which involves disputed questions of facts and law [*Sahara Fabrics (P) Ltd. v Smt Kailash R Mehra* [2006] 69 SCL 233]
- ★ To apply the rigours of Section 88 of the Indian Trusts Act, 1882 the parties must have a genuine fiduciary relationship [*Vaishnav Shorilal Puri v Kishore Kundan Sippy* [2006] 69 SCL 349 (BOM)]
- ★ Any further issue of capital under Section 81 by a Private Company shall be in accordance with the provisions of Section 291/292 and Memorandum and Articles of the Company [*I.T. Cube India (P) Ltd. v I.T. Cube Inc.* [2006] 69 SCL 319 (KAR.)]
- ★ Where contract was executed on behalf of the company by all the directors, company may be held liable for the contract having regard to the nature of the transaction and the authority of those who executed it, even in the absence of the seal of the company [*Pancharan Dhara v Monmatha Nath Maity* [2006] 69 SCL 401 (SC)]

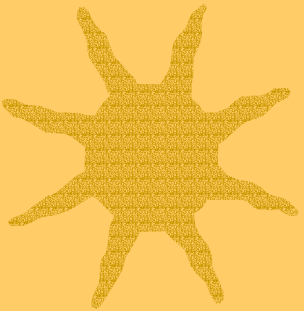


Other Issues

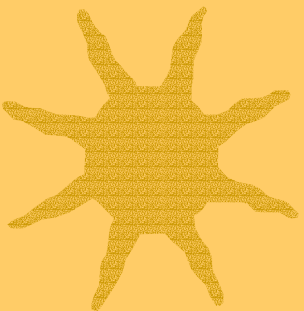
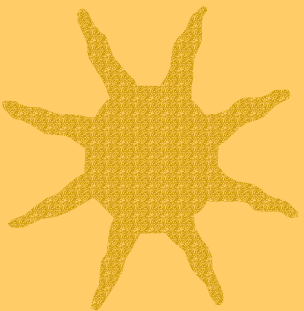
- ★ A mere issuance of Form C could not save bar of limitation. However a letter of promise from a debtor to pay a time barred debt, even if barred by limitation could be taken and a fresh period of limitation starts from the date of such letter - ***[In Re. Reunion Electrical Mfrs. (P) Ltd., [2006] 70 SCL 52 (BOM)]***
- ★ For rejection of the transmission there should be a provisions in the Articles that any debt incurred by a shareholder should be cleared by a legal heir before registration of the transmission - ***[Subir Roy v P.R. Productions (P) Ltd. [2006] 70 SCL 337 (CLB-Kol)]***
- ★ Basic characteristics of a Private Company in terms of Section 3(1)(iii) do not get altered just because it is a subsidiary of a public company in view of the fiction in terms of section 3(1)(iv)(c) that it is a public company - ***[Hillcrest Realty Sdn. Bhd.v Hotel Queen Road (P) Ltd. [2006] 71 SCL 41 (CLB – New Delhi)]***

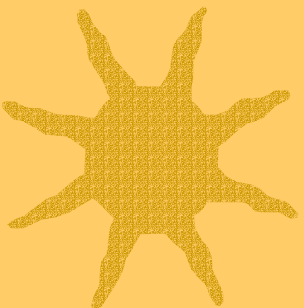
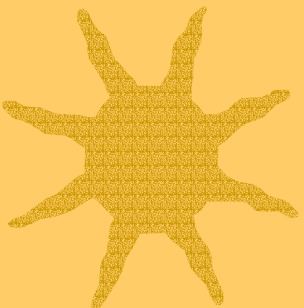
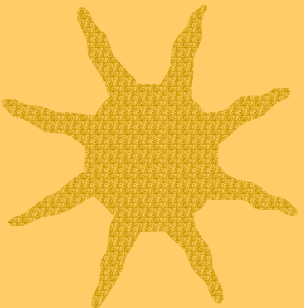


Other Issues



- ★ When CLB before passing ex parte orders have specifically enquired as to why the notices should not be issued to respondents non recording of reasons in the order could not be a reason for vacating or modifying order - [***Nikhil Mohanbhai Majithia v Babul Products (P.) Ltd. (CLB – New Delhi) 71 SCL 26]***]





THANK YOU