

*"It always seems impossible unless it is DONE!"*



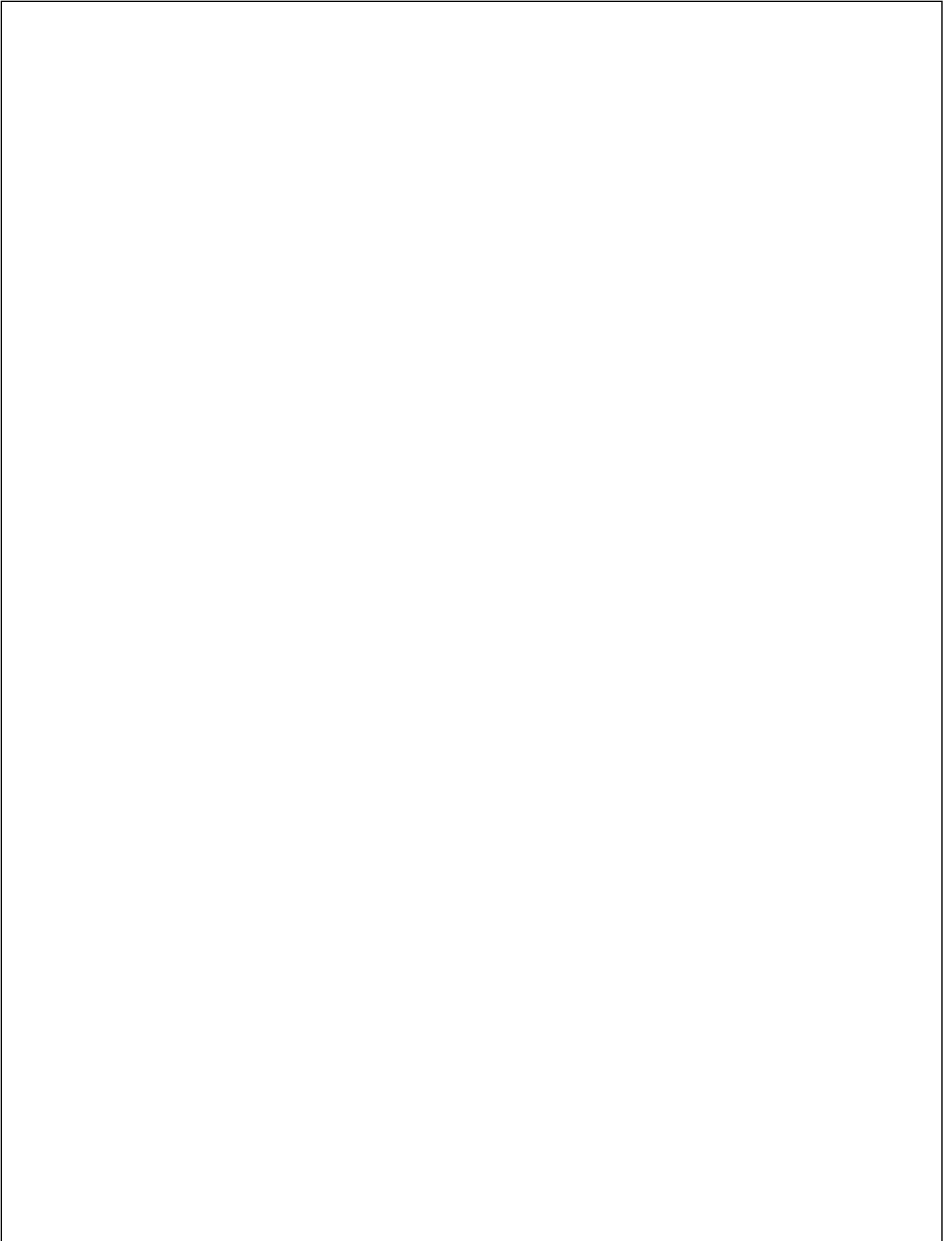
# Multidisciplinary Case Studies

## Module III

*"It always seems impossible unless it is DONE!"*



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# CORPORATE LAWS

## (INCLUDING COMPANIES ACT, 2013)



**A. HARI SANKARAN v. UNION OF INDIA [SC]****Civil Appeal No. 3747 of 2019****Facts :**

- A. On the basis of the Reports submitted by the ICAI and SFIO, the Central Government sought permission from the NCLT under section 130 of the Companies Act, 2013 to reopen the books of accounts and re cast the financial statements of the Infrastructure Leasing and & Financial Services Ltd. (the company in which the Appellant (Hari Shankar) is a director) and other two companies for 5 years, viz., F.Y 2012-2013 to 2017-2018.
- B. After perusal of the Reports, the NCLT passed an order allowing the reopening of the accounts. This decision was upheld by the NCLAT. C. Aggrieved, the Appellant preferred the instant appeal.

**Decision -**

The Court decided in favour of the **Respondent (UOI)**.

**Legal Principles held / Observations made -**

1. That while allowing the application, the NCLT had considered the preliminary report submitted by the ICAI and SFIO and the observations made in the aforesaid reports/preliminary reports and had satisfied itself that the conditions precedent for invoking powers under Section 130 of the Companies Act, 2013 stated in Section 130 (i) OR (ii) of the Act were satisfied.
2. That in the facts and circumstances of the case and keeping in mind the larger public interest where thousands of crores of public money was involved, the Tribunal was justified in allowing the application.

**Conclusion -**

The Court held that the Central Government could reopen the accounts as specified by the order of the NCLT..

**B. PR. COMMISSIONER OF INCOME TAX, DELHI v. ROC, DELHI & ORS [NCLAT]**

*Company Appeal (AT) No. 405 of 2018*

**Facts :**

- A. A company name "M/s Nexus Marketing Pvt. Ltd" applied for striking off its name under 'Fast Track Exit Scheme, 2011' [FTE]. This application was processed by the Respondent (ROC).
- B. The Respondent issued notice to the Appellant (Revenue) for seeking objections, if any within 30 days but received no objections from them within the stipulated period. Resultantly, the name of the Company was struck off.
- C. Subsequently, the Appellant filed an appeal to the NCLT seeking restoration of the name of the company on the ground that the tax dues against the company were not determined, which was dismissed by the Tribunal.
- D. Aggrieved, the preferred the instant appeal..

**Decision -**

The Court decided in favour of the **Respondent (RoC)**.

**Legal Principles held / Observations made -**

1. That the relevant documents filed by the Respondent satisfactorily established that the procedure laid down for striking off the name of Company from Register of Companies had been observed in letter and spirit.
2. That the relevant company was eligible to apply for striking off of its name under the FTE, 2011 as they qualified all the criteria for being adjudged as a defunct company.
3. That the plea of Appellant of them being a 'Creditor' of the company could not be accepted when admittedly they had not raised any demand or passed any assessment order prior to passing of the order of striking off the Company.
4. That as per Section 179 of the Income Tax Act, 1961, striking off the name of a Private Company from the Register of Companies does not absolve its erstwhile Directors from the liability to pay the amount of Tax leviable in respect of income of any previous year. In such a scenario, there is no requirement for restoring the name of the company for the mere purpose of collection of tax.

**Conclusion -**

The Court held that the name of the company could not be restored.



*Insolvency laws*





**A. ANAND RAO KORADA RESOLUTION PROFESSIONAL v. M/S VARSHA FABRICS LTD.***[SC] Civil Appeal Nos. 8800 & 8801 of 2019***Facts :**

- A. In the writ petitions filed by the workers Union, the High Court passed order directing the labour commissioner to determine the dues to the workers and accordingly labour commissioner quantified the same and certain properties of the corporate debtor was put on auction sale.
- B. Meanwhile, one financial creditor initiated corporate insolvency proceedings against the **Respondent (Varsha)** (corporate debtor) and the NCLT fixed the moratorium.
- C. The sale of the properties was to be made during the period of moratorium and the **Appellant (Anand Rao Resolution Professional)** challenged the orders of the High Court.

**Decision -**

The Court decided in favour of the **Appellant (Anand Rao)**.

**Legal Principles held -**

1. That Section 238 of the IBC gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets.
2. That the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT.

**Conclusion -**

The court held that the properties of the corporate debtor should not have been auctioned.

**B. DUNCANS INDUSTRIES LTD v. A.J. AGROCHEM [SC]**

*Civil Appeal No. 5120 of 2019*

**Facts :**

- A. The **Appellant (Duncan)** (Corporate Debtor) was a company which owned and managed 14 tea gardens out of which, the Central Government had taken over the control of 7 tea gardens under the Tea Act, 1953.
- B. The **Respondent (A.J. Agrochem)**, an operational creditor of the Appellant, used to supply pesticides, insecticides, herbicides etc. to the Appellant. They initiated the proceedings against the appellant before the NCLT under Section 9 of the IBC.
- C. The NCLT dismissed the application as not maintainable as the consent of the Central Government was not obtained. However, on appeal, the NCLAT reversed the order of the NCLT. Hence the present appeal by the corporate debtor

**Decision -**

The Court decided in favour of the **Respondent (A.J. Agrochem)**.

**Legal Principles held -**

1. That despite the notification under the Tea Act, the Appellant continued to be in management and control of the tea gardens/units and was running the tea gardens as if the notification dated under Section 16E had not been issued.
2. That Section 16G (1) (c) of the Tea Act referred to the proceedings for winding up of such companies or for the appointment of receiver in respect thereof.
3. That the proceedings under Section 9 of the IBC is not be limited and/or restricted to winding up and/or appointment of receiver only. The winding up/ liquidation of the company is the last resort and only on an eventuality when the CIRP fails.
4. That considering Section 238 of the IBC, the provisions of the IBC shall have an overriding effect over the Tea Act, 1953.

**Conclusion -**

The court held that the application filed by the operational creditor was rightly accepted.

**C. EXCEL METAL PROCESSORS LTD v. BENTELER TRADING INTL. GMBH & ANR. [NCLAT]**

*Company Appeal (AT) (Insolvency) No. 782 of 2019*

**Facts :**

- A. The **Respondent (Benteler)**, a German Company ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the **Appellant (Excel Metal)** ('Corporate Debtor') alleging that they had committed a default in making the payment to an extent of US \$1,258,219.42 inclusive of interest @ 15% per annum.
- B. The Adjudicating Authority admitted the application.
- C. The Appellant challenged the said order.

**Decision -**

The Court decided in favour of the **Respondent (Benteler)**.

**Legal Principles held -**

- 1. That Appellant contended that that as per the Agreement any suit or case was maintainable only in the Court at Germany and therefore, no case could be filed in any Court in India.
- 2. That the Corporate Insolvency Resolution Process is not a 'suit' or a 'litigation' or a 'money claim' for any litigation but is rather a process whose object is merely to get resolution brought about, so that the Company does not default on dues.
- 3. That the NCLT has been given the authority to adjudicate upon the matters falling within the ambit of the Code.

**Conclusion -**

The court held that the appeal filed by the Appellant was baseless.

**D. AHLUWALIA CONTRACTS (INDIA) LTD v. RAHEJA DEVELOPERS LTD [NCLAT]***Company Appeal (AT) (Insolvency) No. 703 of 2018***Facts :**

- A. The **Appellant (Ahluwalia)**, being an Operational Creditor filed an application under Section 9 of the Insolvency and Bankruptcy Code, against the **Respondent (Raheja)** (Corporate Debtor).
- B. The Adjudicating Authority, by impugned order, rejected the application on the ground that the claim of the Appellant fell within the ambit of 'disputed claim' after noticing that the Respondent initiated arbitration proceedings only after the receipt of demand notice from the appellant.
- C. Aggrieved, the Appellant preferred the instant appeal.

**Decision -**

The Court decided in favour of the **Appellant (Ahluwalia)**.

**Legal Principles held -**

1. That it is open to the Corporate Debtor to point out pre-existence of dispute. It is to be shown that the dispute was raised prior to the issuance of demand notice.
2. That a 'claim' means a right to payment even if it is disputed. Therefore, the fact that the 'Corporate Debtor' has disputed the claim by showing that there was a certain counter claim, cannot be held that there is pre-existence of dispute.

**Conclusion -**

The court held that the application filed by the operational creditor could not be rejected.

**E. SSMP INDUSTRIES LTD v. PERKAN FOOD PROCESSORS PVT. LTD [DEL]**  
**CS (COMM) 470/2016**

**Facts :**

- A. The **Plaintiff (SSMP)** filed the present suit seeking recovery of Rs.1, 61, 47,336.44.
- B. The **Defendant (Perkan)** had filed its written statement/counter claim for a sum of Rs.59,51,548/- and averred that no amount was due and payable by it to the Plaintiff.
- C. The Plaintiff Company went into insolvency and a Resolution Professional was appointed.
- D. The question has arisen as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.

**Decision -**

The Court decided the question and settled the position of law.

**Legal Principles held -**

- 1. That until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor, it would not be prohibited under Section 14 of the Code.
- 2. That until and unless the counter claim is itself determined, the claim and the counter claim should be heard together and there is no bar on the same in the Code.

**Conclusion -**

The court held that the counter claim could be heard and decided by the competent court.



## *Interpretation of statutes*



**A. NEVADA PROPERTIES PVT LTD v. THE STATE OF MAHARASHTRA [SC]***Criminal Appeal No.1481 of 2019***Facts :**

- A. Section 102 of the Cr.P.C. provides for power of police officer to seize certain property
- B. The question put forth before a three judges bench in the instant case was whether the term 'any property' includes immovable property also.

**Decision -**

The Court decided the case and settled the question of law.

**Legal Principles held -**

1. That Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed.
2. That the section gives powers to the police to act in case there is a suspicion of commission of an offence. In such a case of mere suspicion, such drastic powers of seizure of the immovable property cannot be given to the police.

**Conclusion -**

The Court held that the the Police does not have powers to seize immovable property under the said section.

**B. INTERTEK INDIA PVT LTD v. PRIYANKA MOHAN [DEL]***C.R.P. No. 215 of 2019***Facts :**

- A. The **Respondent (Priyanka)** was an employee of the **Petitioner (Intertek)** whose services were terminated by the Petitioner.
- B. Aggrieved, the Respondent filed a suit claiming a declaration that termination of her services was null and void and further sought a decree of damages on account of mental harassment, loss of reputation, etc.
- C. The Petitioner filed application under Order 7 Rule 11 (d) of the CPC, 1908 contending that the contract of services being a terminable contract, no suit would lie for re-instatement of services.
- D. The trial court by the impugned order dismissed the application. Hence the present petition before the High Court.

**Decision -**

The Court decided in favour of the **Respondent (Priyanka)**.

**Legal Principles held -**

1. That the Respondent had not sought any re-instatement in service but had claimed that the termination was illegal and hence null and void.
2. That the Respondent could claim damages etc. for wrongful termination in case she was able to establish that the termination was illegal or contrary to any settled principles

**Conclusion -**

The Court held that the petition filed by the Petitioner could not stand in the eyes of law.



**C. RAVINDER KAUR GREWAL v. MANJIT KAUR [SC]***Civil Appeal No.7764 of 2014***Facts :**

A. The sole question of law involved in the instant appeal was-

*“Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person”*

**Decision -**

The Court decided the case and settled the question of law.

**Legal Principles held -**

1. That that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest.
2. That that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant under Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession.

**Conclusion -**

The Court held the above principle of law.

**D. ANIL KHADKIWALA v. THE STATE GOVT. OF NCT OF DELHI [SC]***Criminal Appeal No(s).1157 of 2019***Facts :**

- A. The **Respondent no. 2 (Mr. X)** filed a complaint against the **Appellant (Anil)** who was the Director of M/s. ETI Projects Ltd., the Company in question alleging that the accused person had issued cheques which were dishonoured upon presentation.
- B. The Appellant had preferred an application for quashing the same by taking the defence that he had already resigned from the Company before issuing the cheques. The application was dismissed.
- C. The appellant then preferred a fresh application under Section 482 giving rise to the present proceedings

**Decision -**

The Court decided the case in favour of the **Appellant (Anil)**.

**Legal Principles held -**

1. That there was no bar to the maintainability of a second application under Section 482, Cr.P.C. in the peculiar facts and circumstances of the case.
2. That the High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques.

**Conclusion -**

The Court held that the Appellant had resigned before the issuance of the cheque and hence, could not be held liable.