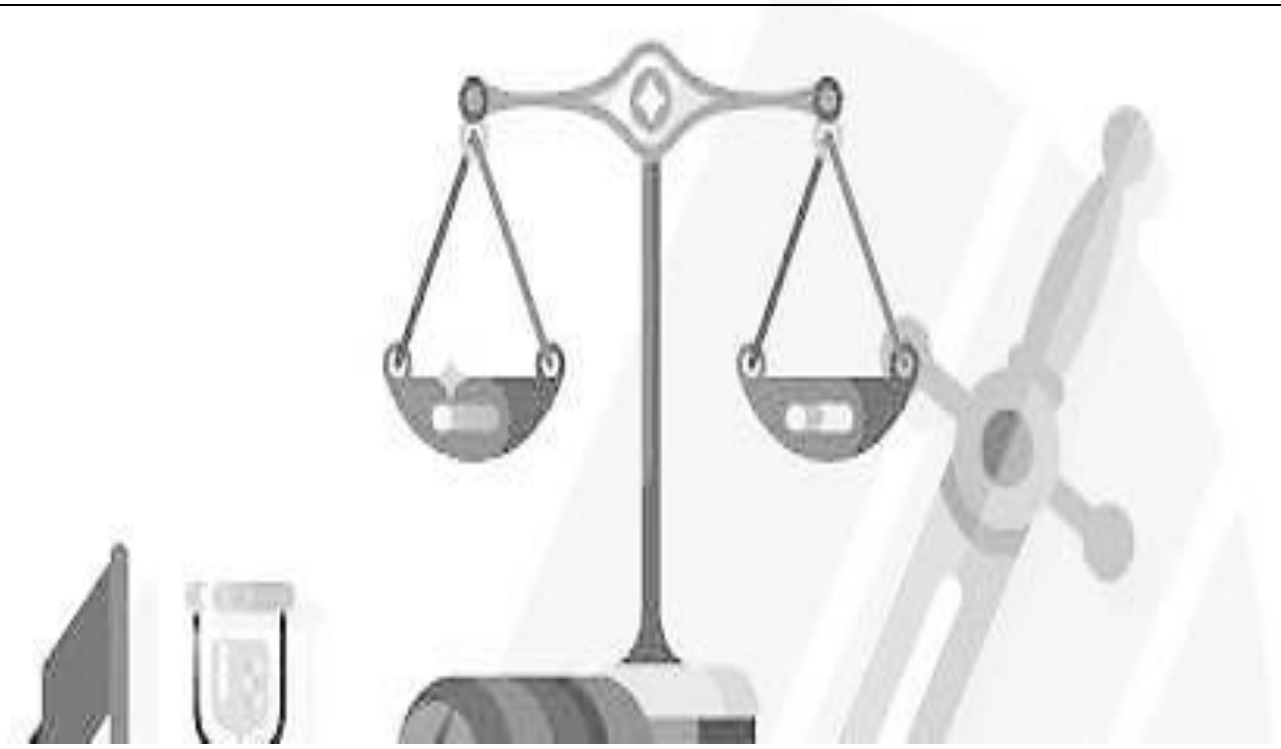
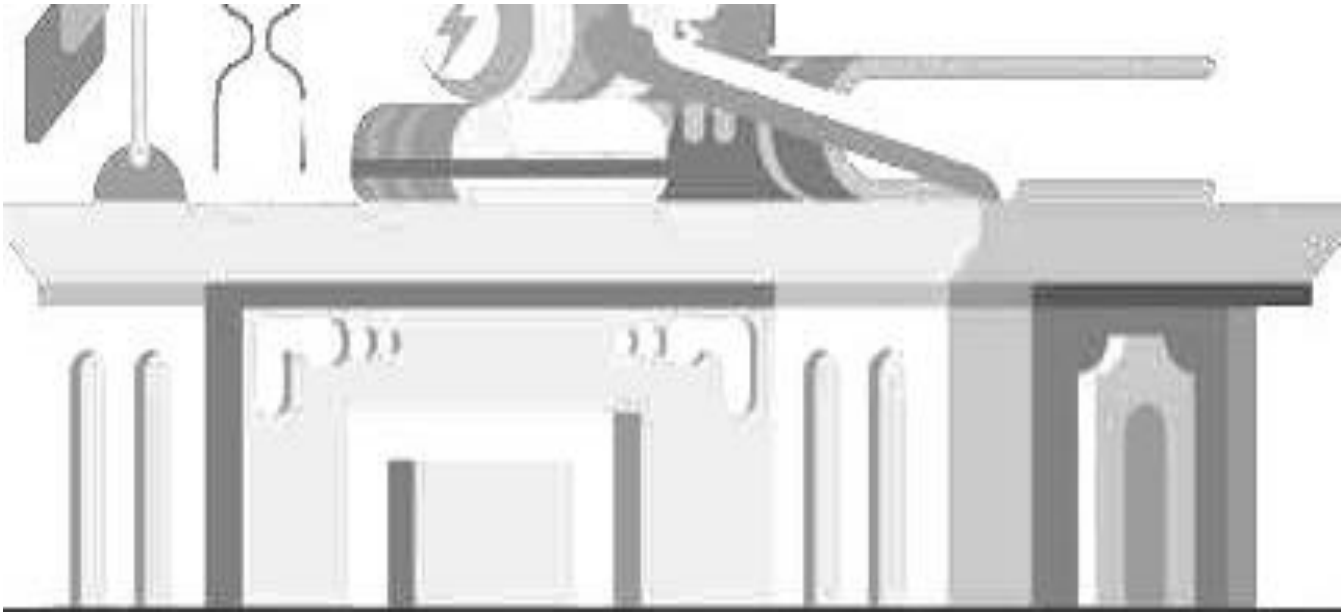


MULTIDISCIPLINARY CASE STUDIES

MODULE III



CORPORATE LAWS

(INCLUDING COMPANIES ACT, 2013)

1. JOHN THOMAS v. Dr. K. JAGADEESAN [SC]

Appeal (Crl.) 688 of 2001

Facts :

A. The **Respondent (Dr. Jagadeesan)** was the director of a renowned Hospital in Chennai. A caricature had been published in a newspaper showing the Hospital as the abattoir of human kidneys for trafficking purposes. The Respondent filed a suit for defamation against the published of the Newspaper who is the **Appellant (John Thomas)** herein.

B. The Appellant contended that the libel was not against the Respondent personally, but against the hospital only and hence the Respondent has no locus standi. This contention was accepted by the Trial Court and the case was dismissed.

C. Aggrieved, the Respondent approached the High Court which disapproved the action of the Magistrate and directed the trial to proceed. Aggrieved, the Appellant has preferred the instant appeal.

Decision –

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

Legal Principles held / Observations made–

1. That who can file a complaint against a person defaming an artificial judicial person is dealt with under Section 499 of the Indian Penal Code, 1860. It says that a complaint can be filed by *"some person aggrieved by the offence."*
2. That the section indicates that the complainant need not necessarily be the defamed person himself. In case of the defamed person being a company, the directors would be equally affected by the defamatory article and hence, will fall under the purview of the word *"some person aggrieved"* as envisaged in Section 499(1) of the Code.

Conclusion –

The Court held that the Respondent had the locus to make the complaint.

2. STEEL AUTH OF INDIA LTD. V. SHRI AMBICA MILLS LTD. & ORS [SC]

Civil Appeal NO.2889 OF 1985

Facts :

A. The **Respondent (Shri Ambica)** had obtained an advance license under a special scheme and had submitted it to the **Appellant (SAIL)** for the supply of rolled strips in coils. The Appellant rejected the license and refused to supply the goods at concessional price stating that the license was defective.

B. The Respondent contended that the license issuing authority and the major shareholder of Appellant were the same government and therefore, the Appellant could not have rejected the defective advance license.

C. The main contention that arose was whether a company in which the major shareholder is the government itself becomes a department of the government or remains as a separate entity.

Decision –

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

Legal Principles held / Observations made–

1. That a company, even though fully owned by the Government, when incorporated, takes its own entity/identify and cannot be considered as department of the Government.

Conclusion –

The Court held that the Appellant was not a department of the Government and rather had a separate entity.

3. USHA MARTIN VENTURES LTD. & ORS. v. USHA MARTIN LTD. & ANR [NCLAT]

Company Appeal (AT) No. 94 of 2019

Facts :

A. The **Appellant (Usha Martin Ventures)** had filed a Petition under Section 241 & 242 of the Companies Act, 2013 alleging oppression and mismanagement against the **Respondents (Usha Martin)**.

B. The State Bank of India filed an intervention application, which was allowed by National Company Law Tribunal.

C. Aggrieved, the Appellants challenged the impleadment of SBI in the instant appeal.

Decision –

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

Legal Principles held –

1. That the State Bank of India had a nominee as one of the Director of the Company and the Appellant had alleged mismanagement of the company. This would have a direct impact in the Nominee Director and hence, SBI was a necessary party.

Conclusion –

The Court held SBI had been rightly impleaded in the suit.

4. MEL WINDMILLS PVT. LTD. v. MINERAL ENTERPRISES LTD. [NCLAT]

Company Appeal (AT) No. 04 of 2019 with connected appeals

Facts :

A. The **Appellant (MEL Windmills)** filed a first motion petition with the NCLT for convening a meeting of the members and creditors of the company in order to get a scheme of demerger sanctioned by them.
B. The NCLT passed an order declining to sanction the scheme of demerger on the ground that several issues were pending finalization and certain investigations were pending in relation to the mining business of the demerged company.
C. The demerged company contended that the pending investigations were those which had been stayed by the High Court. Therefore, the said proceedings had no bearing and could not be an impediment in considering approval of the scheme of demerger.

Decision –

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

Legal Principles held / Observations made -

1. That at the stage of calling of meeting of creditors/members for consideration of the scheme of compromise or arrangement the Tribunal is not required to examine the merits of the scheme qua the proposed compromise.
2. That the merits of the proposed scheme of demerger which had to be examined only after obtaining the consent of creditors/members with requisite majority
3. That the pending issues could not be construed as an impediment in sanctioning the proposed scheme of demerger because the demerger scheme proposed by the Appellants was not with regard to business of Mining which would continue with the Demerged Company and the pending investigation would continue unhindered without having any impact on the proposed scheme of demerger.

Conclusion –

The Court remanded the matter back to the NCLT for fresh adjudication.

5. BACHA F. GUZDAR v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No.104 of 1953

Facts :

A. The **Appellant (Bacha F. Guzdar**) was a Shareholder in a company that was engaged in the business of production and manufacture of Tea. The Company was eligible for certain benefits under the Income Tax Act, 1922 by the virtue of which 60% of income from the business of

production and manufacture of tea was exempt as it was held to be Agricultural Income. The remaining 40% was subject to tax.

B. The appellant received certain amount as dividend on the said shares. The Income Tax department sought to impose tax on the amount received as dividend.

C. The Appellant denied payment of tax on the ground that the dividend received was out of profits from the business of production and manufacture of tea and hence, 60% of it was exempt from tax.

D. The Department disagreed.

Decision –

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

Legal Principles held –

1. That the shareholders are not the owners of the assets of the company. They merely have a right to participate in the profits accrued by the company by using such assets. Assets are held by the company in its own name.
2. That in order to avail benefit under the said section, there has to be a direct nexus between the income and the Agricultural land. In the instant case, income from dividend did not accrue from the land directly. It accrued from the shares of the company. Therefore, the benefit cannot be granted.
3. That accepting the contention of the appellant would defeat the intention of the legislature in enacting the said section.

Conclusion –

The Appellant was not given the benefit of the exemption and the whole amount of dividend was added to his total income.

6. SIDDARTH GUPTA v. THE DELHI GOLF CLUB LIMITED & ANR [DEL]

I.A. No. 19355/2015 in C.S (OS) No. 2805/2015

Facts :

A. The **Petitioner (Siddharth Gupta)** had acquired membership in the **Delhi Golf Club Ltd (Respondent)** after paying the requisite fees and was enjoying the rights and privileges guaranteed to the members of the Club.

B. One day, he got to know that a resolution had been passed in the AGM of the Club wherein his membership was cancelled.

C. He filed a Petition against the said resolution in the Delhi High Court.

Decision –

The Court decided in favour of the **Petitioner (Siddharth Gupta)**

Legal Principles held -

1. That the membership of a person can be cancelled only after following the related provisions of the MoA and AoA of the Club and also the Principles of Natural justice.
2. That neither any notice was given to the appellant nor any opportunity of being heard was provided to him. Further, the provisions related to expulsion of members as provided in the MoA and AoA were not followed. In such a scenario, the resolution could not be sustained.

Conclusion –

The club was directed to reverse the Resolutions and were refrained from cancelling the membership of the Petitioner.

7. MADRAS PETROCHEM LTD & ANR v. BIFR & ORS [SC]

Civil Appeal Nos.614 – 615 of 2016

Facts :

A. The **Appellant (Madras Petrochem Ltd.)** filed a reference before the **BIFR (Respondent)** to formulate a rehabilitation scheme. All attempts to revive the company failed. Pursuant to this, on recommendation of BIFR, the Bombay High Court passed an order of winding up against the appellant. The company filed an appeal with the AAIFR.

B. While the matter stood pending before the AAIFR, ICICI issued a notice under Section 13(2) of the SARFESI Act to the appellant company and followed it up with a possession notice.

C. Such an interplay of petitions filed under SICA as well as the SARFAESI Act resulted in conflict between the two Acts. The instant Petition was filed in order to understand the correct position of law as to which Act would prevail over the other.

Decision –

The Court decided in favour of the **Respondents (BIFR).**

Legal Principles held –

1. That the following is the correct position of law when there is a conflict between the SARFAESI Act and SICA-

Unsecured Creditors	Secured Creditors			
	If there is a single secured creditor	If there is more than one creditor		
		Less than 60% of Creditors agree to enforce Security	More than 60% of Creditors agree to enforce Security	More than 75% of Creditors agree to enforce Security
SICA will prevail	SARFAESI will	SICA will have	SICA will have	Proceedings

	prevail	full play	no play	under SICA will abate

Conclusion –
The Court held that since more than 75% of the Secured Creditors had agreed to enforce their security interests, the proceedings under SICA shall abate.

8. REGISTRAR OF COMPANIES v. RAJSHREE SUGAR & CHEMICALS LTD & ORS [SC]

Civil Appeal No. 485 0f 2000

Facts :

- **A.** Certain share transfer certificates were submitted with the **Respondent Company (Rajshree Sugar)** in order to register the transfer in the Register of members. The company, however, failed to comply with section 113 of the Companies Act, 1956 which prescribes for the time period within which the company has to issue fresh certificates to the transferee(s).
- **B.** On perusal of records of the company, the **Appellant (RoC)** found the alleged violation after a span of 2 years. He filed a case against the company which was dismissed on grounds of (i) limitation period and (ii) that the RoC had no locus to bring a petition under the said section.
- **C.** The RoC filed an appeal with the Supreme Court.

Decision –
The Court decided in favour of the **Appellant (RoC).**

Legal Principles held –

1. That the Government Officers are obliged to work with reasonable expedition and within the time frame prescribed by the Act. However, in the instant case, the delay to file the petition was condoned but heavy costs were imposed on the appellant (RoC).
2. That the words "any person aggrieved" used in section 113 of the Act should be interpreted in such a manner so as to bring it in conformity with other provisions of the Act. If the words are interpreted to include only the transferee of the shares, it will go against the other provisions of the Act.
3. That the words "any person aggrieved" used in section 113 of the Act includes the registrar of Companies and hence, the RoC had the locus to file the instant petition.

Conclusion –
The Court held that the RoC could file the complaint and remanded the matter back for fresh adjudication.

9. OM PRAKASH PARASRAMPURIA & ORS v. UNION OF INDIA & ORS [DEL]

W.P. (C) 8617 and 8732/2015

Facts :

A. In the case of *"KSL & Industries Ltd. vs. Arihant Threads Ltd. & Ors (2015) 1 SCC 166"* the Supreme Court held that provisions of section 22 of SICA will prevail over section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act). This was based on the legal principle that **"coercive recovery proceedings could not be initiated against a sick company."**

B. The **Petitioners (Om Prakash Parasramupia)** were guarantors to a loan obtained by a sick company and recovery proceedings under the RDDBFI Act, 1993 were initiated against them.

C. The Petitioners argued that since the company had been declared as a Sick company, no action under other Acts like RDDBFI could be brought against them.

Decision –

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

Legal Principles held –

1. That Section 22 of the SICA puts a bar on the continuation or institution of proceedings for the winding up of or on the continuation or institution of suits for the recovery of money or for the enforcement of any security against any sick company without the consent of BIFR.

2. That the word 'suit' as used u/s 22 cannot be understood in its broad and generic sense to include any action before a legal forum involving an adjudicatory process. Thus, the bar would apply only to proceedings in a civil court and not on actions for recovery proceedings filed before a Tribunal, such as, the 'DRT.

Conclusion -

The Court held that the petition under RDDBFI Act can be maintained against the guarantors of a sick company.

10. B.I.F.R. & ORS v. KMA LTD & ORS [Bom]

Company Application No. 593 of 2011 and 620 of 2011 in 778 of 2005

Facts :

A. The company had a total of 1162 workmen out of which 1099 workmen were members of one Union (say, A) and the rest 63 were members of a rival Union (say, B).

B. Member of Union A accepted payment of their dues from the company as per the Consent Terms reached between them and the Secured Creditors. Members of the Union B did not agree to the said terms.

C. Members of the Union B argued that they are not bound by the consent terms accepted by Union A and must be paid in accordance with the adjudication originally made by the Industrial Court or in accordance with their entitlement under Sections 529A and 530 of the Companies Act, 1956.

D. Further, the members of Union B demanded wages upto the date on which winding up order was passed by the court against he company.

Decision –

The Court decided upon a number of principles in favour of different parties.

Legal Principles held –

1. That the dissenting workmen, i.e; members of Union B were not bound by the consent terms entered into by the members of Union A.
2. That the workmen who did not become members of the Company as per the consent terms and did not work must be treated as having refused to offer themselves for service and accordingly, ceased to be workmen. Thus, they cannot claim wages for the days after which the factory was closed and were entitled to wages only upto the date of closure of the factory.
3. That the workmen were entitled to payment of gratuity and leave encashment upto a maximum permissible limit of 30 days, in priority. However, they were not entitled to payment of bonus, interest on gratuity or leave encashment beyond 30 days as preferential payment.

Conclusion -

The Court held the abovementioned principles regarding the various questions involved.

11. SHRI GOPAL PAPER MILLS CO. LTD. v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No. 1669 of 1966

Facts :

A. The **Appellant company (Shri Gopal)** passed a resolution on 30/12/1954 resolving to capitalize and distribute its accumulated profits to its shareholders as Bonus shares. However, the dividend was to be calculated on the said shares from 01/01/1955.

B. The Income Tax Department, while calculating the tax liability of the company, held that since dividend was to be calculated on the bonus shares from 01/01/1955, they will be deemed to have been allotted on 01/01/1955. Therefore, the amount for which bonus shares were issued to the shareholders would not be considered as the share capital of the company and would rather be added to the income of the company for the assessment year 1954.

C. The company contested this on the ground that the ownership of bonus shares vested in the shareholders on the day on which resolution was passed i.e; on 30/12/1954. Thus, the amount

for which the bonus shares were issued should not be added to the profits of the company and should rather be added to its equity.

(PLEASE NOTE that the assessment year used to be the same as calendar year back then)

Decision –
The Court decided in favour of the **Appellant (Shri Gopal).**

Legal Principles held –

1. That under the AoA of the company, the shareholders did not have any rights to reject the allotment of bonus shares. Thus, the company had full powers to issue and allot bonus shares to the shareholders.
2. That in the above scenario, it did not matter that the dividend on the shares was calculated from 01/01/1955. The ownership in the shares transferred with the passing of the resolution.

Conclusion -
The Court held that the shareholders became the holders of the bonus shares from 30/12/1954.

12. CHIEF CONTROLLING REVENUE AUTH. & ANR V. RELIANCE INDUSTRIES LTD & ANR [BOM-FB]

Civil Reference No.1 of 2007 in Writ Petition No. 1293 of 2007

Facts :

A. The **Respondent Company (Reliance Industries Ltd.),** situated in Mumbai, planned to amalgamate with its group company Reliance Petroleum Ltd, which was situated in Gujarat. In accordance with the provisions of the Companies Act, 1956, both the companies approached their respective High Courts in order to get their schemes of amalgamation sanctioned.

B. Both the High Courts sanctioned the schemes of amalgamation. Subsequently, the Respondent Company paid stamp duty of Rs.10 crores in the State of Gujarat on the order passed by the Gujarat High Court and requested for the remission/ deduction/ setoff of this sum on the stamp duty payable on the order passed by the Bombay High court.

C. This request was rejected by the Bombay High Court and the company was ordered to pay stamp duty of Rs. 25 crores in the State of Maharashtra on the order passed by the Bombay High Court.

Decision –
The Court decided in favour of the **Appellant (Revenue).**

Legal Principles held –

1. That any order passed by the High Court sanctioning a scheme of amalgamation is an instrument chargeable to stamp duty because it is that order that effects transfer of assets. In case orders sanctioning the scheme of amalgamation are passed by two different High Courts, then the orders of both the High Courts will be the separately chargeable to stamp duty.
2. That the orders sanctioning the scheme of amalgamation are not incidental to the transaction but are rather the most important part as it is these orders which effectuate the transfer of assets.
3. That no waiver / rebate can be given to the company on the stamp duty to be paid in one state based on the duty paid in another state.

Conclusion -

The Court held that the company has to pay separate Stamp Duties in both the states.

13. MESSER HOLDINGS LTD. v. SHYAM MADANMOHAN RUIA & ORS [SC]

SLP(C) Nos. 33429-33434 of 2010 with SLP(C) Nos. 23088-23090 of 2012

Facts :

A. Two companies named MCG and GGL entered into a Share Purchase Agreement which contained a *non-compete clause* which prohibited the parties from entering into competitive business.

B. Thereafter, MCG entered into another Share Purchase Agreement with Ruias under which they agreed to by 45001 shares of another company called BOCL from Ruias and 30000 additional shares of BOCL from the open market. BOCL was engaged in the same business as GGL.

C. Subsequently, GGL protested the acquisition of BOCL by MCG on the ground that it violated the *non-compete clause.* To this, MCG suggested that 50000 shares of BOCL be taken in the name of GGL and the rest 25001 shares be taken in their own name. This wasn't acceptable to Ruias.

Decision –

The Court disposed the appeal by imposing **Exemplary Costs.**

Legal Principles held –

1. That the parties involved themselves in a legal battle that stretched over 18 years. This was a classic example of the abuse of the judicial process by unscrupulous litigants with money power, all in the name of legal rights by resorting to half-truths, misleading representations and suppression of facts.
2. Thus, exemplary cost to the tune of Rs. 25 Lakhs each was imposed on MCG, CCL and Ruias as compensation for the loss of judicial time.

Conclusion -

The Court held that the parties had indulged in acts that resulted on abuse of the judicial processed and wastage of the time of the court. Therefore, exemplary costs were imposed.

14. KISHINCHAND CHELLARAM V. COMMISSIONER OF INCOME TAX [SC]

Civil appeal Nos. 462-465 of 1960

Facts :

A. The **Appellant (Kishinchand Chellaram)** along with others was the shareholders of a company. The company declared certain amount as dividend on the said shares and credited the same to the accounts of the respective shareholders.

B. Subsequently, the company passed a separate resolution purporting to reverse the earlier resolutions was passed by the company declaring dividends.

C. The Income Tax Authorities considered the dividends as the income of the shareholders and assessed as such. However, the appellants contended that the dividends were not their income as it was reversed by the company and hence, should not be added to their total income.

Decision –

The Court decided in favour of the **Respondents (Revenue).**

Legal Principles held –

1. That the dividend once declared/paid by the company does not lose its character even if the company passes a subsequent resolution reversing the previous resolutions and cancelling the payment of dividend. Any amount once declared, paid and received as dividend will be considered to be dividend only for the purpose of Income Tax.
2. That payment made as dividend by a company to its shareholders out of its capital will also be considered to be dividend for the purpose of income tax. Separate action can be brought against the directors/ officers in default of a company for such unlawful actions.

Conclusion -

The Court held that the Appellant was liable to pay tax on the amount paid to them as dividend.

15. RAM PRSHAD v. COMMISSIONER OF INCOME-TAX, NEW DELHI [SC]

Civil Appeal No. 1946 of 1968

Facts :

A. The **Appellant (Ram Prashad)** was the Managing Director of the company. According to the terms of his employment agreement, he was entitled to get 10% of the gross profits of the

company besides monthly fixed salary. For one such year, Rs. 53,913/- was calculated to be payable to him as 10% of the gross profits of the company. However, he gave up the abovementioned amount soon after the accounts were finalised.

B. Income Tax Authorities sought to add the abovementioned amount to the total income of the appellant. The appellant denied this by contending that the amount never accrued to him and hence, it should not be added to his total income.

C. The appellant further contended that he was an agent of the company and did not share a master servant relationship with the company. Thus, his income should be taxed as income from business and not from salary.

Decision –

The Court decided in favour of the **Respondents (Revenue).**

Legal Principles held –

1. That directors work within the ambit of the powers provided to them by the Article of Association of the company, their employment contracts and the decisions taken collectively by the Board of Directors. This shows that there exists great amount of supervision and control over the work of directors.
2. That the above facts show that directors work as employees of the company and hence, their income should be taxed under the head – income from salary.

Conclusion -

The Court held that the appellant was liable to pay tax on the said amount.

16. AIR FRANCE GROUND HANDLING PVT. LTD (IN LIQUIDATION) [DEL]

Co.Pet. 382/2016

Facts :

A. The **Petitioner (Air France)** had passed a special Resolution in its Extraordinary General Meeting held for voluntary winding up of the Company. Accordingly, an Official Liquidator was appointed to carry out the Liquidation of the Company.

B. A Petition was filed in the court seeking an order of dissolution against the company.

Decision –

The Court passed an order dissolving the Company.

Legal Principles held –

1. The Court observed the following points in deciding the Petition –
    a. That the final Extraordinary General Meeting was held and the Voluntary Liquidator filed the final accounts of the Company, as prescribed under the Rules 329 and 331 before the Registrar of Companies and to the Official Liquidator.

b. The Official Liquidator had received 'No Objection Certificates' from the Registrar of Companies and the Income Tax Department.
c. That an affidavit was filed with the Official Liquidator to declare that no outstanding amount stands against the Company
d. That the necessary compliances of the Companies Act, 1956 had been made
e. That the affairs of the Company had not been conducted in a manner prejudicial to the interest of its members or to the public

Conclusion -
The Court held that in the above scenario, an order dissolving the company could be passed.

17. MIHEER H. MAFATLAL v. MAFATLAL INDUSTRIES LTD [SC]

Civil Appeal No.11879 of 1996

Facts :

A. The transferor-company Mafatlal Fine Spinning and Manufacturing Co. Ltd [MFL] amalgamated with the **Respondent (transferee company Mafatlal Industries Limited (MIL))** under a scheme of amalgamation which was sanctioned by the Bombay High Court as well as the Gujarat High Court.
B. Aggrieved, the instant appeal was preferred.

Decision –
The Court decided in favour of the **Respondent (MIL).**

Legal Principles held –

1. That the jurisdiction of the Company Court while considering the approval of a scheme of amalgamation is very limited.
2. That the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors who might have voted in favour of the scheme by requisite majority but the Court has to also consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and that it does not violate any public policy.
3. That the Court does not have the jurisdiction of an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved it.
4. The Sanctioning court has to ensure that-
    a. all the requisite statutory procedure for supporting such a scheme has been complied with

b. the scheme put up for sanction of the Court is backed up by the requisite majority vote
c. the concerned meetings of the creditors or members had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question
d. all the necessary material is placed before the voters at the concerned meetings
e. the members or class of members or creditors or class of creditors were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter

Conclusion –
The Court held that the Respondents could go ahead with the scheme of amalgamation.

18. MADURA COATS LTD v. MODI RUBBER LTD & ANR [SC]

Civil Appeal No. 1475 of 2006

Facts :

A. The **Appellant (Madura Coats)** was a creditor of a company called **Modi Rubbers (Respondent).** Respondent was suffering through acute shortage of money and was unable to pay its debts. Aggrieved by this, the Appellant filed a petition in the Allahabad High Court for winding up of the Respondent. During the pendency of the winding up petition, the Respondent filed a reference Application with the BIFR.

B. The following timeline is important to be understood–
   a. 2002 – Winding Up Petition filed by the Appellant against the Respondent
   b. 03/02/2004 – Respondent made a Reference to the BIFR
   c. 12/03/2004 –High Court passed a winding up order against the Respondent in the petition filed by the Appellant in the year 2002
   d. 17/03/2004 – Reference made by the Respondent registered as a case by the BIFR.

C. Taking cognizance of the fact that a case had been registered with the BIFR, the Allahabad High Court put a stay on the winding up process. Aggrieved by this, the Appellant brought the instant appeal.

Decision –
The Court decided in favour of the **Respondent (Modi Rubber).**

Legal Principles held –

1. That once a reference is registered after scrutiny, it is mandatory for the BIFR to conduct an enquiry
2. That SICA is intended to revive and rehabilitate a sick industry before it can be wound up under the Companies Act. The legislative intention is to ensure that no proceedings against the assets of the company are taken before any decision is taken by the BIFR. This is because if

the assets are sold or the company is wound up, it may become difficult to later restore the status quo ante.

3. That different situations can arise in the process of winding up a company under the Companies Act but whatever be the situation, whenever a reference is made to the BIFR under the SICA, the provisions of the SICA would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under the SICA.

Conclusion –

The Court held that the liquidation proceedings have to be stopped and the proceedings under SICA be continued.

19. SINGER INDIA LTD. v. CHANDER MOHAN CHADHA & ORS [SC]

Civil Appeals No. 387 & 388 of 2004

Facts :

A. **The Respondent (Chander Mohan Chadha)** had leased out a piece of land to a company known as Singer Sewing Machine Company, incorporated in the US. After a few years, the company transferred these leasehold rights to an Indian company called "Indian Sewing Machine Ltd." (later known as **Singer India Ltd**, **the Appellant**.) without obtaining prior approval of the lessor.

B. Aggrieved by this, the lessor filed an eviction petition against the company under section 14 of the Delhi Rent Control Act.

C. The company contended that the leasehold rights were transferred by virtue of a scheme of amalgamation approved by the High Court and was therefore, a compulsion made by operation of law. It further contended that the Indian company was incorporated only for complying with the provisions of law and that it was, for all practical purposes, the same entity as the foreign company.

Decision –

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

Legal Principles held –

1. That though by operation of law, the Foreign Company had wound up its business, but had assigned the leasehold interest to the Indian Company without obtaining the written consent of the landlord and, therefore, it was a clear case of sub-letting
2. That it is not open to any Company to ask for unveiling its own cloak and examining as to who are the directors and shareholders and who are in reality controlling the affairs of the Company.

Conclusion –

The Court held that the Appellants were liable to be evicted.

20. MORGAN STANLEY MUTUAL FUND v. KARTICK DAS [SC]

Civil appeal No.4584 of 1994

Facts :

A. The **Appellant (Morgan Stanley)** made a public issue inviting subscription from the public to its mutual fund scheme "Morgan Stanley Growth Fund".

B. The **Respondent (Kartick)** brought a complaint under the Consumer Protection Act, 1986 seeking to restrain the public issue from being floated on the grounds that the Appellant's Offering Circular was not approved by SEBI, that there were several irregularities in the same, that the basis of allotment was arbitrary and unfair and that the appellant was seeking to collect money by misleading the public.

C. The Appellant contended that the aforesaid complaint under the Consumer Protection Act could not be maintained. To maintain a complaint under COPRA, there has to be some defect in goods or some deficiency in the services being offered. In the instant case, shares had not been allotted as yet and hence, they had not attained the status of being "goods".

Decision –

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

Legal Principles held –

1. That till the allotment of shares takes place, "the shares do not exist". Therefore, at the stage of application, shares will not be goods. It is only after allotment that rights may arise as per the Article of Association of Company. at the stage of application, an applicant is just a prospective investor.
2. Since the shares could not be termed as "goods" as long as they are at the stage of application, the prospective investors could also not attain the status of being "consumers". Thus, no complaint can lie against the issue under the Consumer Protection Act.
3. That the above act of the company could not be termed as unfair trade practice either. This is because the company is not trading in shares. The object of issuing the same is for building up capital and is not a practice relating to the carrying of any trade.

Conclusion –

The Court held that the complaint made by the Respondent could not be maintained.

21. THE STATE TRADING CORPORATION OF INDIA LTD & ORS v. THE COMMERCIAL TAX OFFICER & ORS [SC]

Writ Petitions No.202 -204 of 1961

Facts :

A. Sales-tax Authorities sought to assess the **Petitioner (Corporation)** to sales tax and issued notices of demand. The Appellant claimed to be an Indian citizen and filed petitions under Art. 32 of the Constitution alleging violation of rights guaranteed under Art. 19(1)(f) and (g) of the Indian Constitution.

B. The Respondents challenged the maintainability of the petition on the ground that Article 19 guarantees rights to Indian citizens only. They submitted that companies/corporations are not Indian citizens and therefore, have no rights under Article 19.

Decision –

The Court decided in favour of the **Respondent (Commercial Tax Officer).**

Legal Principles held –

1. That whenever any particular right is to be enjoyed by a citizen of India, the Constitution takes care to use the expression "any citizen" or "all citizens", wherein for those rights which are to be enjoyed by all, irrespective of whether they are citizens or aliens, or whether they are natural persons or juristic persons, the words "any person" are used.
2. That Article 19 uses the words "any citizen", and hence, is available to be enjoyed by Indian Citizens only. Since corporations do not have any citizenship, they cannot enjoy these rights.
3. That the fact that corporations may be nationals of a country for purposes of international law does not make them citizens of that country for purposes of municipal law or the Constitution.

Conclusion –

The Court held that the Petitioner did not have any rights under Article 19 of the Constitution.

22. STATE OF AP v. ANDHRA PROVINCIAL POTTERIES LTD. [SC]

Criminal Appeal No. 34 of 1970

Facts :

A. A complaint was filed against the **Respondent (APPL)** and its directors for failure to file with the RoC the balance sheet and profit and loss account of the company as required under the Companies Act, 1956.

B. The directors of the Respondent Company alleged that the section requires the company to file with the RoC documents after they have been approved in a duly convened General

Meeting. Since no general body meeting had been held and the documents had not been laid before a general meeting, the said section did not apply to them.

C. The RoC contended that a person charged with an offence cannot rely on his default as an answer to the charge. If the directors were responsible for not calling the general meeting, they cannot say in defence that because the general meeting had not been called, the balance sheet and profit and loss account could not be laid before it and hence, the section did not apply to them.

Decision –

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

Legal Principles held –

1. That the responsibility of sending copies of the balance sheet and profit and loss account to the RoC arises only after they have been laid before the general meeting. Without so laying, copies could not be sent to the Registrar and even if they are sent it would not be a compliance with the provisions of the section.
2. That wilful omission to call a general body meeting and to lay the balance sheet and profit and loss account before it may expose the person responsible to punishment under other provisions of the Act, however, it will not make the directors liable under the current provision.

Conclusion –

The Court held that the Respondents were not liable under the said section.

23. TATA ENGINEERING AND LOCOMOTIVE LTD. v. STATE OF BIHAR & ORS [SC]

Writ Petitions Nos.112 and 113 of 1961

Facts :

A. With respect to the principle that a corporation is not entitled to rights guaranteed under Article 19 of the Indian Constitution, the pertinent question involved in this case was whether the veil of the Corporation can be lifted and the rights of the shareholders of the said Corporation could be recognised under Art. 19 of the Constitution or not.

Decision –

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

Legal Principles held –

1. That the doctrine of the lifting of the veil can be applied in five categories of cases :
    a. where companies are in the relationship of holding and subsidiary companies;
    b. where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company;
    c. in matters pertaining to the law of taxes, death duties and stamps, particularly where the question of the "controlling interest" is in issue;

d. in the law relating to exchange control;
e. in the law relating to trading with the enemy

2. That the courts cannot lift the corporate veil if the case does not fit into any of the categories mentioned above.
3. That recognizing the rights of the shareholders and giving the benefit of their rights to the corporations will be in contradiction to the settled principle of the separate legal entity of the corporations.

Conclusion –
The Court held that the corporate veil could not be lifted in the instant case.

24. J.K. (BOMBAY) LTD. v. BHARU MATHA MISHRA & ORS [SC]

Criminal Appeal No. 87 of 2001

Facts :

A. Mata Harsh Mishra, who is the husband of **Respondent (Bharu Mishra)**, joined the **Appellant Company (JK Ltd.)** as a Trainee Supervisor. He was allotted a flat by the company in Anil Co-operative Housing Society Ltd.

B. After resigning from the job, Mishra refused to vacate the flat on the pretext that as he had not been paid his dues, he had a right to remain in occupation of the flat allotted to him by the company.

C. The company filed a case under section 630 of the Companies Act, 1956 against Mishra, his wife and his son (Respondents herein). Section 630 of the Act which makes the wrongful withholding of any property of a company by an officer or employee of the company a penal offence.

D. Mishra's wife and son filed a writ petition in the High court challenging their impleadment as parties to the case. The High Court ruled in their favour, aggrieved by which, the instant appeal was preferred by the company.

Decision –
The Court decided in favour of the **Respondent (Bharu Mishra).**

Legal Principles held –

1. That penal law cannot be interpreted in a manner to cover within its ambit such persons who are left out by the legislature. The position of the legal heirs of the deceased employee cannot be equated with the family members of an erstwhile employee.
2. That all the family members of an alive 'officer' or 'employee' of a company cannot be proceeded with and prosecuted under Section 630 of the Act.

Conclusion –

The Court held that the names of the Respondents were required to be removed from the case.

25. S. V. KONDASKAR, OFF. LIQUIDATOR v. V. M. DESHPANDE, ITO & ANR [SC]

Civil appeal No.1650 of 1970

Facts :

A. Colaba Land & Mills Co., Ltd. (in liquidation) was ordered to be wound up and the **Official Liquidator (Appellant)** was appointed. The **Income-tax Officer (Respondent)** issued six different notices proposing to reopen the assessment of the Company and to re-assess it.

B. The Official Liquidator filed an application with the Company Court contending that the income tax officer had no jurisdiction to issue the said notices or to proceed with the re-assessment of the Company without the leave of the court.

C. The Court accepted this contention and stayed the proceedings initiated by the Respondent. Aggrieved by this, appeals were made.

Decision –

The Court decided in favour of the **Respondent (Income Tax Department).**

Legal Principles held –

1. That the Income-tax Act is a complete code particularly with respect to the assessment and re-assessment of income-tax and the orders made by the Income-tax Officer in the course of such proceedings are subject to appeal to the higher hierarchy under the Income-tax Act.
2. That while holding assessment proceedings, the Income-tax Officer does not perform the functions of a court as contemplated by the Companies Act, 1956.
3. That no reasonable explanation exists as to why the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would, however, have full power to scrutinise the claim of the revenue after income-tax has been determined and payment is demanded from the liquidator.

Conclusion –

The Court held that the Income Tax Authoprities could proceed without taking leave of the company court.

26. RAMCHAND & SONS SUGAR MILLS v. KANHAYA LAL BHARGAVA & ORS [SC]

Civil Appeal No.166 of 1966

Facts :

A. The **Respondent (Kanhaya Lal Bhargava)** filed a suit against the **Appellant Company** for the recovery of a certain amount. Accordingly, the court issued summons on the director of the company to present its case.

B. Inspite of the court issuing summons on the director and giving many opportunity, he did not appear. Therefore the court struck off the defence of the Appellant Company

C. Aggrieved by this, the Company preferred an appeal.

Decision –

The Court decided in favour of the **Appellant (Ramchand Sugar Mills).**

Legal Principles held –

1. That O.XXIX of the Civil Procedure Code, 1908 does not preclude the exercise of the inherent power of the court under S. 151 of the Code. Therefore, in a case of default made by a director who failed to appear in court when he was so required under O.XXIX, the court can make a suitable consequential order under s. 151 of the Code as may be necessary for the ends of justice or to prevent abuse of the process of the court.
2. That the acts of the directors within the powers conferred on them by the Constitutional Documents of the company and their employment contract may be binding on the company, but their acts outside the said powers will not bind the company.
3. That unless there is a finding of collusion between the company and the director in that the former prevented the latter from appearing in court, the company cannot be made constructively liable for the default of one of its directors.

Conclusion –

The Court held that the court could not prohibit the company from filing defence.

27. SHAILESH PRABHUDAS MEHTA v. CALICO DYEING & PRINTING MILLS [SC]

Civil Appeal No.854 of 1994

Facts :

A. The **Appellant (Shailesh Mehta)** is a legal heir of a deceased shareholder of the **Respondent Company (Calico dyeing)**. At the time of the death of the deceased, the AoA of the Respondent Company did not provide for the power of the Board to refuse the registration of the shares.

B. The AoA was subsequently amended and the Board was given the powers to refuse registration of transfer of shares. It was after this amendment that the Appellant complied with the requirements of the Act and sent the required documents to the company seeking transmission of shares. This happened nearly 6-7 years after the death of the deceased.

C. The directors of the Respondent Company refused to register the transmission of 100 shares to the Appellant stating that the Appellant had a long standing dispute with the company.

D. The appellant alleged malafide intention on the part of the directors in bringing the amendment in the AoA and not registering the transmission of such shares. He filed a petition against the same.

Decision –
The Court decided in favour of the **Respondent (Calico Dyeing).**

Legal Principles held –

1. That the registration and transmission of shares was sought after the AoA was amended and the Board was given the power to refuse registration or transmission. Therefore, there was no irregularity or lack of bona fide action on the part of the company in bringing about those amendments.
2. That there exists animosity between the parties and the decision of the Management in not registering the transmission of shares was a proper and commercial decision keeping in view the interest of the Management of the Company

Conclusion –
The Court held that there was no malafide on the part of the company and they had rightly rejected the registration of transmission of shares.

28. A.P. STATE FINANCIAL CORPORATION v. OFFICIAL LIQUIDATOR [SC]

Civil Appeal Nos. 3439 & 3440 of 1997

Facts :

A. Two companies named M/S Nagarjuna Paper Mills and M/S Chandra Pharmaceuticals Limited had gone into liquidation and the liquidation proceedings were pending before the High Court.

B. These two companies obtained loans from the **Appellant (AP State Financial Corp)**. For the realisation of dues, the Appellant invoked the provisions of the State Financial Corporations Act, 1951.

C. As both the companies were under liquidation, the Appellant filed applications before the respective High Court for staying outside the liquidation proceedings. The learned Judge granted permission to the Appellant subject to certain conditions as prescribed under the Companies Act, 1956.

D. The Appellants challenged the above conditions imposed by the High Court contending that the State Financial Corporation Act, 1951 is a special legislation and shall prevail over the Companies Act, 1956.

Decision –
The Court decided in favour of the **Appellant (AP State Financial Corporation).**

Legal Principles held –

1. That State Financial Corporation Act, 1951 is a special Act for grant of financial assistance to industrial concerns with a view to boost up industrialisation and also recovery of such financial assistance if it becomes bad.
2. That the relevant provisions of both the Acts have non obstante provisions. In such a scenario, owing to the fact that the Companies Act, 1956 is a subsequent enactment, the non obstante clause in Companies Act, 1956 will prevail over the non obstante clause found in the State Financial Corporation Act, 1951.

Conclusion –

The Court held that the Court was justified in imposing the above conditions to enable the Official Liquidator to discharge his function properly.

29. MACKINTOSH BURN LTD. v. SARKAR AND CHOWDHURY ENTERPRISES PVT.LTD [SC]

Civil Appeal Nos. 3322-3323 of 2018

Facts :

A. The **Appellant (Mackintosh Ltd.)** was a public company where a majority of shares were held by the Government of West Bengal. The **Respondent (Sarkar and Chowdhury)** was holder of 28.54% of shares of the Appellant Company.

B. The Respondent purchased 100 more shares of the Appellant Company, which when added to his holding, took it up to 39.77%. They sought registration of the shares so bought. The Appellant denied such registration.

C. The Respondent approached the Company Law Board seeking an order for registration of the shares. The Appellants contended that the Respondent Company is controlled by a competitor in business, and hence, it would not be in the interest of the Appellant Company to permit the transfer. The Company Law Board ruled in favour of the Respondents.

Decision –

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

Legal Principles held –

1. That in the instant case, there was no resolution passed by the Appellant Company refusing to register the transfer of shares.
2. That refusal to register transfer of shares can be on the ground that the transfer is illegal or impermissible under any law, is in violation of law or any other sufficient cause. Conflict of interest in a given situation can amount to a sufficient cause provided the surrounding facts and circumstances are given due consideration.

Conclusion –

The Court held that the action of the Appellant in not registering the transfer was justified.

30. THE COMMISSIONER OF IT v. CITY MILLS DISTRIBUTORS (P) LTD [SC]

Tax Reference Case No.11 of 1982

Facts :

A. The promoters of the **Respondent Company (City Mills)** had carried on business on behalf of the company before its incorporation and had received a sum of Rs.80,534/- as income for the said period.

B. The Income Tax Officer, while assessing the company's total income, sought to add the above mentioned pre incorporation income to the total income of the Respondent Company. The Department contended that this was the income of the assessee company because its promoters had acted and carried on business on its behalf and the assessee company had accepted the act of the promoters after its incorporation.

C. The ITAT held that the income was not to be added to the total income of the assesse company. Aggrieved, the department the instant appeal.

Decision –

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

Legal Principles held –

1. That in law, the promoters and the assessee company were different legal persons and that the income which had accrued before incorporation, was income that was earned by the promoters.
2. That a company can enter into an agreement only after its incorporation. The question as to who is liable to pay tax on such income does not depend upon whether or not the company after incorporation decides to accept the agreements entered into by the promoters. It is the promoter who carried on the business and received the income when it accrued and therefore, he will be liable to bear the burden of tax thereon.

Conclusion –

The Court held that the Respondents were not liable to pay tax on the said amount.

31. SHAH BROTHERS ISPAT PVT. LTD. v. P. MOHANRAJ & ORS. [NCLAT]

Company Appeal (AT) (Insolvency) No. 306 of 2018

Facts :

A. A Corporate Insolvency Resolution Process (CIRP) was initiated against the pursuant to which Moratorium period as initiated in respect of the company.

B. The **Appellant (Shah Ispat)** filed a complaint against the company under section 138 of the Negotiable Instrument Act. The **Respondents (P Mohanraj),** being the directors of the

Company argued that during moratorium, no legal action can be initiated against the company.

C. The NCLT passed the order in the favour of the Respondents and asked the appellant to take the complaint back. Aggrieved, the instant appeal was Preferred.

Decision –

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

Legal Principles held –

1. That a company cannot be imprisoned, however, fine can be imposed on a Company, if found guilty. The Directors of the Company being parties can be imprisoned or fine may be imposed on them.
2. That Section 138 is a penal provision, which empowers the court of competent jurisdiction to pass order of imprisonment or fine..
3. That moratorium period initiated against a company does not put a bar on initiation of criminal matters against the company.

Conclusion –

The Court held that the complaint u/s 138 can be filed against the Company.

32. STANDARD CHARTERED BANK v. DIRECTORATE OF ENFORCEMENT [SC]

Civil Appeal No. 1748 of 1999

Facts :

A. A proceeding was initiated against the **Appellant (Standard Chatered)** under the Foreign Exchange Regulation Act, 1973 which provided for a minimum punishment of imprisonment for a term not less than six months and with fine.

B. The Appellant contended that it could not be tried under the said sections because it required imposition of a mandatory term of imprisonment which will be impossible to be executed against a company.

Decision –

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

Legal Principles held –

1. That except for such crimes involve personal malicious intent, a corporation may be subject to other criminal processes even when the criminal act is committed through its agents.
2. That in the case of strict liability, an intent that guilt shall not be predicated upon the automatic 'actus reus' and is subject to the defence of due diligence. In the case of absolute liability, the legislature establishes an offence where liability arises instantly upon the breach of the statutory prohibition and no particular state of mind is a prerequisite to guilt.

3. That as the company cannot be sentenced to imprisonment, the court cannot impose that punishment when imprisonment and fine is the prescribed punishment. However, the court can impose the punishment of fine which could be enforced against the company. The court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company.

Conclusion –
The Court held that companies can be tried under sections where the punishment prescribed includes mandatory imprisonment.

33. PAHUJA TAKII SEED LTD. & ORS v. RoC NCT OF DELHI & HARYANA [NCLAT]

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

Facts :

A. The **Appellant Company (Pahuja Takii)** along with its Officers filed applications under Section 441 of the Companies Act, 2013 for compounding of the offence(s) committed by them.

B. The following questions were raised in this batch of appeals –

i. Whether the Companies Act, 2013 bars filing of a joint application for compounding of offence by a defaulting company along with its officers in default?
ii. Whether the Companies Act, 2013 bars filing of a joint application for compounding of the same offence committed in different years?
iii. Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'imprisonment or fine', if repeated within a period of three years results into a mandatory imprisonment for the defaulters and whether the same can be compounded or not?
iv. Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'only fine', if repeated within a period of three years results into a mandatory imprisonment for the defaulters and whether the same cannot be compounded?
v. Whether the Tribunal has jurisdiction to compound offences where the fine prescribed for such offence does not exceed Rs. 5,00,000/

Decision –
The Court decided in favour of the **Appellants (Pahuja Seed).**

Legal Principles held –

1. That as per that Section 441 of the Companies Act, 2013, any offence committed by a company or any officer thereof which is punishable with fine only, can be compounded by the Tribunal or the Regional Director.

2. That there is no bar on preferring a single application for compounding the same offence committed during different financial years by the Company and its Officers, nor there do any bar on a joint application being preferred by a Company along with its Officers in default.
3. That as per Section 451, if a company or an officer of a Company commits the same offence for the second or subsequent occasions within a period of three years, then they shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence. Thus, mandatory imprisonment for subsequent offence is not provided for in the Act.
4. That there is no limit to the pecuniary jurisdiction of the Tribunal under section 441. Thus, NCLT can entertain petitions for compounding of offences whose prescribed Punishment is less than Rs. 5 Lakhs.

Conclusion –

The Court held the above principles with respect to the questions asked.

. SECURITIES LAWS .

1. PVP GLOBAL VENTURES PVT LTD v. SEBI [SAT]

Appeal No. 451 of 2018

Facts :

A. The adjudicating Officer had imposed certain amount as penalty on the **Appellant (PVP)**. This order had attained finality and thereafter the recovery officer issued a certificate of recovery against the Appellant.

B. This certificate included interest on the penalty and in the process attached the bank account of the Appellant.

C. Aggrieved, the Appellant filed the instant Appeal, contending that interest could not be imposed on the said penalty.

Decision –

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

Legal Principles held –

1. That instead of prescribing an independent mechanism for collection and recovery of the amounts due to SEBI, the legislature deemed it fit to follow the mechanism provided under the Income Tax Act, 1961 and accordingly inserted Section 28A to SEBI Act, 1992 whereby the provisions of the Income Tax Act, 1961 relating to collection and recovery have been incorporated in the SEBI Act, 1992.

2. That the Adjudicating Officer, in its order while imposing penalty, had directed the Appellant to pay the penalty amount within 45 days. This would constitute a valid Demand Notice.

3. That interest is chargeable under Section 28A read with Section 220(2) of the Income Tax Act, 1961 as also under the provisions of Interest Act, 1978 whereby, interest can be charged from the date on which the penalty becomes due.

Conclusion –

The court held that the interest on penalty was rightly levied.

2. THERM FLOW ENGINEERS PVT. LTD. v. SEBI [SAT]

Appeal No.349 of 2018

Facts :

A. The **Appellant (Therm Flow)** was a promoter of the Target Company consisting of a consortium of individual promoters. Certain shares were transferred between the promoters via open market. This transfer took place in violation of the SEBI (SAST) regulations, 2011.

B. SEBI observed this and made an order against the Appellant directing them to make a public announcement to acquire shares Target Company within a period of 45 days from the date of the order and to pay interest at the rate of 10% p.a.

C. The Appellant contended that the violation was merely of 0.04% shares and hence, the amount of penalty was out of proportion. Aggrieved, they filed the instant appeal.

Decision –

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

Legal Principles held –

1. That violation of the Takeover Regulation was only to the extent of 0.04 percent and that too due to transfer of shares between the promoters via open market,. Therefore, the direction of the WTM to make public announcement to acquire shares was disproportionate.
2. That the appellant could be reasonably directed to transfer 0.04 percent shares through open market and deposit an amount of Rs.3,60,300/- in the Investor Protection and Education Fund to meet the ends of justice.

Conclusion –

The court held that that the abovementioned penalty was justified.

3. IN RE: NEESA TECHNOLOGIES LIMITED & ORS [SEBI]

WTM/PS/46/WRO/JUN/2016

Facts :

A. SEBI vide an ex-parte interim order, prima facie observed that Neesa Technologies Limited (the Company) had engaged in fund mobilizing activity from the public, through its offer and issue of Non-Convertible Debentures.

B. The Company had offered and allotted NCDs to 341 persons during the financial year 2013-2014 and mobilized Rs.5.96 crore. However, the Company did not get the said NCDs listed nor did it file an application for listing with any stock exchange.

C. The Company contended that the NCDs were treated as 'deposits' by RoC and therefore SEBI would not have jurisdiction in the matter.

Decision –

The Court decided in favour of the **Respondent (Arfat Petrochemical Pvt. Ltd.).**

Legal Principles held –

1. That considering the number of persons to whom the NCDs were offered and issued, the Company made a public issue of NCDs during the relevant period, in terms of the first proviso to section 67(3) of the Companies Act, 1956.
2. That the Company vide letter dated November 05, 2014, had admitted issuing Non-Convertible Debentures. Further, the RoC notice dated July 07, 2015 has also mentioned about the NCDs for Rs.5.96 crore. In view of the same, the Company having admittedly issued debentures in a public issue is under the jurisdiction of SEBI
3. That a company making a public issue of securities cannot choose whether to list its securities or not as listing is a mandatory requirement under law. Therefore, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956.
4. That where a company issues debentures, it is supposed to create a debenture redemption reserve for the redemption of such debentures
5. That where a Company fails to make an application for listing of securities, the Company has to forthwith repay such money collected from investors under NCDs.

Conclusion –

SEBI held that the Company had violated the provisions of the Companies Act, 1956 as well as the ILDS Regulations.

4. NATIONAL SECURITIES DEP. LTD v. SEBI

Civil Appeal No. 5173 of 2006 with Civil Appeal No. 186 of 2007

Facts :

A. An Administrative Circular was issued by SEBI under Section 11(1) of the Securities Exchange Board of India Act, 1992.

B. A preliminary objection was raised by the respondent against the said Circular before the Securities Appellate Tribunal.

C. SEBI contended that under the SEBI Act, SEBI has administrative, legislative and quasi-judicial functions. Appeals preferred to the Securities Appellate Tribunal can only be from quasi-judicial orders and not administrative and legislative orders.

Decision –

The Court decided in favour of the **Respondents (SEBI).**

Legal Principles held –

1. That it is clear orders being quasi-judicial orders made under the Rules and Regulations are the subject matter of appeal under Section 15T.

2. That Administrative orders such as circulars issued under the present case referable to Section 11(1) of the Act are outside the appellate jurisdiction of the Tribunal.

Conclusion –

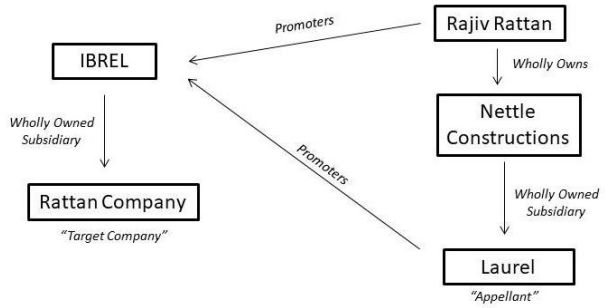
The Court held that the Circular could not be appealed against.

5. LAUREL ENERGETICS PVT LTD. v. SEBI [SC]

Civil Appeal No.5675 of 2017 with Civil Appeal No.5694 of 2017

Facts :

A. The inter relationship between the parties involved in this matter are as follows –



B. In July, 2014, the Appellant acquired 18% of the equity share holding of the target company at a price of Rs.6.30 per share. In October, 2015 the Appellant along with other entities acting in concert, made a public announcement under the SEBI Takeover Regulations, 2011. An open offer was made for acquisition of majority of equity shares of the Target Company at the price of Rs.3.20 per share.

C. SEBI observed that the Appellant could not be considered as a promoter of the target company for the mere fact that it is a promoter of the parent company, and therefore, exemption under regulation 10 could not be provided to it. As a result of this, the price of Rs.3.20 per share was not accepted and the higher price of Rs.6.30 (calculated as per the Regulations) was stated to be the offer price.

D. The appellant contested this and contended that they were promoters of the parent company of the target company, which formed a PAC. Therefore, they should be entitled for the benefit of the Exemption.

Decision –

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

Legal Principles held –

1. That the wordings used in different sub regulations suggest that where the corporate veil is to be lifted in the regulations, the regulation itself specifically so states. Therefore, it is impermissible for the court to lift the corporate veil in a manner that would distort the plain language of the regulation.
2. That it is not possible to construe the regulation in the light of its object, when the words used are clear.

Conclusion –

The Court held that the offer price should be Rs, 6.30.

6. DUSHYANT N DALAL v. SEBI [SC]

Civil Appeal No. 5677 of 2017 with batch of appeals

Facts :

A. SEBI passed two orders against the **Appellant (Dushyant Dalal)** – one imposing penalty and the other ordering disgorgement of unlawful gains. This case deals with imposition of penal interest in the event of non-compliance with the orders within the specified time.

B. In the disgorgement case, SEBI did not expressly award any future interest. However, it was provided that if the amount was not disgorged within 45 days from the date of the order, the consequence was specified as being debarment for a further period of 7 years. On default in compliance, SEBI sought to impose penal interest.

C. In the penalty order, SEBI provided for the payment of penal interest on default in payment of penalty within specified time. SEBI contended that this interest should be calculated from the day on which the default begins, i.e. the day after the last specified day for payment of penalty. However, the Appellant contended that penal interest should be calculated from the day on which Order imposing such penal interest is passed.

Decision –

The Court decided in partially favour of the **Appellant (Dushyant Dalal)** and partially in favour of the **Respondent (SEBI)**

Legal Principles held –

1. That with respect to the disgorgement order, no penal interest can be imposed in cases where the adjudicating authority has not mentioned about imposition of penal interest in its main order. This is supported by the fact that the consequence of default in compliance with the order is already very harsh.

2. That with respect to the penalty order, penal interest imposed shall be calculated from the day on which default begins and not from the day on which order imposing penal interest is passed.

Conclusion –

The court held that Dushyant Dalal had to pay penal interest for non compliance with the order imposing penalty from the day On which the time period for payment of penalty expired. However, no penal interest could be imposed for non compliance with the disgorgement order.

7. PENTA GOLD LIMITED v. NATIONAL STOCK EXCHANGE [SAT]

Appeal No. 116 of 2018

Facts :

A. An Underwriting Agreement was entered into by and between the **Appellant (Penta)** and the underwriters wherein the underwriters underwrote certain number of shares. The issue turned out to be undersubscribed and the underwriters were then called on to fulfill their obligations.

B. The underwriters fulfilled their obligations by procuring applications from third parties. The Respondent did not allow this and held that the underwriters had failed to subscribe to the unsubscribed shares as contemplated under the ICDR Regulations which says that the underwriters should subscribe to the shares in their own name.

Decision –

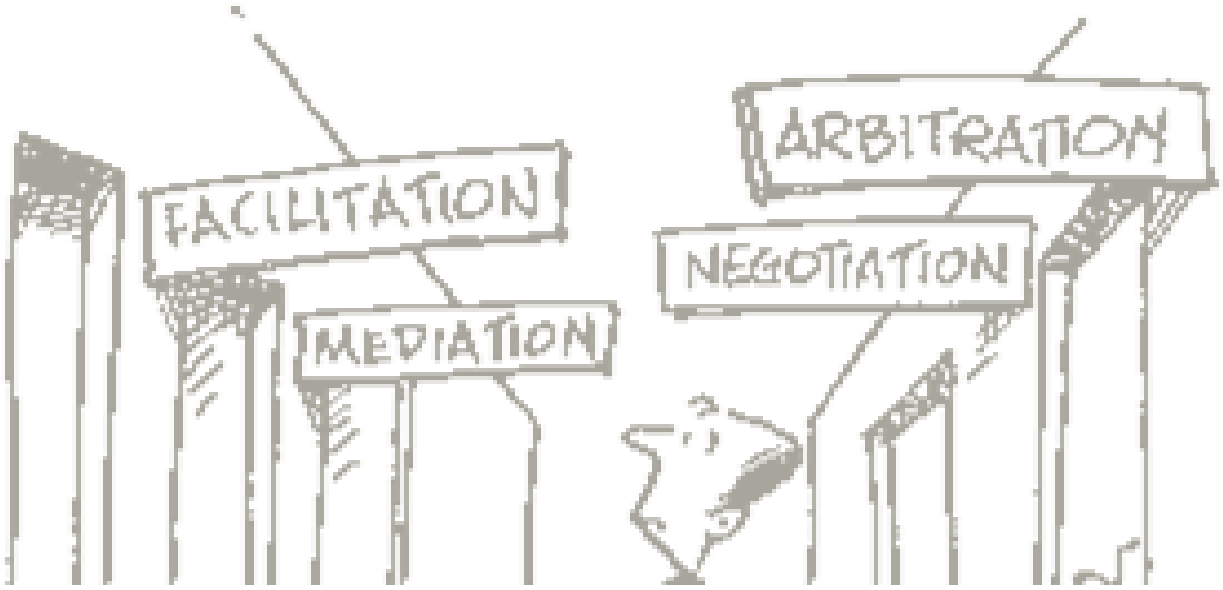
The Court decided in favour of the **Appellant (Penta).**

Legal Principles held –

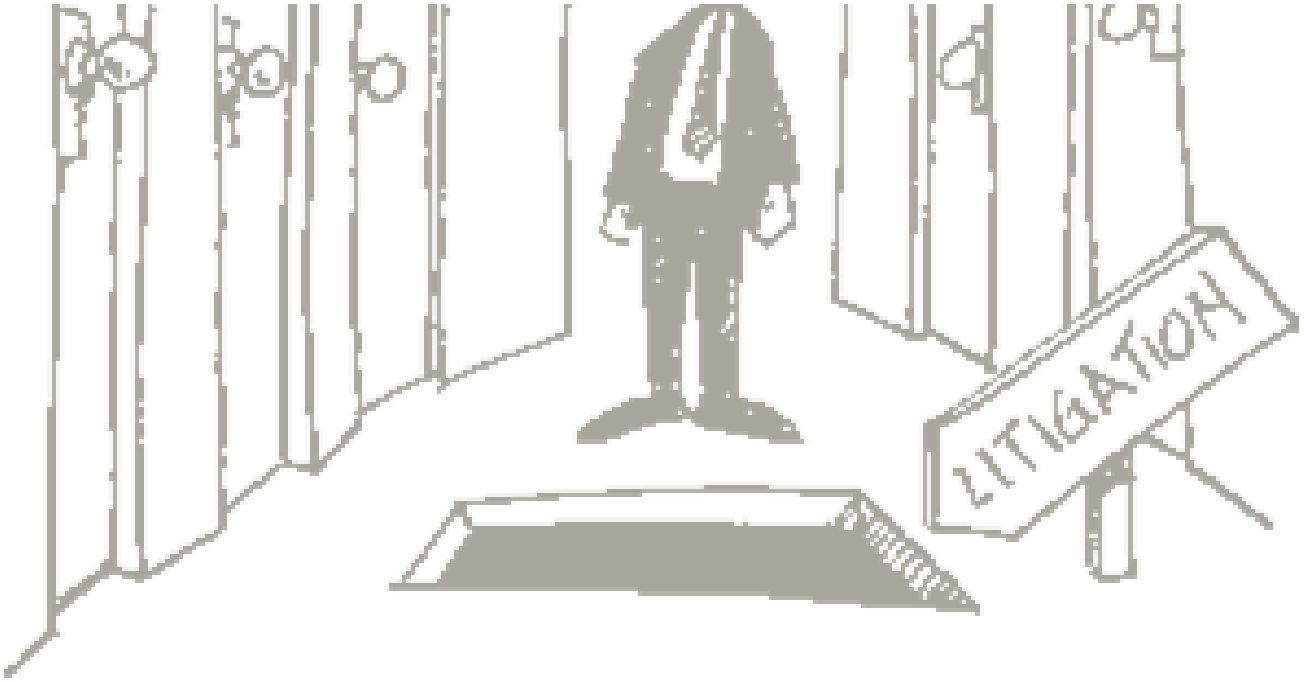
1. That the order passed by the Respondent was bad in law.
2. That the underwriters can procure applications from third parties in order to discharge their obligations under the underwriting agreements.

Conclusion –

The Tribunal held that underwriter could procure applications from third parties.



FEMA & OTHER ECONOMIC LAWS



1. EMAAR MGF LAND LIMITED v. AFTAB SINGH [SC]

Review Petition (C) Nos. 2629-2630 of 2018

Facts :

A. A Buyer's agreement was entered into between the **Petitioner (Emaar)** and the **Respondent (Aftab)** which contained an arbitration clause providing for settlement of disputes between parties. Under the said Agreement, the Respondent was to buy certain villa from the Appellant.

B. Since there was a great delay in the handing over of the possession of the property by the Petitioner to the Respondent, they filed a Consumer Complaint before the NCDRC against the Petitioner praying for delivery of possession of the property, adjustment of excess payment and compensation for deficiency of service.

C. The Petitioner filed an application under Section 8 contending that there existed an arbitration agreement and prayed for getting the matter referred to arbitration. The lower courts dismissed the application on the ground that the consumer dispute was not arbitrable. Aggrieved, the Petitioner filed the instant Petition.

Decision –

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

Legal Principles held –

1. That a complaint under Consumer Protection Act, 1985 is a special remedy. Thus, despite there being an arbitration agreement, the proceedings before Consumer Forum have to go on.
2. The remedies under the Consumer Protection Act, 1985 are confined to complaints made by consumers as defined under the Act. However, these remedies are cheap and quick and in line with the object and purpose of the Act.
3. That such a position of law exists only in cases where specific/ special remedies are provided for and are opted by an aggrieved person. In such cases, the judicial authority can refuse to relegate the parties to the arbitration.

Conclusion –

The Court held that the proceedings before the consumer forum can go on.

2. HINDUSTAN INFRASTRUCTURE CONSTRUCTION CORPORATION LTD. v. M/S. R.S. WOODS INTERNATIONAL & ORS [DEL]

C.R.P. No.19/2018

Facts :

A. The **Petitioner (Hindustan)** had drawn certain cheques in favour of the **Respondent (M/S Woods).** When the Respondent presented the cheques for encashment, the cheques got dishonoured.

B. The Respondent filed a Civil Suit for recovery the due amount from the Petitioner. The Petitioner challenged this on the ground that the Partnership Deed of the Respondent was not registered and therefore, they had no rights to approach the courts of law.

Decision –
The Court decided in favour of the **Respondent (M/S Woods).**

Legal Principles held –

1. That the bar under the Indian Partnership Act preventing an unregistered partnership from approaching the courts would apply only where the suit is sought to be laid on the basis of the partnership deed and not in a case where statutory right/liability is sought to be enforced by the partners.
2. That in the instant case, the suit was purely based on the liability under Section 30 and 37 of the Negotiable Instruments Act, 1881 which is a suit based on statutory liability arising out of the contract between the parties.

Conclusion –
The Court held that the Respondents could file the complaint.

3. UNION OF INDIA v. KHAITAN HOLDINGS (MAURITIUS) & ORS [DEL] *CS (OS) 46/2019, I.As. 1235/2019 & 1238/2019*

Facts :

A. An agreement (BIT) was entered into between the **Petitioner (Republic of India)** and the Republic of Mauritius for the Promotion and Protection of Investments. Thereafter, some issues arose which were referred to the Supreme Court for adjudication. The Supreme Court passed an order against the **Respondent (Khaitan)** herein.
B. The Respondent alleged that the order was against the BIT entered into bith the countries and sought to invoke the arbitration clause present in the BIT.
C. The Petitioner has sought an anti-arbitration injunction against the arbitral proceedings initiated by Respondent.

Decision –
The Court decided in favour of the **Respondent (Khaitan).**

Legal Principles held –

1. That even judgements of Courts can trigger investment disputes under the BITs resulting in enormous claims being raised against the Government.
2. That under public international law which primarily governs BIT agreements, the Articles of State Responsibility specifically provide that the conduct of any organ of the State can be called to question.

3. That the issues raised by the parties are arbitrable and can be settled by way of arbitration. In such a scenario, arbitration proceedings, after being initiated, can not be withdrawn.

Conclusion –
The Court held that the arbitration shall be carried on.

4. BIR SINGH v. MUKESH KUMAR [SC]

Criminal Appeal Nos.230-231 of 2019

Facts :

A. The **Respondent (Mukesh)** issued a cheque in the name of the **Appellant (Bir)** towards repayment of a "friendly loan" of Rs.15 lakhs advanced by the Appellant to the Respondent. The Appellant deposited the said cheque for encashment which got dishonoured.
B. The Appellant again presented the cheque to his bank, but it was again returned unpaid with the remark "Insufficient Fund". The Appellant filed a Criminal Complaint against the Respondent where the Judicial Magistrate convicted him.
C. In appeal, the Respondent contended that the loan that was taken was a friendly loan and the cheque was issues merely as a security for repayment if the loan. Since the cheque was never issued with an intention to be used for payment of any money and was merely drawn for security, no action lay under the NI Act, 1881.

Decision –
The Court decided in favour of the **Appellant (Bir).**

Legal Principles held –

1. That Section 139 of Negotiable Instruments Act, 1881 mandates that unless the contrary is proved, it is presumed that the drawer of a cheque drew the cheque for the discharge, in whole or in part, of any debt or other liability.
2. That the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque
3. That Even a blank cheque leaf, voluntarily signed and handed over by an accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, 1881 in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

Conclusion –
The Court held that the Respondent was guilty under section 138 of the NI Act, 1881.

5. BHARAT BROADBAND NETWORK LTD. v. UNITED TELECOMS LTD [SC] *Civil Appeal No.3972 of 2019*

Facts :

A. The Chairman & Managing Director of the **Appellant** (**Bharat)**, had the right to appoint the arbitrator as provided under the arbitration agreement entered into by the parties. Since disputes and differences arose between the parties, the **Respondent (United)** invoked the aforesaid arbitration clause. The Appellant's Chairman and Managing Director nominated one Shri K.H. Khan as the sole arbitrator to adjudicate and determine disputes that had arisen between the parties.

B. Subsequently, the Appellant made an application to the sole arbitrator praying that since he (arbitrator) was de jure unable to perform his function as arbitrator, he should withdraw from the proceedings to allow the parties to approach the High Court for appointment of a substitute arbitrator in his place.

C. The application was rejected and on appeal High court also rejected the appeal stating that the very person who appointed the arbitrator is estopped from raising a plea that such arbitrator cannot be appointed after participating in the proceedings. Aggrieved, the Appellant preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That when a person is approached in connection with his possible appointment as an arbitrator, it is his duty to disclose in writing any circumstances which are likely to give rise to justifiable doubts as to his independence or impartiality.
2. That the appointment of the arbitrator may be challenged on the ground that justifiable doubts have arisen as to the independence or impartiality of an arbitrator.
3. That once a person becomes ineligible to be appointed as an arbitrator in any given matter, the only way in which the ineligibility can be removed is by the parties waiving the ineligibility by an "express agreement in writing".
4. On the facts of the present case, it was clear that the Managing Director of the Appellant could not have acted as an arbitrator himself and therefore, was barred from appointing any other person as an arbitrator to the matter.

Conclusion –

The Court held that the appointment of the arbitrator by the MD was invalid .

6. RESERVE BANK OF INDIA v. JAYANTILAL N. MISTRY [SC]

Transferred Case (Civil) No. 91 of 2015

Facts :

A. The **Respondent (Jayantilal)** had asked for certain information from the **Appellant (RBI)** under the Right to Information act, 2005.

B. The information sought by the Respondent were–

i. Details of the reports of pertaining to investigation and audit carried out by RBI
ii. Details of past 20 years' investigation with respect to cooperative banks
iii. Details of the report sent by RBI to the Finance Minister with respect to FEMA violations committed by several commercial banks
iv. Details of the inspection reports of apex cooperative banks
v. Details of the loans taken by the industrialists that have not been repaid, and the names of the top defaulters who had not repaid their loans to public sector banks
vi. Details of the show cause notices and fines imposed by the RBI on various banks

C. RBI refused to provide the information sought by the Respondent. It contended that RBI held such information of various banks in fiduciary capacity. Therefore, they were exempted from disclosing such information under Section 8 of the RTI Act.

Decision –

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

Legal Principles held –

1. That RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. It is supposed to uphold public interest and not the interest of individual banks.
2. That RBI does not place itself in a fiduciary relationship with the Financial institutions when it gathers from them reports of the inspections, statements of the bank, information related to the business. Such information is obtained by the RBI not under the pretext of confidence or trust but is rather, a statutory duty performed by it.
3. That RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought therein.

Conclusion –

The Court held that RBI will have to disclose the information sought under the RTI Act, 2005.

7. TODAY HOTELS PVT LTD. v. INTECTURE INDIA DESIGNS LTD [DEL]

FAO (OS) No. 417/2015 & CM No. 13586/2015

Facts :

A. The **Appellant (Today Hotels)** had filed an application under section 8 of The Arbitration and Conciliation Act, 1996 seeking an order to refer a dispute to arbitration. The said application was dismissed. Aggrieved, the Appellants filed the instant appeal.

B. The **Respondent (Intecture)** contended that the instant appeal was not maintainable as the Arbitration and Conciliation Act, 1996 did not provide for appeals from any order passed under Section 8 of the Act.

Decision –

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

Legal Principles held –

1. That an order passed under Section 8 of the Arbitration and Conciliation Act, 1996 is an order passed by the judicial authority/forum/court which draws its power from section 8 of the Act. Therefore, the right to file an appeal against such order has also to be found in the Act.
2. That the Act does not provide for appeals against orders passed under section 8 of the Arbitration and Conciliation Act, 1996.

Conclusion –

The Court held that the Appeal was not maintainable and dismissed the same.

8. LAKHMI CHAND v. RELIANCE GENERAL INSURANCE [SC]

Civil Appeal Nos.49-50 of 2016

Facts :

A. The **Appellant (Lakhmi Chand)** was the owner of goods carrying vehicle which was insured with the **Respondent Company (Reliance General)**. The said vehicle met with an accident which took place on account of rash and negligent driving of the offending vehicle.

B. The Appellant incurred expenses amounting to Rs.1,64,033/- for the repair of the vehicle while the Surveyor appointed by the Respondent assessed the damage at Rs.90,000/-. The claim of the Respondent was rejected by te company against which several appeals were preferred.

C. When the matter reached the NCDRC, it dismissed the appeal on the ground that the Appellant had violated the terms of the Insurance Policy by overloading the vehicle at the time of the accident. Aggrieved, the Appellant preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That the mere fact that the insured vehicle was overloaded does not amount to a fundamental breach of the terms and conditions of the policy so as to allow the insurer to run away from its liability towards the damage caused to the vehicle.
2. That for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end.

Conclusion –

The Court held that the Appellant had the right to receive the amount from the insurance company.

9. EITZEN BULK A/S v. ASHAPURA MINECHEM LTD & ANR [SC]

Civil Appeal Nos. 5131-5133 of 2016

Facts :

A. The **Appellant (Eitzen Bulk)** had entered into a contract with the **Respondent (Ashapura Minechem)** which contained an Arbitration Clause. Under this, the seat of arbitration was decided to be London and the governing law was English law.
B. The Arbitrator passed an award in favour of the Appellant. The Appellant sought to enforce the award in India. The Respondent, in the meanwhile, filed an application to set aside the said order under section 34 of the Indian Arbitration and Conciliation Act, 1996. The Appellant challenged this application on the ground that Part 1 of the Arbitration Act is not applicable to foreign awards.
C. The Bombay High Court accepted the contention of the Appellant. However, the Gujarat High Court rejected the contention and held that Part 1 will be applicable to foreign Awards.
D. Aggrieved, the Appellant filed the instant appeal.

Decision –

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

Legal Principles held –

1. That the existence of an arbitration clause which provides for the seat of arbitration outside India shows the intention of the parties to expressly or impliedly exclude the provisions of Indian laws. This includes Part I of the Arbitration Act, 1996
2. That where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration will be a law other than Indian law, part I of the Act would not have any application and, therefore, the award debtor would **not** be entitled to challenge the award by raising objections under Section 34 before a Court in India.

Conclusion –

The Court held that the foreign award could not be challenged in the Indian courts under section 34 of the Arbitration Act.

10. THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS v. RAMESHWARI PHOTOCOPY SERVICES & ANR [DEL]

CS (OS) 2439/2012

Facts :

A. The **Plaintiff (The Chancellore)** being the publishers of textbooks, instituted a suit for the relief of permanent injunction restraining the **Defendants** (**Rameshwari Photocopy Service and the University of Delhi)** from infringing the copyright of the Plaintiffs in their publications by photocopying, reproduction and distribution of copies of Plaintiffs' publications on a large scale and circulating the same and by sale of unauthorised compilations of substantial extracts from the Plaintiffs' publications by compiling them into course packs / anthologies for sale.
B. The Plaintiff contended that at least four course packs were being sold containing photocopies of portions of the Plaintiffs' publications varying from 6 to 65 pages.
C. Further, the Plaintiffs alleged that the said course packs sold by the 1st Defendant were based on syllabi issued by the 2nd Defendant for its students and that the faculty teaching at the 2nd Defendant was directly encouraging and recommending the students to purchase those course packs instead of legitimate copies of Plaintiffs' publications.
D. The Defendants contended that the copies were being published "in the course of education" which was protected under section 52 of the Copyrigts Act, 1957.

Decision –

The Court decided in favour of the **Defendant (Rameshwari Photocopy Service and the University of Delhi)**

Legal Principles held –

1. That the words "in the course of instruction" within the meaning of Section 52(1) (i) would include reproduction of any work while the process of imparting instruction by the teacher and receiving instruction by the pupil continues i.e. during the entire academic session for which the pupil is under the tutelage of the teacher.
2. That imparting and receiving of instruction is not limited to personal interface between teacher and pupil but is a process commencing from the teacher readying herself/himself for imparting instruction, setting syllabus, prescribing text books, readings and ensuring, whether by interface in classroom/ tutorials or otherwise by holding tests from time to time or clarifying doubts of students, that the pupil stands instructed in what he/she has approached the teacher to learn.
3. That the word "instruction" has to be given the same meaning as "lecture" and has to include within its ambit the prescription of syllabus, the preparation of which both the teacher and the

pupil is required to do before the lecture and the studies which the pupils are to do post lecture and so that the teachers can reproduce the work as part of the question and the pupils can answer the questions by reproducing the work, in an examination.

4. That reproduction of any copyrighted work by the teacher for the purpose of imparting instruction to the pupil as prescribed in the syllabus during the academic year would be within the meaning of Section 52 (1)(i) of the Act.
5. That the reproduction of books by the students for the purposes of their private or personal use, whether by way of photocopying or by way of copying the same by way of hand would make the action of the student a fair dealing and not constitute infringement of copyright. If the action of each of the students of having the book issued from the library and copying pages thereof, whether by hand or by photocopy, is not infringement, the action of the University impugned in this suit, guided by the reason of limited number of each book available in its library, the limited number of days of the academic session, large number of students requiring the said book, the fear of the costly precious books being damaged on being subjected to repeated photocopying, cannot be said to be infringement because the result/effect of both actions is the same.
6. That Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public.

Conclusion –

The Court held that the Defendants were not guilty of copyright infringement as their acts amounted to copies being made/published in the course of education and hence, were exempt under section 52 of the Act.

11. ROTOMAC ELECTRICALS LTD. v. UNION OF INDIA & ANR [Del]

LPA No. 363 of 2016

Facts :

A. The A**ppellant (Rotomac)** was granted a license under Duty Exemption Scheme as per which, they were required to fulfill the export obligation of Rs.1,07,58,600/- as Free On Board (FOB) value within a period of 18 months from the date of the issue of the licence.
B. The Appellant failed to fulfill the obligation. Consequently, penal proceedings under the Foreign Trade (Development and Regulation) Act, 1992 were initiated against them and penalty was imposed.
C. Aggrieved, the Appellant challenged the imposition of the penalty.

Decision –

The Court decided in favour of the **Respondent (Union of India)**

Legal Principles held –

1. That the Appellant did not have the requisite documents required to prove that they fulfilled export obligation in respect of the licence.
2. That such finding of fact recorded by the statutory authorities regarding the failure of the Appellant to furnish the documents to establish the fulfilment of the export obligation was correct and requires no interference.

Conclusion –
The Court held that the Appellant was liable to be penalised.

12. IMAX CORPORATION v. E-CITY ENTERTAINMENT (I) PVT LTD [SC]

Civil Appeal No.3885 of 2017

Facts :

A. An agreement was entered into between the **Appellant (IMAX)** and the **Respondent (E-City)** which contained an arbitration clause, providing for arbitration under ICC Rules. The Agreement did not specify the venue of arbitration.
B. At the time of initiation of the arbitral proceedings, the venue of arbitration was decided to be London. Arbitration court passed the award in favour of the Appellant. The Respondent challenged the award in the Bombay High Court.
C. The Appellant contended that the petition filed by the Respondent was not maintainable because the award was a foreign award and hence, the Indian Courts did not have jurisdiction to entertain the petition. The High Court rejected the objections which resulted in the instant appeal.

Decision –
The Court decided in favour of the **Appellant (IMAX)**

Legal Principles held –

1. That the parties had agreed to have the seat decided by the ICC and the ICC having chosen London and the parties having abided by the decision, the parties agreed that the seat shall be in London for all practical purposes.
2. That if in pursuance of the arbitration agreement, the arbitration takes place outside India, there is a clear exclusion of Part-I of the Arbitration Act.

Conclusion –
The Court held that the foreign award could not be challenged under Part 1 of the Arbitration and Conciliation Act, 1996.

13. ESSAR PROJECTS (INDIA) LTD. v. INDIAN OIL CORP LTD & ANR [DEL]

O.M.P. (I) (COMM) 232/2017

Facts :

A. The **Petitioner (Essar)** and the **Respondent (IOCL)** had entered into an agreement containing an arbitration clause. Pursuant to the agreement, the Petitioner had issued certain Unconditional bank Guaranteed in favour of the Respondent.
B. Certain disputes arose between the parties which were referred to Arbitration for resolution. In the meanwhile, the Respondent sough to encash the bank guarantees issues by the Petitioner.
C. The Petitioner filed the instant petition seeking orders restraining the Respondent from encashing the abovementioned guarantees.

Decision –

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

Legal Principles held –

1. That in cases of unconditional bank guarantees, the court should not interfere unless the Petitioner is able to establish fraud of egregious nature or is able to plead special equities.
2. That commitment of banks must be honoured free from interference by the courts and it is only in exceptional cases should the court interfere.

Conclusion –

The Court held that the Respondent be allowed to encash the guarantees as they were unconditional and no case of special equities had been established by the Petitioner.

14. PILE ENGINEERING INDIA (P) LTD. v. BIHAR RAJYA PUL NIRMAN NIGAM LTD [SC]

Civil Appeal No. 14991 of 2017

Facts :

A. An agreement was entered into between the parties. The agreement contained the following clause –

> *"Clause 23: In case any dispute or difference shall arise between the parties or either of them upon any question relating to the meaning of the specifications, designs, drawings and instruction, herein before mentioned or to the quality of workmanship of materials used on the work, or as to the construction of any of the conditions or any clause or thing therein contained, or as to any question, claim, rights or liabilities of the parties, or any matter, or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings,*

specifications, estimates, instructions, order or these conditions, or otherwise concerning the work, or the execution, or failure to execute the same whether arising the progress of the work, or after the completion or abandonment thereof or as to the breach of this contract, then either party shall forthwith give to the other notice of such dispute or difference and such dispute or difference shall be referred to the Managing Director of the Corporation and his decision thereon shall be final conclusive and binding on all the parties."

B. The **Respondent (Bihar Rajya)** contended that the above clause was not an arbitration clause.

Decision –
The Court decided in favour of the **Appellant (Pile).**

Legal Principles held –

1. That whether a clause is an arbitration clause depends upon the wordings of the clause and the qualifications mentioned under the Arbitration and Conciliation Act, 1996.

Conclusion –
The Court held that the abovementioned clause is an arbitration clause.

15. M/S DURO FELGUERA S.A v. GANGAVARAM PORT LIMITED [SC]

Arbitration Petition No.30/31 of 2016

Facts :

A. The **Respondent (Gangavaram)** had floated a tender to invite bids for expanding its facilities at the port. The **Petitioner (Duro Felguera)** turned out to be the best bidder and the tender was awarded to them.
B. After discussion between the parties, the main contract was divided into five different and separate Packages. Separate Letters of Award for five different Packages were issued to the Appellant. Each of the Packages contained a separate arbitration clause.
C. Dispute arose between the parties. The Respondent contended that all the five contracts were composite contract and therefore, one single arbitration tribunal should be appointed. The Petitioner contended that all five contracts were separate contracts and different arbitration tribunals should be appointed.

Decision –
The Court decided in favour of the **Appellant (Duro Felguera).**

Legal Principles held –

1. That all the five different Packages had separate arbitration clauses and they did not depend upon the terms and conditions of the Original Package nor on any MoU signed by the parties.

Conclusion –
The Court appointed separate Tribunals for the 5 separate agreements.

16. HIMANGNI ENTERPRISES v. KAMALJEET SINGH AHLUWALIA [SC]

Civil Appeal No. 16850 OF 2017

Facts :

A. The **Respondent (Kamaljeet)** had rented out her property to the **Appellant (Himangni)** under a Lease Deed. The deed contained an arbitration clause for adjudication of disputes.
B. On arousal of disputes, the Respondent filed a civil suit against the Appellant for eviction and recovery of unpaid arrears of rent and grant of permanent injunction. The Appellant, on being served with the notice of the civil suit, filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 on the ground that the suit was founded on the lease deed, which contained an arbitration clause for resolving the dispute arising out of the deed. Thus, all disputs related to the lease were governed by the terms of the lease deed.
C. The trial court rejected the section 8 application. On appeal High court also dismissed the appeal.

Decision –
The Court decided in favour of the **Respondent (Kamaljeet).**

Legal Principles held –

1. That the well-recognised examples of non-arbitrable disputes are:
    a. disputes relating to criminal offences
    b. matrimonial disputes
    c. guardianship matters
    d. insolvency and winding-up matters
    e. testamentary matters (grant of probate, letters of administration and succession certificate)
    f. eviction or tenancy matters

Conclusion –
The Court held that the civil suit filed by the Respondent was maintainable despite parties agreeing to refer the disputes arising therefrom an arbitrator.

17. INNOX WIND LTD. v. THERMOCABLES LTD [SC]

Civil Appeal No. 19 of 2018

Facts :

A. The **Appellant (Innox)** and the **Respondent (Themocables)** entered into an agreement for supply of cables. According to the Agreement, the supply was to be according to the terms mentioned in the order and the Standard Terms and Conditions that were attached thereto.
B. The Standard Terms and Conditions contained a clause that provided for disputes to be resolved by a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
C. As dispute arose, the Appellant invoked the arbitration clause and moved the High Court by filing an application for appointment of an arbitrator. The High Court dismissed the said application by holding that the Appellant did not prove the existence of an arbitration agreement. Aggrieved, the appellant approached the Supreme Court.

Decision –

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

Legal Principles held –

1. That although general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a consensual standard form is enough for incorporation of an arbitration clause.

Conclusion –

The Court held that there was a valid arbitration clause and proceeded to appoint an arbitrator.

18. DAIICHI SANKYO COMPANY LTD. v. MALVINDER M SINGH ORS [DEL]

O.M.P. (EFA) (COMM.) 6/2016

Facts :

A. A Share Purchase and Share Subscription Agreement (hereinafter referred to as SPSSA) was entered into by the parties whereby the **Petitioner (Daiichi)** agreed to purchase from the **Respondents (Malvinder)** their total stake in a company. The SPSSA contained an arbitration clause which stated that the disputes were to be resolved by Arbitration to be administered by the International Chamber of Commerce.
B. The award went in favour of the Petitioner and when the same was sought to be executed, it was challenged by the Respondents on various grounds. These grounds were-
    i. What are the relevant parameters of section 48 of the Arbitration Act, 1996 on which, a foreign award can be refused from being enforced?

ii. Whether Quantified damages could be awarded when the real damage caused to the party is not quantified.
iii. Whether the award can be enforced as it grants consequential damages which are beyond the jurisdiction of the arbitral tribunal.
iv. Whether the Award cannot be enforced as claim of the petitioner is barred by limitation.
v. Whether an award of interest on damages amounts to multiple awards.
vi. Whether the Award of damages against a minor is illegal, non-est and void and cannot be enforced being in conflict with Public Policy of India..

Decision –
The Court decided in favour of the **Petitioner (Daiichi).** (except for question no. vi)

Legal Principles held –

1. That enforcement of a foreign award can be only refused if such an enforcement is found to be contrary to (a) fundamental policy of Indian Law (b) interest of India and (c) justice or morality.
2. That the tribunal has to take care to award reasonable compensation to ensure that the plaintiff is put in the same position he would have been if the representation had been true. This includes assessment of damages by the tribunal even if no real damage is done.
3. That keeping in view the doctrine of Noscitur a sociis, the word "consequential" should be read to mean "punitive, exemplary and multiple" damages which is well within the jurisdiction of the Tribunal.
4. That question of period of limitation of the claim has to be answered by the Tribunal by looking into the merits of the case. The Court cannot look into the same.
5. That awarding interest on the damages awarded for the period prior to award cannot be said to be a case of multiple damages.
6. That a minor cannot be guilty of having perpetuated a fraud either himself or through any agent. If the natural guardian commits the fraud he cannot bind the minor or the estate of the minor with any penalty or adverse consequences that would result on account of the fraud played by the natural guardian.

Conclusion –
The Court decided the different questions as above.

19. SUNDARAM FINANCE LTD. v. ABDUL SAMAD & ORS [SC]

Civil Appeal No.1650 of 2018

Facts :

A. The **Appellant (Sundaram finance)** was the lender and the **Respondent (Abdul)** was the borrower of a vehicle loan. Upon default of the Respondent, the Petitioner instituted arbitration proceedings wherein, the award was passed in Petitioner's favour.
B. The Appellant filed execution petition in the courts of Morena. The Respondent objected this and contended that the execution petition needs to be filed in the courts having jurisdiction over the arbitration proceedings (in Tamil Nadu) first and from there, a transfer order needs to be taken in order to transfer the execution petition to Morena.
C. The trial court accepted this contention of the Respondent. Aggrieved, the Appellant has filed the instant appeal.

Decision –
The Court decided in favour of the **Appellant (Sundaram Finance).**

Legal Principles held –
1. That an Arbitral award is to be enforced in accordance with the provisions of the Civil Procedure Code, 1908 in the same manner as if it were a decree. However, it is the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court.
2. That when an award is made, of which execution is sought, the arbitral proceedings stands terminated on the making of the final award. Therefore, the question of any court having jurisdiction upon the arbitral proceedings does not arise.
3. That the execution petition can, therefore, be filed in any court in the jurisdiction of which, the execution is sought.

Conclusion –
The Court held that the execution petition could be directly filed in the Morena Courts.

20. ANTRIX CORPORATION LTD. v. DEVAS MULTIMEDIA PVT. LTD. [DEL]

FAO (OS) (COMM) 67/2017

Facts :
A. An agreement was entered into at Bangalore between the **Appellant (Antrix)** and the **Respondent (Devas)**, which provided for arbitration as the method for resolving disputes arising out of the agreement. Subsequently, disputes arose between the parties for the resolution of which the Respondent initiated arbitration proceedings in Paris.
B. The Appellant filed a petition before the Bangalore City Civil Court (hereafter "Bangalore court") under Section 9 of the Arbitration Act, 1996, seeking an order restraining the Respondent from proceeding with the Paris arbitration. In the meanwhile, the arbitrator rendered its Award in favour of the Respondent. The Appellant filed an appeal in the Bangalore Court under Section 34 of the Act challenging the Award.

C. The Respondent challenged the Bangalore Court's jurisdiction to entertain the Appellant's application. Simultaneously, the Respondent filed an execution petition before the Delhi High Court to execute the arbitral award.
D. The High Court ruled that the Appellant's petition filed in the Bangalore Court was not maintainable as the parties had designated New Delhi as the seat of the arbitration, and by virtue of such designation, they conferred exclusive jurisdiction on the courts at New Delhi. They also ruled that by virtue of section 42 of the Arbitration Act, 1996, the Delhi Court had got an exclusive jurisdiction to entertain petitions related to the case and thus, both the petitions filed by the Appellant in the Bangalore court were non-maintainable. Aggrieved, the Appellant preferred the instant appeal.

Decision –
The Court decided in favour of the **Appellant (Antrix).**

Legal Principles held –

1. That it is open to parties to arbitration to designate a particular forum as the exclusive forum to which all applications under the Act would lie which would merely be an exercise of the right of the parties to choose one among multiple competent forums as the exclusive forum.
2. That Section 42 of the Act presupposes that there is more than one competent forum to hear applications under the Arbitration Act, and hence to ensure efficacy of dispute resolution, it lays down that the court, which is first seized of any such application under the Act, would be the only court possessing jurisdiction to hear all subsequent applications.
3. That merely choosing a seat, cannot amount to exercising such a right of exclusive forum selection. If seat were equivalent to an exclusive forum selection, then every time parties would designate a seat, it would in effect mean that Section 42 would have no application.

Conclusion –
The Court held that The Delhi courts did not have any exclusive jurisdiction and that the applications filed in the Bangalore Courts were maintainable.

21. SHYAM SUNDER AGARWAL v. P. NAROTHAM RAO [SC]

Civil Appeal No. 6872 of 2018

Facts :

A. A Memorandum of Understanding (MoU)/Agreement was executed between the parties for sale and purchase of shares of a Company of which all the parties were Directors.
B. In Clause 12 of the said Agreement, words like "decision", "Mediators/Arbitrators", "any breaches" and "decision is to be final and binding on all parties to the said Agreement" are used.
C. The main issue between the parties is whether the above clause is a valid arbitration agreement.

Decision –
The Court decided in favour of the **Respondent (P Narotham Rao).**

Legal Principles held –

1. That the people styled as Mediators/Arbitrators were without doubt escrow agents who had been appointed to keep certain vital documents in escrow, and to ensure a successful completion of the transaction contained in the MOU. The idea was that the two persons do all things necessary during the implementation of the transaction between the parties and see that the transaction gets successfully completed.
2. That the wordings of the Agreement have been used very loosely. For an agreement to be a valid arbitration agreement, the words used should be precise and should clearly lay down the intent of the parties.

Conclusion –
The Court held that the impugned clause was not a valid arbitration clause.

22. DEEPAYAN MOHANTY v. CARGILL INDIA PVT LTD & ORS. [Del]

CS (OS) No.1157of 2014

Facts :

A. The **Plaintiff (Deepayan)** was an employee of the **Defendant Company (Cargill)**. He was awarded certain amount as bonus which was split 50-50. 50% comprised a cash award, which was paid to the Plaintiff at the relevant time and the other 50% was retained as a deferred incentive award to be deferred over a period of three years. This bonus award contained a forfeiture clause, by which if the employee joined a competitor's business, the withheld bonus would be forfeited.
B. The Plaintiff resigned from the Defendant Company and joined in a competitor's business. When he approached the company for payment of the balance incentive award, he was informed that he did not comply with the terms and conditions of the incentive award and therefore, the payment was not liable to be made.
C. Aggrieved, he Plaintiff filed the instant suit.

Decision –
The Court decided in favour of the **Plaintiff (Deepayan).**

Legal Principles held –

1. That it is the settled position in India that no employer has a right to restrain an employee from taking up competing employment after the term of employment with the previous employer comes to an end.
2. That Such a clause is invalid and unenforceable as per Section 27 of the Indian Contract Act, 1872.

3. That the deferred incentive was an amount awarded in full to the employee as a reward for their performance "during the course of employment". Only the payment was postponed partially and for the postponement of the payment, interest is also paid by Defendant to the employee. Thus, it was the amount belonging to the employee that was withheld by the Defendant.

Conclusion –
The Court held that the Defendant Company could not withhold the money awarded as bonus to the Petitioner.

23. M/S SHRIRAM EPC LIMITED v. RIOGLASS SOLAR SA [SC]

Civil Appeal No. 9515 of 2018

Facts :

A. An Arbitration Agreement, that provided for the seat of arbitration to be outside India, was entered into by the **Appellant (Shriram)** and the **Respondent (Rioglass).** When certain disputes arose, the arbitration clause was invoked. The Arbitrator passed an order in favour of the Respondent.
B. The Respondent filed a petition in the Indian Courts for the execution of the Foreign Award. The Appellant challenged it on the ground that the foreign award was not adequately stamped.
C. The High Court rejected this contention and passed an order for the execution of the award. Aggrieved, the Appellant filed the instant appeal.

Decision –
The Court decided in favour of the **Respondent (Rioglass)**

Legal Principles held –

1. That the only "award" that is referred to in the Indian Stamp Act, 1899 is an award that is made in the whole of India except the State of Jammu and Kashmir.
2. That the Indian Stamp act, 1899 does not apply to Foreign Arbitral Awards.

Conclusion –
The Court held that the Award could be executed without any stamp duty being paid on the award.

24. SONELL CLOCKS AND GIFTS LTD. v. THE NEW INDIA ASSURANCE CO. LTD [SC]

Civil Appeal Nos.1217-1218 of 2017

Facts :

A. The **Appellant (Sonell Clocks)** had taken an Insurance Policy from the **Respondent (The New India)** in respect of its building, plant and machinery. Due to torrential rains and floods in the entire area, the water gushed into the factory premises causing damage to the machinery as well as raw material lying therein.
B. The Appellant gave the Intimation of the loss to the Respondent after a gap of 3 months 25 days. Thereafter, the Respondent appointed a surveyor to assess the loss caused due to the flooding of the factory premises.
C. The surveyor after causing inspection submitted its report to the Respondent stating that the claim was not payable on account of the failure of the Appellant to comply with the general conditions of the policy which required immediate intimation of the event causing the imposition of liability on the insurer. Acting upon the said report, the Respondent repudiated the claim.
D. The Appellant contended that the Respondent had waived their right to repudiate the claim on the ground of delay in intimation by appointing the surveyor.

Decision –

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

Legal Principles held –

1. That waiver is an intentional relinquishment of a right. It must involve conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed.
2. To invoke the principle of waiver, the person who is said to have waived must be fully informed as to his rights and with full knowledge about the same, he intentionally abandons them.
3. That the appointment of a surveyor by the Respondent after receipt of intimation of the loss from the appellant and an express stand taken in the repudiation letter sent by the Respondent to the Appellant after consideration of the surveyor's report cannot be construed to be a case of waiver on the part of the Respondent.

Conclusion –

The Court held that the Respondent had not waived its right to repudiate the claim by appointing the surveyor.

25. TRUSTEE, JACOBITE SYRIAN CATH & ANR v. JIPPU VARKEY [NCDRC]

Revision Petition No. 2695-2696 OF 2018

Facts :

A. The **Petitioner (Trustee, Jacobite)** had collected certain amount from the **Respondent (Jippu)** for granting permission to construct a family tomb in the cemetery of the Cathedral. The

family tomb was allegedly constructed by the Respondent and the mortals of his father were placed in the said tomb.

B. The Respondent alleged that the said tomb was destroyed by the Petitioner. Aggrieved from the destruction of the tomb and claiming to be a consumer of the Petitioners, the complainant approached the Dispute Redressal Forum by way of a consumer complaint, alleging deficiency in service and seeking reconstruction of the tomb along with compensation.
C. The State Commission passed orders in favour of the Respondent. Aggrieved, the Petitioners filed the instant Petition.

Decision –

The Court decided in favour of the **Petitioner (Trustee, Jacobite).**

Legal Principles held –

1. That the term 'consumer', defined in Section 2(1) (d) of the Consumer Protection Act, 1986 means a person who either purchases goods or avails services for a consideration.
2. That the grant of permission for construction of a family tomb in the cemetery of a Cathedral does not amount to rendering services within the meaning of Section 2(1) (o) of the Act. It is just a permission granted by a religious organization to one of its devotees.
3. That even if some amount is charged by the religious organization from the devotees for granting the requisite permission, it does not amount to rendering services under the Consumer Protection act, 1986.

Conclusion –

The Court held that the complaint made by the Respondent was not maintainable.

. INSOLVENCY LAWS .

1. SWISS RIBBONS PVT LTD. v. UNION OF INDIA [SC]

Writ Petition (Civil) No. 99 of 2018

Facts :

A. The **Petitioners (Swiss) filed** the instant petition challenging the Constitutionla Validity of the Insolvency and Bankruptcy Code, 2016.

Decision –

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

Legal Principles held –

1. That the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it.
2. That in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. Approximately 3300 cases have been disposed of by the Adjudicating Authority and around 80 cases have since been resolved by resolution plans being accepted. Other statistics also support and show the success of the Code.

Conclusion –

The court held that the IB Code, 2016 was constitutionally valid.

2. SHALINI PUBLICITY CREATIVE PVT. LTD. v. DENA BANK [NCLAT]

Company Appeal (AT) (Insolvency) No. 153 of 2019

Facts :

A. The **Respondent (Dena, Financial Creditor)** alleged default on the part of the **Appellant (Shalini Corporate Debtor)** in repayment of facilities granted to them and filed an application under section 7 of the IB Code, 2016 to initiate a CIRP against the Appellant. The Respondent had relied upon the sanction letter as well the books of accounts of the Appellant to establish the same.

B. The NCLT admitted the application.

C. Aggrieved, the Appellants filed the instant appeal. They contended that a One Time Settlement (OTS) proposal had been made by the them and also that the application was barred by limitation.

Decision –
The Court decided in favour of the **Respondent (Dena, Financial Creditor).**

Legal Principles held –

1. That the One Time Settlement (OTS) proposal made by the Appellant had been rejected by the respondent and that the debt and default was established.
2. Section 7 of IB Code, 2016 providing for initiation of Corporate Insolvency Resolution Process by Financial Creditor came into force on 1st December, 2016. Remedy by way of triggering of insolvency resolution process on the ground of default committed with respect to the financial debt was not available to any Financial Creditor prior to such date.
3. That there had been a continuing cause of action as the default in the instant case was a continuing one. Thus, the period of limitation got refreshed everyday.

Conclusion –
The court held that the application was rightly admitted by the NCLT.

3. **AFFINITY FINANCE SERVICES PVT LTD. v. KIEV FINANCE LTD [NCLAT]**
Company Appeal (AT) (Insolvency) No.171/2019

Facts :

A. The **Appellant** (**Affinity**, **Operational creditor**) filed petition under Section 9 of the IB Code, 2016 seeking initiation of CIRP against the **Respondent (Kiev, Corporate Debtor)** for committing default in paying of its debt. The petition was admitted by the Adjudicating Authority, Committee of Creditors was constituted but they did not receive any resolution plan during the period of 180 days.

B. The NCLT passed the liquidation order with respect to the Respondent and a Liquidator was appointed. However, subsequently an application was filed by the Liquidator seeking recall of the liquidation order, which was dismissed on the ground that the order of liquidation passed by the NCLT could not be subjected to review or revocation.

C. Aggrieved, the Appellant has preferred the instant appeal.

Decision –
The Court decided in favour of the **Respondent (Kiev, Corporate Debtor).**

Legal Principles held –

1. That no resolution applicant came forward with a resolution plan during the CIRP and that is why the liquidation order was [passed by the NCLT.
2. That the resolution plan proposed to be filed by the resolution applicant could not be evaluated and subjected to scrutiny for determining its viability and feasibility by the COC unless the same had been submitted within the prescribed time frame.

Conclusion –

The court held that the liquidation could not be recalled.

4. JK JUTE MILL MAZDOOR MORCHA v. JUGGILAL KAMLAPAT JUTE MILLS LTD & ORS [SC]

Civil Appeal No.20978 of 2017

Facts :

A. The **Appellant (JK Jute)** was the Trade Union of the **Respondent Company (Juggilal).** The Respondent made certain defaults in payment pursuant to which the Appellant filed a petition to initiate a CIRP against them.

B. The NCLT held that a Trade Union is not covered under the definition of Operational Creditors and rejected the application. The same was upheld by NCLAT in appeal.

C. Aggrieved, the Appellants filed the instant appeal.

Decision –

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

Legal Principles held –

1. That a trade union is an entity established under a statute – namely, the Trade Unions Act, and therefore falls within the definition of "person" under Sections 3(23) of the Code.
2. That an operational debt means a claim in respect of employment. An application for default in payment of operational debt can be made not only in an individual capacity, but also conjointly.
3. That a registered trade union which is formed for the purpose of regulating the relations between workmen and their employer can maintain a petition as an operational creditor on behalf of its members as the procedure is the handmaid of justice, and is meant to serve justice.

Conclusion –

The court held that Appellant could file the aforesaid application.

5. AXIS BANK v. SBS ORGANICS PVT. LTD & ANR [SC]

Civil Appeal No. 4379 of 2016

Facts :

A. The **Respondent (SBS)** had borrowed certain amount from the **Appellant (Axis Bank)** the repayment of which was defaulted. The Appellant, being a secured creditor, initiated an action against the Respondent under the SARFAESI Act, 2002.

B. Aggrieved by the steps taken by the secured creditor, the Respondent filed an application before the Debt Recovery Tribunal, Ahmedabad. Initially, an interim relief was granted, but the same was later vacated. The Respondent filed an appeal with the Debt Recovery Appellate Tribunal. In terms of the proviso under Section 18, the Respondent made a deposit of Rs.50 lakhs before the Appellate Tribunal.

C. During the pendency of the appeal before the DRAT, the Application filed with the DRT Ahmedabad got finally disposed of wherein the steps taken by the Secured Creditor /Appellant were set aside and the case was decided in favour of the Respondent.

D. Accordingly, the Respondent sought permission to withdraw the appeal filed with the DRAT and also a refund of the deposit of Rs. 50 lakhs. Permission was granted, however, making it subject to certain conditions. The Respondent moved the High Court by way of Writ Petition aggrieved by the observation that the withdrawal would be subject to such conditions.

E. The High Court, by its order, set aside the said condition and permitted the Respondent to withdraw the amount unconditionally. Aggrieved, the appellant-Bank filed an appeal.

Decision –

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

Legal Principles held –

1. That for 'preferring' an appeal, a fee is prescribed, whereas for the Tribunal to 'entertain' the appeal, the aggrieved person has to make a deposit of fifty per cent of the amount of debt due from him as claimed by the secured creditors or determined by the DRT.

2. That in the instant case, the Respondent had sought withdrawal of the appeal even before it came up for consideration on merits.

3. That the provision requiring deposit of certain amount as a pre condition for entertainment of an appeal was inserted in the Act to secure the interest of the other party. However, where the case has been finally decided in the favour of the Appellant, the deposited amount need not be kept.

Conclusion –

The court held that the Appellant should be allowed to withdraw the deposit amount unconditionally.

6. UCO BANK & ANR v. DIPAK DEBBARMA & ORS [SC]

Civil Appeal No. 11247 of 2016

Facts :

A. The **Respondent (Dipak)** belonged to the Scheduled Tribe. They had taken some amount as loan from **Appellant (UCO Bank)** against a security in the form of a piece of land. Defaults occurred in the repayment of the loan amount, pursuant to which, the Appellant proceeded to sell the secured asset (the piece of land) under the SARFAESI Act, 2002.

B. The appellant auctioned the land to certain people who were not a part of the Scheduled Tribes. The Respondent challenged this sale on the ground that it was in infraction of the Tripura Land Revenue and Land Reforms Act, 1960 under which a legislative embargo had been put on the sale of mortgaged properties by the bank to any person who is not a member of a scheduled tribe.

C. The High Court ruled in favour of the Respondent aggrieved by which, the Appellants preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That the SARFAESI Act, 2002 is relatable to the Entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking.
2. That so long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, could operate validly.

3. That the moment Parliament stepped in by enacting a law that is traceable to Entry 45 and deals exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, has to give way.

Conclusion –
The court held that the bank could go ahead with the impugned sale.

7. CHUNNU FASHIONS & ORS v. EDELWEISS ASSET RECONSTRUCTION CO LTD [DEL]

W.P(C).No. 10589/2016

Facts :

A. The **Petitioner (Chunnu)** had filed an appeal in the DRAT against an order passed by the DRT. The DRAT imposed a condition on the Petitioner to deposit an amount equal to 25% of the amount directed to be paid by the order under appeal as a pre-condition to the entertainment of the appeal.
B. The Petitioner failed to deposit the said amount within the specified time. As a result, the DRAT dismissed the appeal.
C. Aggrieved, the Petitioner filed this Writ Petition.

Decision –
The Court decided in favour of the **Resondent (Edelweiss).**

Legal Principles held –

1. That the condition of pre-deposit for entertainment of an appeal is mandatory under Section 18 of the SARFAESI Act, 2002. Therefore, an appeal cannot be entertained, unless the condition precedent of deposit is fulfilled.

Conclusion –
The court held that the appeal had rightly been dismissed as the Petitioner herein had not complied with the requirement of payment of pre deposit within the stipulated time.

8. MOBILOX INNOVATIONS PVT LTD. v. KIRUSA SOFTWARE PVT LTD [SC]

Civil Appeal No. 9405 of 2017

Facts :

A. The **Appellant (Mobilox)** was engaged by Star TV for conducting tele-voting for the "Nach Baliye" program on Star TV. The Appellant in turn subcontracted the work to the **Respondent (Kirusa)**. The Respondent provided the requisite services and raised monthly invoices and also followed up with the Appellant for payment of pending invoices. Also, anon-disclosure agreement ("NDA") was executed between the parties.

B. Subsequently, the Appellant wrote to the Respondent that they were withholding payments against invoices raised by them, as the respondent had disclosed on their webpage that they had worked for the "Nach Baliye" program run by Star TV, and had thus breached the NDA.

C. Respondent filed an application with the NCLT under Sections 8 and 9 of the IB Code, 2016 stating that an operational debt was owed by the Appellant. NCLT dismissed the application on the ground that the Appellant had disputed the claim of debt alleged by the Respondent. On appeal, NCLAT remanded the case back to NCLT. Aggrieved, the Appellant challenged the order of the NCLAT.

Decision –

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

Legal Principles held –

1. That the operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.
2. That once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.
3. That the Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

Conclusion –

The court held that the application made by the Respondent had to be rejected as there existed a valid dispute between the parties.

9. SURENDRA TRADING COMPANY v. JUGGILAL KAMLAPAT JUTE MILLS CO LTD [SC]

Civil Appeal No. 8400 of 2017

Facts :

A. The **Appellant (Surendra, Operational Creditor)** had filed an application before the NCLT under sections 8 and 9 of the IB Code, 2016 against the **Respondent (Juggilal, Corporate Debtor)**. The NCLT observed certain deficiencies in the application and directed the appellant to remove the same within 7 days as provided under the Code.

B. The Appellant removed the defects but after the expiry of 7 days. The NCLT dismissed the application. On appeal, the NCLAT held that the Appellant should have cured the defects within 7 days as the provision was mandatory.

C. Aggrieved, the Appellant challenged this in the present appeal.

Decision –

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

Legal Principles held –

1. That the NCLAT has concluded that as far as 14 days' time provided to NCLT for admitting or rejecting the application for initiation of CIRP is concerned, the period is not mandatory.
2. That the principle applied while deciding that period of fourteen days within which the NCLT has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well.

Conclusion –

The court held that the period of 7 days available to the applicant to cure the defects in the application is not mandatory.

***10.* M.D. FROZEN FOODS EXPORTS PVT. LTD. v. HERO FINCORP LTD [SC]**

Civil Appeal No. 15147 of 2017

Facts :

A. The **Appellant (MD Frozen)** had borrowed certain money from the **Respondent (Hero)** for their business against security of immovable properties. Certain defaults were made and the account of the Appellants became a 'Non-Performing Asset' ('NPA').

B. The Respondent referred the dispute of non-payment to arbitration on 16/11/2016. Before this referral, on 05/08/2016 the SARFESI Act, 2002 got amended and the Respondent was included in the definition of a financial institution. The Respondent, thus became eligible to invoke the provisions of SARFESI Act, 2002.

C. Accordingly, the Respondent, issued demand notices under the Act, despite the fact that the arbitration proceedings were going on. In the arbitration proceedings, the Respondent got interim stay by way of which the Appellant was refrained from dealing with the mortgaged properties.

D. The Appellant challenged the notices issued under the SAEFESI Act before the High court, which dismissed the petition. Aggrieved, they preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That arbitration is an alternative to the civil proceedings, and any matter which came within the scope and jurisdiction of the Debt Recovery Tribunal could still be referred to arbitration. Thus, SARFAESI proceedings and arbitration proceedings can go hand in hand.
2. That the Act applies to all the claims which are alive at the time when it is brought into force. That the provisions of the SARFAESI Act, 2002 becomes applicable to all debts owing and alive when the Act becomes applicable to the Respondent.

Conclusion –

The court held that the Respondent could maintain a proceeding under the SARFAESI Act, 2002 as well as the Arbitration Act, 1996.

11. INTERNATIONAL ASSET RECONSTRUCTION CO OF INDIA LTD. v. OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD [SC]

Civil Appeal No.16962 of 2017

Facts :

A. A recovery certificate was issued by the DRT against the **Appellant (International Asset)** under Section 19(22) of the RDDBFI Act, 1993. Pursuant to this, the Recovery Officer passed the necessary orders to give effect to the order.

B. The Appellant sought an appeal against the orders of the Recovery Officer, which was filed beyond the period of 30 days as prescribed in the Act. The Tribunal held that the delay could not be condoned as there was no provision made for it in the Act.

Decision –
The Court decided in favour of the **Respondent (Official Liquidator).**

Legal Principles held –

1. That the provisions of the Limitation Act, 1963 apply only to proceedings in 'courts' and not to appeals before bodies other than courts such as quasi-judicial Tribunals or executive authorities.
2. That the scheme of the Act shows that the Limitation Act is to be applied upon the original proceedings before the Tribunal only. Only the Appellate Tribunal has been conferred the power to condone delay.
3. That this power to condone the delay does not extend to the Appeals preferred against the orders passed by the Recovery Officers.

Conclusion –
The court held that the Tribunal did not have any powers to condone the delay made in preferring an appeal against the orders of the Recovery Officer.

12. PROWESS INTERNATIONAL PVT. LTD. v. ACTION ISPAT & POWER PVT. LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 223 of 2017

Facts :

A. An application was filed by the **Appellant (Prowess)** against the **Respondent (Action Ispat)** under section 9 of the IB Code, 2016 in order to get a CIRP initiated against them. This Application was rejected by the NCLT.

B. The Appellant preferred an appeal against this order after a delay of more than six months without making any application for condonation of delay. When this was pointed out, the Appellant made an application for condonation of delay and contended that the delay was just for 2 days.

Decision –
The Court decided in favour of the **Respondent (Action Ispat).**

Legal Principles held –

1. That for preferring appeal under Section 61 of the IB Code, 2016 against an order passed by the NCLT, the provision for counting the period of limitation is different.

2. That the appeal is required to be filed within thirty-days from the date of knowledge of the order against which appeal is preferred. The time period for appeal is counted from the date of knowledge and not from the date of receiving a certified copy.

3. That the Appellant had knowledge about the judgement from the day of pronouncement of the order and they could not explained as to what action they took between the day of Judgment and the day on which the application for certified copy was filed.

Conclusion –
The court held that the delay could not be condoned.

13. INDIAN BANK v. K. PAPPIREDDIYAR [SC]

Civil Appeal No. 6641 of 2018

Facts :

A. The **Appellant (Indian Bank)** had issued certain amount as loan to the **Respondent (Pappireddiyar)** against a security which was in the form of an agricultural land.
B. The Respondent made a default in the repayment pursuant to which, the Appellant initiated an action under section 13 of the SARFAESI Act, 2002.
C. The Respondent challenged this on the ground that agricultural lands are outside the purview of the SARFAESI Act, 2002 and hence, the action taken by the Appellant is not maintainable.

Decision –
The Court decided in favour of the **Appellant (Indian Bank).**

Legal Principles held –

1. That the SARFAESI Act, 2002 does not contain a definition of the expression "agricultural land".
2. That whether a particular piece of land is agricultural in nature is a question of fact which must be deduced from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.
3. That the classification of land in the revenue records as agricultural is not conclusive of the question whether the SARFAESI Act, 2002 does or does not apply to the land.

Conclusion –
The court held that given the facts of the case, the land in question was not an agricultural land.

COMPETITION LAW

1. MAHYCO MONSANTO BIOTECH (INDIA) PVT LTD. v. COMPETITION COMMISSION OF INDIA & ORS [DEL]

LPA 637/2018 & CM. Nos. 47926/2018 and 47927/2018

Facts :

A. The only question to be answered in this case was "whether Section 48 of the Competition Act, 2002, which provides for vicarious liability of persons in-charge and responsible for the conduct of business of the Company, applies only on contravention of orders of CCI or DG under Sections 42 to 44 of the Competition Act, 2002 and not to contravention of Sections 3 and 4 of the Competition Act, 2002?"

Decision –

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

Legal Principles held –

1. That Section 27 of the Act clearly stipulates that the CCI, on a finding that there is a contravention of Section 3 or Section 4, can pass orders against an 'enterprise' and a 'person' i.e. individual and impose penalty on them.
2. That if the Company and the Officers/ Directors are being proceeded against for violation of Sections 3 and 4, there has to be a consequence for violation.

Conclusion –

The Court held that provisions of section 48 apply to cases of violation of section 3 and 4 also.

2. JASPER LNFOTECH PVT LTD (SNAPDEAL) v. KAFF APPLIANCES (INDIA) PVT. LTD [CCI]

Case No. 61 of 2014

Facts :

A. The **Informant (Snapdeal)** had displayed the **OP's (Kaff)** products for sale on its online portal at a discounted price. Aggrieved by this, the OP displayed a caution notice on its website alleging that the products sold by the Informant through its website were without their authorization. They also stated that they will not honour warranties on the products sold through the Informant's website.

B. Aggrieved by this, the Informant served a legal notice on the OP for withdrawal of the said Caution Notice from its website alleging violation of Section 3 of the Competition Act, 2002. According to them, the Opposite Party was trying to indulge into acts of Resale Prove maintenance by forcing them to sell the products above a given price.

Decision –

The Court decided in favour of the **Opposite Party (Kaff Appliances).**

Legal Principles held –

1. That there was a large number of dealers who were competing with each to sell the products of the Opposite Party. This was suggestive of a fair degree of intra-brand competition.
2. That the evidence did not reveal the existence of any price restriction or minimum RPM. Though the existence of Caution Notice, Legal Notice and Email had been established, it was conclusively established that they were used as instruments for imposing a minimum RPM on the Informant.

Conclusion –

The Court held that there was no violation of Section 3 of the Act.

3. RAVI PAL v. ALL INDIA SUGAR TRADE ASSOCIATION & ANR [CCI]

Case No. 25 of 2018

Facts :

A. The **Complainant (Ravi Pal)** alleged that the **Opposite Party (All India)** was indulged in the act of collecting and disseminating pre-determined purchase price of sugar amongst the cartel members through WhatsApp and SMS which in effect restricted the market for other competitors whose bids were based on market forces.
B. They further alleged that the Ops were controlling the supply of sugar in the market and affecting players of the market in other States as they were compelled to lower the prices of sugar due to elimination of market forces.
C. This, according to them, was a violation of section 3 of the Act.

Decision –

The Court decided in favour of the **Opposite Party (All India).**

Legal Principles held –

1. That the information shared over WhatsApp and SMS was already available in the public domain and was known to the bidders before it being so shared.
2. That the sugar commodity is subject to the provisions under the Essential Commodities Act, 1955 and orders issued thereunder and, thus, the final market price of sugar is dependent upon numerous factors.

Conclusion –

The Court held that there was no violation of the provisions of the Act.

4. SUN ELECTRONICS PVT LTD v. ELECTEK SOL PVT LTD & ORS [CCI]

Case No. 02 of 2019

Facts :

A. The **Informant (Sun)** alleged the following against the **Opposite Party (Electek) –**
   i. That it did not abide by their obligation as per the work order;
   ii. That they sought additional sum of Rs.10 Lakhs from the Informant for completing the assigned work;
   iii. That they insisted that the Informant buy additional AV equipment and appoint a MEP consultant
   iv. That they withheld the XP8S license key from the Informant.

B. This conduct, as per the Informant, was in violation of the provisions of Section 3 and Section 4 of the Act.

Decision –

The Court decided in favour of the **Opposite Party (Electek).**

Legal Principles held –

1. That with regard to section 3, the Informant could not show any 'agreement' amongst the OP and the other persons.
2. That a number of other major players like Schneider etc. operated at the same level of competition besides OP in the Relevant Market. Thus, the OP did not enjoy any dominant position in the relevant market.
3. That the Act does not recognize the concept of Collective Dominance.

Conclusion –

The Court held that there was no violation of the provisions of the Act.

5. Ms. DEJEE SINGH & ORS v. SANA REALTORS PVT LTD [CCI]

Case No. 06 of 2019

Facts :

A. The **Informant (Deejee Singh)** alleged the following against the **Opposite Party (Sana)-**
   i. That as per the brochure of the OP, they had developed a new type of real estate property called the SOHO units, which were meant to serve as a home as well as an office.
   ii. That the OP had made a long delay in handing over of possession of the units to the informant.

B. This, according to the Informants, violated the provisions of Section 4 of the Act.

Decision –
The Court decided in favour of the **Opposite Party (Sana).**

Legal Principles held –

1. That a number of other major players like DLF Limited, Omaxe etc. operated at the same level of competition besides OP in the Relevant Market. Thus, the OP did not enjoy any dominant position in the relevant market.

Conclusion –
The Commission held that there was no violation of the provisions of the Act.

6. DEP. CHIEF MATERIALS MANAGER, RAIL COACH FACTORY, PUNJAB v. FAIVELEY TRANSPORT INDIA LTD & ORS. [COMPAT]

Appeal No. 10 of 2016

Facts :

A. The **Respondents (Faiveley)** were the suppliers of "Axle Mounted Disk Brake System (AMDBS)" to the **Appellant (Railways)**. The Appellant floated tenders for the supply of AMDBS and the Respondents were the successful bidders. It was observed that the Respondents quoted identical rates which were accepted by the Appellant.
B. The Appellant made a complaint to the CCI alleging that the Respondents had formed a cartel and thereby violated the provisions of sections 3 & 4 of the Competition Act, 2002.
C. The matter was referred to the director of investigation who submitted a report stating that there was a cartel as alleged. However, after examining the issues, the CCI dismissed the complaint. Aggrieved, the Appellant preferred this Appeal.

Decision –
The Court decided in favour of the **Respondent (Faiveley).**

Legal Principles held –

1. That the mere fact that two bidders have tendered identical or similar bias will not, by itself, establish a case of bid rigging. Corroborative evidences have to be established.
2. That while considering a case of cartelization, factors like size of the industry and type of the market have to be considered.

Conclusion –
The Court held that the alleged similarity in the bids was not a result of any cartelization.

7. MERU TRAVEL SOL PVT LTD v. UBER INDIA PVT. LTD & ORS [CCI]

Case No. 96 of 2015

Facts :

A. The **Informant (Meru)** alleged the following against the **Opposite Party (Uber) –**
   i. That the OP had indulged themselves in abusive practices like unreasonable discounts, abysmally low/predatory pricing to consumers etc. to adversely affect and oust its competitor from the relevant market.
   ii. That the OP was giving the whole trip amount received from the passengers to the respective taxi drivers along with additional incentives in order to get them attached exclusively with their network.
   iii. That this was done to prevent passengers/customers from obtaining radio taxi services from other radio taxi services operators.
   iv. That the OP had entered into exclusive contract with taxi owners in violation of Sections 3(1), 3(2) and 3(4) of the Act whereby they were restrained from getting attached on to any other competing radio taxi operator network.

B. Based on these, the Informant alleged that the OP had violated sections 3 and 4 of the Competition Act, 2002.

Decision –

The Court decided in favour of the **Opposite Party (Uber).**

Legal Principles held –

1. That based on different reports, it was observed that there existed stiff competition between the OP and other radio taxi service providers like OLA in the relevant geographic market. Thus, there was no dominance enjoyed by the OP.
2. That the Informant could not prove the existence of any agreement between the OP and the taxi drivers. Thus, in the absence of an agreement, no case of anti-competitive agreement can be made out.

Conclusion –

The Court held that the OP had not violated section 3 and 4 of the Competition Act, 2002.

8. TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION v. BRITANNIA INDUSTRIES LTD & ORS [CCI]

Case No. 106 of 2015

Facts :

A. The **Informant (Tamil Nadu Consumer)** alleged the commitment of the following acts on behalf of the **Opposite Party (Britannia) –**

i. That the OPs did not allow their distributors to deal with any other biscuit manufacturing by orally restricting them and also restricted the area in which these distributors could operate
ii. That the OPs forced their distributors to use gadgets and software introduced by them
iii. That the OPs had offered special rates to firms like Reliance Mart, Big Bazar, etc. As a result, the products of OPs were available to whole sale shops at rates (price) below the cost price of the distributors.
iv. That the OPs required their distributors to maintain infrastructure like godown space, vans, employees, computers, software etc. and also force distributors to extend credit to retailers
v. That the OP cancelled the distributorship of agencies that did not abide by the aforesaid stipulations.

B. In the view of above, the Informant alleged abuse of dominance (violation of section 4) by the Opposite Party.

Decision –
The Court decided in favour of the **Opposite Party (Britannia).**

Legal Principles held –

1. That there existed various other players like ITC, Parle and Priya Gold, in the relevant market at the same level of competition as the OP. Hence, the OPs did not enjoy any dominant position.
2. That in absence of dominant position, a party can not be held liable for violation of section 4 of the Competition Act, 2002.

Conclusion –
The Court held that there was no violation of section 4 of the Competition Act, 2002.

9. DEPARTMENT OF SPORTS v. ATHLETICS FEDERATION OF INDIA [CCI] *Case No. 01 of 2015*

Facts :

A. The **Opposite Party (Athletics Federation)** took a decision in its AGM to take action against the state units/ officials/ athletes who encouraged unauthorised marathons without taking permission of the OP.
B. The **Informant (Department of Sports)** alleged that the above decision was anti-competitive had an adverse impact on promotion of sports and protection of the interest of sports persons. They further allege that the decision was not conducive for development of the sport of athletics and would prohibit healthy competition.

Decision –
The Commission ordered Investigation by the DG**.**

Legal Principles held –

1. That the activities carried out by the OP were covered under the definition of economic activities as the OP was generating revenue out of such activities through various means such as royalty, sponsorship, etc. Thus, the OP came under the definition of an enterprise.
2. That that OP, being the apex body for managing athletics in India and by virtue of its association with IAAF, AAA and Indian Olympic Association, was controlling athletic activities in the entire country and hence, enjoyed a dominant position in the relevant market.
3. That the condition imposed by the OP looked discriminatory as it restricted the entry of new entrants into the relevant market.

Conclusion –

The Court held that a prima facie case of violation of section 4 was made out against the OP.

10. REGISTRARS ASSOCIATION OF INDIA v. NSDL & ORS [CCI]

Case No. 104 of 2015

Facts :

A. The **Informant (Registrar)** was an association representing Registrars to an Issue and Share Transfer Agents ('RTI'/'STA'). The **Opposite Party (NSDL)** was the largest depository in India and is engaged in the business of providing depository services like dematerialisation and it handles all securities held and settled in dematerialised form in the National Stock Exchange.

B. The Informant alleged that –
   i. the OP (No. 2, subsidiary of OP 1) had filed an application before SEBI for being registered as a RTI/ STA i.e., to enter into the participant market.
   ii. That the OP, through its wholly owned subsidiary OP 2, was trying to enter into the participant market i.e. RTI/ STA market wherein it acts as a regulator.
   iii. That the OP had all the information/ details about the said market and no new entrant in the market could match the infrastructure and muscle power of OP 2.

C. The Informant alleged that the said conduct of OPs is also likely to cause an anti- competitive effect in the market in contravention of the provisions of Sections 3 and 4 of the Act.

Decision –

The Court decided in favour of the **Opposite Party (NSDL).**

Legal Principles held –

1. That the allegations made by the Informant are premature as the application of OP 2 is at the preliminary stage of processing before SEBI.

2. That since OPs were not operating in the participant market, the alleged anti-competitive conduct of OPs in that market could not be examined in terms of the provisions of Sections 3 or 4 of the Act.

Conclusion –
The Court held that there was no case made out in the given set of facts.

11. CONFEDERATION OF REAL ESTATE BROKERS ASSOCIATION OF INDIA v. MAGICBRICKS.COM & ORS [CCI]

Case No. 23 of 2016

Facts :

A. The **Informant (Confederation)** alleged that the **Opposite Parties (Magicbricks, Commonfloor etc.)** were indulging NBP or charging extremely less brokerage fees compared to the traditional brokerage fee of 2% of the sale/purchase value of a property while undertaking a real estate transaction or public auctioning of properties.
B. The Informant alleged that the OPs enjoyed a dominant position in the relevant market and such a conduct of the OPs amounted to abuse of such dominant position.

Decision –
The Court decided in favour of the **Opposite Parties (Magicbricks, Commonfloor etc.).**

Legal Principles held –

1. That there existed various other players, both online and offline in the relevant market at the same level of competition as the OP. Hence, the OPs did not enjoy any dominant position.
2. That in absence of dominant position, a party can not be held liable for violation of section 4 of the Competition Act, 2002.

Conclusion –
The Court held that no case of violation of Section 4 was made out.

12. RAKESH SANGHI v. BENNETT, COLEMAN & COMPANY LTD & ANR [CCI] *Case No. 89 of 2016*

Facts :

A. The **Informant (Rakesh)** had approached the **Opposite Party (Bennett)** for publication of a Caution Notice in their Newspaper published and circulated in the city of Hyderabad for which the OP had charged them Rs. 1,00,000.

B. The Informant alleged that this amount was way higher than the amount charged by other newspaper agencies in the market. They also alleged that there was a huge difference in the amount charged by the OP for publishing commercial and no commercial advertisements.
C. The Informant alleged that the OP had abused its dominant position in commiting the abovementioned acts.

Decision –
The Court decided in favour of the **Opposite Party (Benett).**

Legal Principles held –

1. That there existed various other players like Eenadu, Sakshi, Vaartha, Andhrajyothi, Surya, Prajasakti, Andhrabhoomi, Andhra Prabha and Namaste Telangana, The Times of India, The Hindu, The Deccan Chronicle, Business Standard in the relevant market at the same level of competition as the OP. Hence, the OPs did not enjoy any dominant position.
2. That in absence of dominant position, a party can not be held liable for violation of section 4 of the Competition Act, 2002.

Conclusion –
The Court held that no prima facie case was made out against the OPs.

13. **ASHUTOSH BHARDWAJ v. DLF LTD & ORS [CCI]**
Case No. 01 of 2014 with Case No.93 of 2015

Facts :

A. The **Informant (Ashutosh)** had booked certain flats and had entered into flat buyer's agreement with the **Opposite Perty (DLF)**. The Informant had made full payment for the flats inspite of which the possession was not handed over to him on the stipulated time.
B. The Informant alleged that bot only was the possession not given, but the progress of construction also was tardy. They further alleged that the OP had additionally demanded higher sums from him with respect to the said property.
C. According to the Informant, the abovementioned acts amounted to abuse of dominance by the OP.

Decision –
The Court decided in favour of the **Informant (Ashutosh).**

Legal Principles held –

1. That the report of the DG read in the surrounding circumstances suggest that the OP held a dominant position in the relevant market.
2. That the terms and conditions imposed on the allottees in the instant matters as analysed by the DG in detail were abusive in nature and were in contravention of Section 4 of the Act.

3. That since a penalty of Rs. 630 crores had already been imposed on the OP in a previous case for the same time period to which the present case belongs, no financial penalty under Section 27 of the Act is required to be imposed.

Conclusion –
The Court held passed an cease and desist order against the OP.

14. ONICRA CREDIT RATING AGENCY OF INDIA LTD v. INDIABULLS HOUSING FINANCE LTD [CCI]

Case No. 43 of 2016

Facts :

A. The **Informant (Onicra)** alleged that the **Opposite party (Indiabulls)** imposed certain amount as pre-payment penalty on them for premature closure of the mortgage loan.
B. The Informant alleged that the pre-payment penalty clause in the mortgage Loan Agreement locks-in a borrower with the lender and its imposition amounted to an aftermarket abuse.

Decision –
The Court decided in favour of the **Opposite Party (Indiabulls).**

Legal Principles held –

1. That there existed various other players like SBI, PNB, ICICI etc. in the relevant market at the same level of competition as the OP. Hence, the OPs did not enjoy any dominant position.
2. That the Informant could not prove the existence of any agreement which could possibly have any appreciable adverse effect on the competition in the relevant market.

Conclusion –
The Court held that there was no violation of the provisions of the Competition act, 2002.

15. SATYENDRA SINGH v. GHAZIABAD DEVELOPMENT AUTHORITY [CCI] *Case No. 86 of 2016*

Facts :

A. The **Informant (Satyendra)** was an allottee of a flat under the Pratap Vihar residential housing scheme for the Economically Weaker Sections (EWS) which was being developed by the **Opposite Party (Ghaziabad Development)**.

B. The informant alleged that the OP had demanded a higher price of Rs. 7,00,000/- for a EWS flat allotted to the Informant under the aforesaid scheme as compared to the price of Rs. 2,00,000/- as declared in the scheme's initial brochure.
C. It is the case of the Informant that the OP has abused its dominant position by arbitrarily increasing the price of the said flat in contravention of the provisions of Section 4 of the Act.

Decision –
The Court decided in favour of the **Informant (Satyendra).**

Legal Principles held –

1. That other than OP, very few other players existedin the relevant market who were developing and selling low cost residential flats targeted for economically weaker sections of the society. Thus, the OP enjoyed a dominant position in the relvant market.
2. That the conduct of the OP in unilaterally and arbitrarily increasing the price of the flats emanated from its dominant position in the relevant market and amounted to imposition of unfair price on the Informant and the other allottees.
3. That such an act was anti competitive and was a result of abuse of the dominant position enjoyed by the OP.

Conclusion –
The Commission ordered an investigation to be carried out by the DG.

16. CCI v. CO-ORDINATION COMMITTEE OF ARTISTS AND TECHNICIANS OF W.B. FILM AND TELEVISION & ORS [SC]

Civil Appeal No. 6691 of 2014

Facts :

A. The Hindi tele serial 'Mahabharat' was dubbed in Bangla and the dubbed version was telecasted in the State of West Bengal. The **Respondents (Coordination Committee)** objected to this and forced the broadcasters to stop the serial.
B. The broadcasters approached the **Appellant (CCI0** and alleged that the Respondent, which comprised of film and TV artists and technicians, had entered into an anticompetitive agreement to ban the telecast of the dubbed version of the serial. The CCI held that the Respondent's act was violative of section 3(3) of the Act.
C. On appeal, the Competition Appellate Tribunal reversed the judgment stating that the Respondent was not an 'enterprise' under the Act but merely a trade union and not covered by section 3(3) of the Act. The Appellant appealed to the Supreme Court challenging this decision.

Decision –
The Court decided in favour of the **Appellant (CCI).**

Legal Principles held –

1. That the expression 'enterprise' refers to any entity, regardless of its legal status or the way in which it was financed and, therefore, it may include natural as well as legal persons.
2. That the definition of the word agreement is not exhaustive. Therefore, any arrangement or understanding or even action in concert is termed as 'agreement'. It is irrespective of the fact that such arrangement or understanding is formal or informal and the same may be oral as well as written.
3. That any entity, regardless of its form, constitutes an 'enterprise' within the meaning of Section 3 of the Act when it engages in economic activity. An economic activity includes any activity, whether or not profit making that involves economic trade.
4. That the Respondent is an association of enterprises (constituent members) and these members are engaged in production, distribution and exhibition of films.

Conclusion –

The Court held that the Respondent is covered under the definition of enterprise and the act of the respondent amounted to violation of section 3 of the Act.

17. VIDHARBHA INDUSTRIES ASS v. MSEB HOLDING COMPANY LTD [CCI]

Case No. 12 of 2014

Facts :

A. The **Informant (Vidharbha)** alleged the following against the **Opposite Party (MSEB) –**
   i. That the OP (No.1) bought the entire electricity produced by OP (No. 2) even if at a higher rate
   ii. That the OP (No. 4) was buying power at a higher cost from OP (No. 2) which was cost inefficient in comparison to other power generating companies
   iii. That the OP (No. 4) was denying open access to consumers for availing electricity from other sources;
   iv. That the OP (No. 2), through its decision to shut down four units of Koradi Thermal Power Plant, had limited/ restricted the output of electricity.
B. The Informant alleged that the above acts of the OP were in contravention of the provisions of Section 4 of the Act as they resulted in imposition of unfair price and denial of market access, amongst others.

Decision –

The Court decided in favour of the **Opposite Party (MSEB).**

Legal Principles held –

1. That the units of Koradi Thermal Plant had rendered service for more than 35 years and had become commercially unviable and harmful to the environment. Therefore, they had been shut down.
2. That power from public sector undertakings was purchased under long term PPAs through MOU route only whereas power from other sources was purchased through open bidding. Therefore, there was no unfair pricing in any manner.

Conclusion –

The Court held that there was no violation of the provisions of the Act.

18. XYZ v. HYUNDAI MOTOR INDIA LTD & ANR [CCI]

Case No. 34 of 2017

Facts :

A. The **Informant (XYZ)** alleged the following acts on behalf of the **Opposite Party (Hyundai) –**
   i. That the OP was misusing the EPCG Policy framed by DGFT for promotion of exports out of India.
   ii. That the OP was importing the CG for manufacture of different models of cars that were meant for exports but sold them domestically.
   iii. That the products were purchased by the OP at cheaper rates - reducing its cost of production viz-a-viz its competitors.
   iv. That the OP was not using the imported CG to meet even 50% of the Export Obligation, which was mandatory for it to do.
B. This, according to the Informant, was in violation of the provisions of the Competition Act, 2002.

Decision –

The Court decided in favour of the **Opposite Party (Hyundai).**

Legal Principles held –

1. That the allegations made by the Informant raised issues relating to the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962. No competition issue arose out of the information presented or was otherwise made out.

Conclusion –

The Court held that there was no violation of the Competition Act, 2002.

19. INTERNATIONAL AIR TRANSPORT ASSOCIATION v. AIR CARGO AGENTS ASSOCIATION OF INDIA [CCI]

Case No. 29 of 2017

Facts :

A. The **Informant (International Air)** alleged the following against the **Opposite Parties (Air Cargo) –**
   i. That the OPs were colluding and collectively boycotting business with airlines that sought to implement Cargo Accounts Settlement System ("CASS") in India.
   ii. That the OPs were exerting undue influence on its member agents taking advantage of such position of power.
   iii. That the OPs actively encouraged and pressurized the member cargo agents to collectively boycott airlines implementing CASS, despite the benefits of CASS being acknowledged universally.
   iv. That the OPs were persuading airlines to refrain from asking agents to join CASS in India.
   v. That the OPs were threatening to take action against airlines who sought to implement the same.

B. Based on the above facts and allegations, the Informant alleged the violation of section 3 of the Act.

Decision –

The Court decided in favour of the **Opposite Party (Air Cargo).**

Legal Principles held –

1. That an independent decision by an enterprise to offer or not to offer services at prevailing conditions does not raise antitrust concerns per se. However, an agreement among competitors not to offer services at prevailing conditions does raise antitrust concerns.
2. That no evidence has been adduced to show that there has been a negative impact on the business of the member airlines of the Informant which can be attributed to the activities of the OPs.

Conclusion –

The Court held that there was no violation of the Competition Act, 2002.

20. AKHIL R. BHANSALI v. SKODA AUTO INDIA PVT. LTD. & ANR [CCI]

Case No. 44 of 2017

Facts :

A. The **Informant (Akhil)** alleged the following against the **Opposite Party (Skoda) –**
   i. That the Op had limited and restricted the provision of services by appointing only limited number of dealers;
   ii. That the OP had made spare parts available only at select and exclusive dealership,
   iii. That the quality of service being provided by the authorised dealer of OP-1 in Chennai i.e. Gurudev Motors Pvt. Ltd. was not up to the mark.

B. The Informant alleged that the abovementioned conduct of the OP were anti-competitive in nature.

Decision –
The Court decided in favour of the **Opposite Party (Skoda).**

Legal Principles held –

1. That the allegations appear to be a case of deficiency in after sales services by the authorised dealer of the OP at Chennai which is a case of an individual consumer dispute and there is no competition issue involved in the matter.

Conclusion –
The Court held that the matter was related to a consumer dispute and not the Competition Act, 2002.

21. VIJAY MENON v. MAHARASHTRA STATE POWER GEN LTD [CCI]

Case No. 61 of 2017

Facts :

A. The **Opposite Party (Maharashtra)** had invited tenders for for appointment of supervision, monitoring and coordination agency for the work of supervision of rake movement, coal quality monitoring and loading of quality coal and movement of sized coal for various thermal power stations of MAHAGENCO by rail mode from coal companies. However, it had laid down certain eligibility requirements for the same.

B. These eligibility criteria included conditions which sought to disqualify bidders against whom an inquiry was pending before the Commission or who had been already penalized by the CCI.

C. The **Informant (Vijay)** alleged that such conditions were illegal, baseless and against the spirit of the Act as they sought to disqualify an otherwise qualified bidder merely because an inquiry was pending before the Commission. It has been also argued that such condition is in the nature of barrier to entry and hence, a major restraint on the dynamics of competition**.**

Decision –
The Court decided in favour of the **Opposite Party (Maharashtra).**

Legal Principles held –

1. That the issue projected in the information was purely administrative in nature as the procurer, being a consumer, retained the discretion to disqualify the bidders as per the experience gained and the exigency of the requirement. No competition issue was revealed from the facts alleged in the information.

Conclusion –
The Court held that there was no violation of the Competition Act, 2002.

22. DWARIKESH SUGAR INDUSTRIES LTD v. WAVE DISTILLERIES & BREWERIES LTD & ORS [CCI]

Case No. 47 of 2014

Facts :

A. The **Informant (Dwarikesh)** was engaged in the manufacturing of crystal sugars through vacuum pan process of which molasses was a natural by-product. The control, storage, gradation, regulation of supply and distribution of molasses in the State of Uttar Pradesh was governed by the U.P. Sheera Niyantran Adhiniyam, 1964 and the Molasses Policy ('the Policy') issued thereunder.
B. The Policy so issued mandated the sugar mills to sell/ supply certain percentage of their molasses to the manufacturers of country liquor ('reserved molasses') within the State of Uttar Pradesh and rest of the molasses could be sold freely in the open market.
C. The Informant alleged that the **Opposite Party (Wave and Ors)** were in a dominant position in the relevant market of reserved molasses and had been abusing the same by determining the purchase price of molasses at unreasonably low rates.

Decision –
The Court decided in favour of the **Opposite Party (Wave and Ors.).**

Legal Principles held –

1. That the Competition act, 2002 does not recognize the concept of Collective Dominance as alleged by the Informant.
2. That the existence of an agreement could not be established by the Informant so as to prove it to be anti competitive.

Conclusion –
The Court held that there was no violation of the provisions of the Competition Act, 2002.

23. C.P. PAUL v. KERALA STATE ELECTRICITY BOARD & ANR [CCI]

Case No. 74 of 2017

Facts :

A. The **Informant (C P Paul)** was a proprietor of a Hotel and claimed that as per the prevailing industrial policy of the Government of Kerala, his Hotel was entitled to receive power supply from the **Opposite Party (KSEBL)** at industrial tariff rates under LT-IV category.
B. It is alleged that while the Informant's application for renewal of star classification was pending, the OP raised a bill charging the Informant's hotel at a higher tariff under LT-VII category instead of the applicable LT- IV category.
C. The OP contended that the Government of Kerala changed its Policy and tariffs under LT-VII category was made applicable for all hotels.
D. Based on the above averments and allegations, the present information was filed by the Informant against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act.

Decision –

The Court decided in favour of the **Opposite Party (KSEBL).**

Legal Principles held –

1. That no competition issue whatsoever is involved in the matter or is otherwise made out in the present case.
2. That it is a clear case of forum shopping and hunting by the Informant to rake up the stale disputes under the garb of competition law.

Conclusion –

The Court held that there was no violation of the Competition Act, 2002.

24. **INDUSTRIES & COMMERCE ASSCTN. v. COAL INDIA LTD & ORS [CCI]** *Case No. 60 of 2017*

Facts :

A. The Government of India changed its Policy Framework whereby and where under coal linkages were proposed to be auctioned for non-regulated sector through competitive bidding instead of granting the same through extant administrative dispensation method.
B. The **Informant (Industries)** alleged that the process of e-auction in respect of a scarce and otherwise essential commodity, like coking coal would yield the highest price, which will have the effect of imposition of unfair and excessive prices upon the purchasers and the end consumers.
C. The Informant alleged that such a conduct of the **Opposite Party (Coal India),** being the dominant entity, resulted in imposition of unfair and excessive prices upon the purchasers and the end consumers and was anti competitive in nature.

Decision –

The Court decided in favour of the **Opposite Party (Coal India).**

Legal Principles held –

1. That while formulating policies, MoC is not engaged in any of the activities specified in Section 2(h) of the Act which defines 'enterprise'. Formulation of policies does not fall in the realm of commercial or economic activity as envisaged under the definition of the term 'enterprise' as given thereunder.
2. That the challenge by the Informant to model FSA was also highly premature as the auctions for grant of linkages was yet to be conducted.

Conclusion –

The Court held that there was no violation of the Competition Act, 2002.

25. EXPRESS INDUSTRY COUNCIL OF INDIA v. JET AIRWAYS (INDIA) LTD. & ORS [CCI]

Case No. 30 of 2013

Facts :

A. The **Informant (Express)** alleged in that in May 2008, certain domestic Airlines, **Opposite Parties (Jet)** herein, connived to introduce a 'Fuel Surcharge' (FSC) for transporting cargo. This surcharge was fixed at a uniform rate of Rs. 5/ Kg and came into force on May 15, 2008. It was alleged that there does not exist any legal provision under which such FSC could have been levied by the Airlines.
B. The Informant alleged that the very fact of levying FSC at a uniform rate from the same date itself constitutes an act of cartelization covered under Section 3 of the Act.

Decision –

The Court decided in favour of the **Informant (Express).**

Legal Principles held –

1. That the OPs had associated random factors to FSC prices, without having a systematic mechanism to arrive at these prices. That each OP had stated various factors that determine FSC inspite of which, all OPs had increased FSC by the same amount.
2. That a parallel conduct is legal only when the adaptation to the market conditions are done independently and not on the basis of information exchanged between the competitors.

Conclusion –

The Court held that the OPs had violated the provisions of the Competition Act, 2002 and passed a cease and desist order against them along with imposition of heavy penalty.

26. IN RE: CARTELISATION IN RESPECT OF ZINC CARBON DRY CELL BATTERIES MARKET IN INDIA AGAINST EVEREADY INDUSTRIES INDIA LTD & ORS [CCI]

Suo Motu Case No. 02 of 2016

Facts :

A. The instant case was taken up by the Competition Commission of India suo motu, pursuant to the Lesser Penalty Application submitted by OP.3 stating therein that there existed a cartel amongst OP-1, OP-2, and OP3, [Manufacturers] which were all engaged in the business of, inter alia, manufacture and supply of zinc-carbon dry cell batteries, to control the distribution and price of zinc-carbon dry cell batteries in India, in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.
B. It was also disclosed that the Manufacturers were members of OP-4 which is a trade association, namely, Association of Indian Dry Cell Manufacturers which facilitated transparency between the Manufacturers by collating and disseminating data pertaining to sales and production by each of the Manufacturers.

Decision –

The Court decided against the Manufacturers and the Association**.**

Legal Principles held –

1. That the Manufacturers indulged in anticompetitive conduct of price coordination, limiting production/ supply as well as market allocation.
2. In order to increase price of the zinc carbon dry cell batteries, the Manufacturers mutually agreed on the implementation modalities of MRP. They decided the schedule of start of production of units and also the start of billing as well as availability of products, with revised rates in the market.
3. That the Manufacturers in their meetings held under the aegis of AIDCM, used to share common concerns about low rates of batteries offered by other maverick players, mostly importers/ traders, as this caused constraints in raising/ maintaining the higher market price of their battery products.

Conclusion –

The Court held that the conduct of the Manufacturers as well as the Association was anti competitive and in violation of the provisions of the Competition Act, 2002.

27. In Re: ANTI-COMPETITIVE PRACTICES PREVAILING IN BANKING SECTOR [CCI]

Suo Motu Case No. 01 of 2015

Facts :

A. Considering the similarity of Savings Bank Interest Rates ('SBIRs') and service charges on Automated Teller Machines ('ATMs') transactions, offered/ charged by different banks, the Commission took up the matter on a suo moto basis.

Decision –

The Court decided in favour of the **Banks.**

Legal Principles held –

1. That after making in depth analysis and research in the matter, and after perusing different documents related to the instant matter, the Commission was of the view that SBIRs offered by the banks were an outcome of their independent assessment of market conditions and not of any collusive arrangement.
2. That that rates of SCBs for different types of services varied significantly.

Conclusion –

The Commission held that there was no cartelization.

28. XYZ v. INDIAN OIL CORPORATION LTD. & ORS [CCI]

Case No. 05 of 2018

Facts :

A. The **Informant (XYZ)** alleged joint tendering/collusive tendering by the **Opposite Parties (Indian Oil)** (IOCL, BPCL and HPCL) while procuring the services of the Tank Trucks for transportation of the LPG Cylinders in the nature of price fixing, limitation/restriction of output/services and market allocation. This was alleged to be in contravention of Section 3 of the Act.

B. Informants further alleged abuse of dominant position collectively by the OPs.

Decision –

The Court decided in favour of the **Opposite Parties (Indian Oil).**

Legal Principles held –

1. That collective dominance is not recognised by the Competition Act, 2002.

2. That the OPs had not fixed the prices but only prescribed a price band within which the bidders could compete. Such price band was calculated upon incorporation of cost of various necessary components and included a profit margin.
3. Further, the bidders got a window of around ten percent to give their quotations. Thus, there was no appreciable adverse effect on the competition in the relevant market.

Conclusion –
The Court held that there was no contravention of the Act.

29. RAJENDRA AGARWAL v. SHOPPERS STOP LIMITED [CCI]

Case No. 21 of 2018

Facts :

A. The **Informant (Rajendra)** had purchased a gift item from **Opposite Party (Shoppers Stop)** pursuant to which, he was offered two discount coupons of Rs. 500/- each which could be redeemed/used in a subsequent purchase. However, while offering the said discount coupons, the OP did not convey to the Informant that in order to redeem such coupons, the amount of the subsequent purchase should be at least of Rs. 4000.
B. The Informant subsequently visited the OP Store where he made purchases worth Rs. 1,404/-. At the time of making the payment the Informant was not allowed to redeem the said discount coupons and was compelled by the OP to pay the entire amount of Rs. 1404/-.
C. Based on the above, the Informant has alleged that the conduct of the OP was in contravention of the provisions of Section 3 of the Act and that the OP has resorted to unfair trade practices.

Decision –
The Court decided in favour of the **Opposite Party (Shoppers Stop).**

Legal Principles held –

1. That the said dispute between the Informant and the OP regarding non redemption of two discount coupons is an individual consumer dispute rather than a matter of competition concern and the same also does not cause any adverse effect on competition.

Conclusion –
The Commission dismissed the case.

30. MEET SHAH & OTHER v. UNION OF INDIA, MINISTRY OF RAILWAYS & ORS [CCI]

Case No. 30 of 2018

Facts :

A. The **Informants (Meet Shah)** alleged that as per the pricing policy published on their Official Website, the **Opposite Parties (UOI, IRCTC)** had adopted the method of rounding off the fares of the railway tickets booked through them to the next higher multiple of Rs. 5.
B. The Informants alleged that in doing so, the OPs were abusing their dominant position as there was no other competitor in the market and the people of India were left to the mercy of the whims of the OPs.

Decision –

The Court decided in favour of the **Informant (Meet Shah).**

Legal Principles held –

1. That the Opposite Parties had not been able to convince the Commission as to why the policy of rounding off of actual base fares to the next higher multiple of Rs.5 was applicable to the sale of online tickets, when it was possible for the Opposite Parties to transfer even one paisa electronically.
2. That the practice of rounding off actual base fares to the next higher multiple of Rs. 5 by the OPs prima-facie amount to an imposition of unfair condition in the relevant market, particularly for online booking of rail tickets and is in contravention of provisions of Section 4 of the Act.

Conclusion –

The Commission ordered investigation.

"It always seems impossible unless it is DONE!"

INTERPRETATION OF STATUTES

1. THOMAS CHACKO v. THE CHIEF MANAGER, BANK OF INDIA [KER]

OP (DRT).No. 45 of 2018

Facts :

A. The case relates to an interesting question of law which can be understood fro the following facts –
   a. DRT – Ernakulum (Kerala)
   b. DRAT - Chennai (Tamil Nadu)
B. The question remains that if a case if filed at the Ernakulum DRT wherefrom an appeal is preferred at the Chennai DRAT, will the Kerala High Court have any supervisory jurisdiction over the same.

Decision –

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

Legal Principles held –

1. That Article 227 confers on every High Court superintendence over all courts and tribunals throughout the "territories" over which the High Court exercises its jurisdiction.
2. That when the High Court exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State, then the High Court in the State where the first court is located should be the proper forum.

Conclusion –

The Court held that the Kerala High Court would have supervisory jurisdiction over the said matter.

2. CEMENT WORKERS MANDAL v. GLOBAL CEMENTS LTD (HMP CEMENTS LTD) & 0RS [SC]

Civil Appeal No.5360 of 2010

Facts :

A. The **Respondent (Global)** having its registered office at Calcutta, had a cement factory at Porbandar in the State of Gujarat. The workers who formed the **Appellant (Workers' Union)** were working in the cement factory of Respondent at Porbandarwhich was eventually closed without paying the wages to its workers.
B. The Appellant took this matter to the Labour Court which directed Respondent to pay certain amount to the workers. This was followed by issuance of recovery certificate by the Collector as arrears of land revenue.

C. In the meanwhile, one Bank initiated recovery proceedings against Respondent for the recovery of loan before the DRT at Calcutta, which was allowed. A Receiver was appointed who started attaching the Respondent's property in Calcutta and recovering the debts payable to the Bank.
D. Aggrieved, the Appellant reached the High Court for releief wherein it was held that the Gujarat High Court had no jurisdiction over the said issue as the cause of action arose in Calcutta. Aggrieved, the Respondent filed the instant appeal.

Decision –
The Court decided in favour of the **Appellant (Workers' Union).**

Legal Principles held –

1. That the question as to whether the Gujarat High Court has territorial jurisdiction to entertain the appellant›s petition or not, should be decided keeping in view the provisions of Article 226(2) of the Constitution read with Section 20 of the Code of Civil Procedure, 1908.
2. That the Respondent Company had its factory at Porbandar, which is a part of State of Gujarat; and Second, the Labour Court, Junagadh, which is also a part of State of Gujarat, entertained the dispute between the Appellant and Respondent and passed a recovery order.

Conclusion –
The Court held that the Gujarat High Court had the necessary jurisdiction.

3. M/S SCIEMED OVERSEAS INC v. BOC INDIA LIMITED & ORS [SC]

Special Leave Petition (C) No. 29125 of 2008

Facts :

A. The **Appellant (M/S Sciemed)** was the successful bidder in a work contract which was challenged by the **Respondent (BOC India)**. In the proceedings, the Appellant filed an affidavit to the effect that nearly 85% of the work had been completed.
B. High court ordered an inspection to be done into the matter by an independent advocate. The report submitted by him showed that the statement made in the affidavit was false.
C. The High court imposed a cost of Rs.10 lacs on the Appellant for filing a false affidavit. Aggrieved, they approached the Supreme Court.

Decision –
The Court decided in favour of the **Respondent (BOC India).**

Legal Principles held –

1. That it was found that a considerable amount of work had still to be completed by the Appellant and it was not as if the work was nearing completion as represented to this Court.

2. That there has been an increase in the number of cases witnessing submission of false affidavits in the courts of law. Such actions need to be curbed and proper action needs to be taken against such people.
3. That the fact of the matter is that a false or misleading statement was made before the Court and that by itself is enough to invite an adverse reaction.

Conclusion –
The Court held that the order of the High Court was justified.

4. VILLAYATI RAM MITTAL LTD v. SHAMBHAVI CONTRACTORS LTD [DEL]

I.A. No.5595/2009 in CS (OS) No. 2192 of 2008

Facts :

A. A suit was filed in the courts of Shimla for the recovery of moneys by the **Defendant (Shambhavi)** against the **Plaintiff (Villayati)** for the work done by them. In that suit, the reliefs which were prayed by the defendant were recovery of Rs.45,54,924/-, damages and injunction.
B. Another suit was filed in the present court for recovery of Rs.3.25 crores on account of the sub contract, pertaining to enhanced costs and escalation claimed by the Plaintiff from the Defendant on account of them failing to perform their contractual obligations.
C. The Defendant filed an application under Section 10 of CPC filed for the stay of the present suit on the ground that between the parties a suit involving the same issues was pending in the High Court of Shimla

Decision –
The Court decided in favour of the **Plaintiff (Villayati).**

Legal Principles held –

1. That a later suit between the same parties cannot proceed to trial if issues involved in the later suit are already a subject matter of issues in the previously instituted litigation.
2. That there are certain aspects which differentiate the present suit from the suit filed at Shimla - the present suit basically seeks recovery of amounts from the defendant whereas the suit in Shimla is based on the cause of action of value of work done by the present defendant for the plaintiff and amounts for which work done is claimed in the Shimla suit.

Conclusion –
The Court held that the present suit was maintainable as the questions posed in both the suits were different.

5. RAMESH RAJAGOPAL v. DEVI POLYMERS PVT. LTD [SC]

Criminal Appeal No. 133 of 2016

Facts :

A. The **Appellant (Ramesh)** was a Director in the **Respondent (Devi Polymers Private)**. The Respondent had three Units – A, B and C. Unit 'C' was being headed by the Appellant which primarily rendered consultancy services.
B. In the course of business, the Appellant thought of improving the consultancy services and contacted consultants, who advised the creation of a separate entity known as Devi Consultancy Services and accordingly, the Appellant created a web page under that name. It is significant to note that no amount was paid or received by Unit C separately, independently of the Respondent.
C. Aggrieved by such actions, several petitions were filed by both the parties in different courts. Further, the Respondent also instituted a criminal complaint against the Appellant. Aggrieved, they filed the instant appeal.

Decision –

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

Legal Principles held –

1. That in the website, it is made clear that Devi Consultancy is a part of the Respondent only. It is also shown that the Respondent is the main Company and Devi Consultancy is just a sister Company. The same position is maintained on the Respondent's website.
2. That not even a single rupee was received by the Appellant in his own name or even separately in the name of the Unit which he was heading. All amounts had been received by the Respondent.
3. That in the absence of any act in pursuance of the website by which the Appellant could have deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person, it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468.

Conclusion –

The Court held that the Appellant is not guilty of the alleged offences.

6. STAR SPORTS INDIA PVT LTD v. PRASAR BHARTI & ORS [SC]

Civil Appeal No.5252 of 2016

Facts :

A. Section 3 of the Sports Act provides that a Television Broadcasting Organisation is prohibited from carrying the live television broadcast of a sporting event of national importance on cable

or Direct-to- Home (DTH) networks in India, unless it simultaneously shares the live broadcasting signals, without its advertisements, with the **Respondent (Prasar Bharati)**.

B. The **Appellant (Star Sports)** shared the on ground live feed of the cricket match with the Respondent. However, the feed contained the logos of the content providers and sponsors.

C. The Respondent considered this as to be violation of the provisions of section 3 and filed a case before the lower authorities. The lower authorities decided in favour of the Respondent which ultimately brought the matter before the Supreme Court.

Decision –

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

Legal Principles held –

1. That once it is held that what was shown were advertisements, the question as to whether these advertisements were shown because of some arrangement between the organisers of the tournament and the sponsors or as a result of arrangement between the the Appellant, and the sponsors is immaterial.
2. What is prescribed is that sharing of the live broadcasting signal has to be without advertisements. The application of rule of purposive interpretation would go against the appellant and in favour of the Respondent

Conclusion –

The Court held that that the Appellants had violated the provisions of the said Act.

7. JET AIRWAYS (INDIA) LTD. v. DHANUKA LABORATORIES LTD [DEL]

RSA No.295/2016

Facts :

A. The **Appellant (Jet Airways)** was a carrier of goods. The **Respondent (Dhanuka)** had received an order from a buyer in Bangladesh, which was executed by them by shipping the goods by air through the Appellant. The goods did not reach the consignee of the Airway bill and a short landing letter was issued.

B. The Respondent led evidence in support of its case by proving the value of the goods transported as also the wilful misconduct/ misappropriation of goods by the Appellant through its agent carrier, but the Appellant led no evidence whatsoever in the lower court. The matter therefore got decided in favour of the Respondent.

C. Aggrieved, the Appellant contended that they should get the benefit of limited liability as per the Carriage by Air Act, 1972 and filed the instant appeal.

Decision –

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

Legal Principles held –

1. That the benefit of limited liability of a carrier is subject to the Rule which states that the benefit of limited liability cannot be given to a carrier in case the carrier is found guilty of wilful misconduct or conduct equivalent to wilful misconduct.
2. That once goods are not traced and there is an averment of the same being misappropriated, the case then falls under Rule 25 that there is wilful misconduct or conduct equivalent to wilful misconduct.

Conclusion –

The Court held that the Appellant was not entitled to any limited liability.

8. SOUTHERN MOTORS v. STATE OF KARNATAKA & ORS [SC]

Civil Appeal Nos.10955-10971 of 2016

Facts :

A. The **Appellant (Southern)** were registered dealers under the Karnataka VAT Act, 2003. They issued credit notes to the customers for granting trade discounts, and claimed the same as deduction while calculating the taxable turnover.
B. The tax authorities, represented by the **Respondent (State)** rejected this claim on the ground that the discounts should have been given in the tax invoice raised by them for claiming deduction.
C. Aggrieved, the Appellant approached the courts of law.

Decision –

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

Legal Principles held –

1. That trade discount conceptually is a pre-sale concurrence, the quantification whereof depends on many factors in commerce regulating the scale of sale/purchase depending, amongst others on goodwill, quality, marketable skills, discounts, etc. contributing to the ultimate performance to qualify for such discounts.
2. That trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be reflected in the tax invoice or the bill of sale as the case may be.
3. That the taxable turnover is the summation of the actual sale/purchase price eligible to tax under the Act and the Rules. This liability is reduced or enhanced corresponding to the credit/debit notes issued.

Conclusion –

The Court held that the Appellant were entitled to get the benefits of the credit notes.

9. THE MAHARASHTRA STATE COOPERATIVE HOUSING FINANCE CORPORATION LTD v. PRABHAKAR SITARAM BHADANGE [SC]

Civil Appeal No. 1488 of 2017

Facts :

A. The **Respondent (Prabhakar)** was in the services in the **Appellant (Maharashtra State Corporation)**. For certain acts of misconduct allegedly committed by the Respondent, he was put under suspension. Thereafter, pursuant to the departmental inquiry, he was dismissed from service.

B. The Respondent went ahead with a departmental appeal which was also dismissed. Aggrieved, he reached the Cooperative Court.

C. The Appellant challenged this on the ground that the Cooperative Court set up under the Act did not have the jurisdiction to entertain and decide the service dispute between the employer and the employee as the dispute in question did not touch upon the business of the society and was not covered under the Act.

D. The Court, Appellate Tribunal as well as the High Court in its writ jurisdiction decided in the Respondent's favour. Aggrieved, the Appellant filed the instant appeal.

Decision –

The Court decided in favour of the **Appellant (Maharashtra State Cooperative).**

Legal Principles held –

1. That there are two essential requirements for conferment of jurisdiction on the Cooperative Court:
    - **a.** The dispute should be 'disputes touching' the constitution of the society or elections or committee or its officers or conduct of general meetings or management of society, or business of the society; and
    - **b.** Such a dispute is to be referred to the Cooperative Court by 'enumerated persons' as specified under the Act.
2. That service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision.

Conclusion –

The Court held that the Cooperative Court did not have the jurisdiction over the said matter.

10. M.C. MEHTA v. UNION OF INDIA & ORS [SC]

I.A.No. 487/2017, I.A. No. 491/2017 in Writ Petition (Civil) No.13029/1985

Facts :

A. A Notification was issued by the **Respondent (UOI)** which prohibited the manufacture and sale of BS III vehicles in India from 01st April, 2017. This notification categorically stated that no such vehicles should be manufactured or sold from the said date in India.
B. Certain manufacturers filed application in the court of law praying that the notification be declared invalid. Their main contention was that since they were allowed to manufacture the said vehicle till 01st April, 2017, their sale should not b stopped on the same day itself. They prayed before the courts to extend the date till which such vehicle could be sold in the country.
C. The **Appellant (MC Mehta)** filed the instant application praying before the court to reject such contentions and uphold the validity of the Notification.

Decision –

The Court decided in favour of the **Applicant (MC Mehta).**

Legal Principles held –

1. That the health of the people is far, far more important than the commercial interests of the manufacturers or the loss that they are likely to suffer in respect of the so-called small number of such vehicles.
2. That the manufacturers of such vehicles were fully aware that eventually from 1st April, 2017 they would be required to manufacture only BS-IV compliant vehicles but they chose to sit back and declined to take sufficient pro-active steps.

Conclusion –

The Court held that the notification was completely valid and would have full effect.

11. BARANAGORE JUTE FACTORY PLC. MAZDOOR SANGH (BMS) ETC. v. BARANAGORE JUTE FACTORY PLC. ETC. [SC]

Civil Appeal Nos. 4298-4299 of 2017

Facts :

A. NHAI had acquired certain lands of the **Respondent (Barangore Jute).** The court ordered that the compensation money received from NHAI be deposited with the court. Accordingly, NHAI deposited the amount with the High Court after deducting certain amount by way of tax deducted at source ('TDS' for short).

B. Thereafter, the company filed its income tax return and claimed and received refund of the entire amount covered by the TDS. They used the amount allegedly for various purposes in connection with the affairs of the company.
C. The **Appellants (Workers' Union)** contended that the Respondent should not have received the refund of the TDS and used the same, as it violated the order of the court.

Decision –
The Court decided in favour of the **Appellant (Workers' Union).**

Legal Principles held –
1. That while passing the order of depositing the compensation amount with the court, the court had in mind the entire amount being paid as the compensation.
2. That even the Respondent had submitted before the court that the compensation amount needed to be protected and they were willing to protect it subject to the order of the court.

Conclusion –
The Court held that the Respondent could not have used the amount returned by the IT department.

12. **APOLLO TYRES LTD. v. PIONEER TRADING CORPORATION & ANR [DEL]** *CS (OS) 2802/2015*

Facts :
A. The **Plaintiff (Apollo)** manufactured truck tyres with a peculiar tread patters over which they claimed proprietary rights. The **Defendant (Pioneer)** also manufactured truck tyre by the name HI FLY with similar tread pattern as that of the Plaintiff.
B. The Plaintiff filed a suit against the Defendant for infringement of its proprietary rights and an interim injunction was granted in favour of the Plaintiff.
C. Aggrieved, the Defendant moved an application to vacate the stay.

Decision –
The Court decided in favour of the **Plaintiff (Apollo).**

Legal Principles held –
1. That the tread patterns are utilized by the manufacturers including by the plaintiff, in respect of its tyre in question, as a source identifier, i.e. as a trademark.
2. That there are innumerable different and unique tread patterns in existence which achieve the same objective as that of the Plaintiff, therefore, the Defendant could have adopted any of those.

Conclusion –
The Court held that the injunction could not be stayed as the Defendant's failed to prove the existence of any reasonable grounds for the same.

13. METERS AND INSTRUMENTS PVT. LTD & ANR v. KANCHAN MEHTA [SC]

Criminal Appeal No. 1731-33 of 2017

Facts :

A. The High Court rejected the prayer of the **Appellant (Meters)** for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 (the Act) on payment of the cheque amount and in the alternative for exemption from personal appearance.
B. Aggrieved, they filed an appeal before the Supreme Court.

Decision –

The Court disposed the appeals of by laying down certain principles.

Legal Principles held –

1. That an offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". Thus, the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.
2. If the other parties does not give consent to compound the offence, the court, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.
3. That where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings.

Conclusion –

The Court laid down the abovementioned principles that the courts need to follow while dealing with offences under section 138 of the NI Act.

14. STATE OF MAHARASHTRA v. RELIANCE INDUSTRIES LTD. & ORS [SC] *Civil Appeal No.1699 of 2007*

Facts :

A. The **Appellant (State)** had issued notifications by way of which it was to acquire private buildings owned by the **Respondent (Reliance).** These buildings were constructed upon the lands owned by the Government and hence, the notification spoke about the acquisition of the building independent from the land.
B. The Respondent filed a writ petition with the High Court challenging the acquisition on the ground that only a part of the building was being acquired without the acquisition of land.

C. The High Court quashed the acquisition, aggrieved by which, the Appellants came before the Supreme Court.

Decision –
The Court decided in favour of the **Appellant (State).**

Legal Principles held –

1. That there can be acquisition of part of building or house and owner has the option to express his desire that the whole of it should be acquired and not the part, if that remains the case.
2. That in the instant case, the owners of the building were not the owners of the land. The land belonged to the State and therefore, it could not have acquired its own land nor was there any necessity to do so.

Conclusion –
The Court held that the notification was valid and the Appellant could go ahead with the acquisition.

15. ATMA RAM PROP PVT LTD. v. THE ORIENTAL INSURANCE CO. LTD [SC]

Civil Appeal No.20913 of 2017

Facts :

A. The New Delhi Municipal Council Act, 1994 provides for the recovery of property tax paid by the landlord, from the tenant as arrears of rent. On the other hand, the Delhi Rents Control Act, 1958 provides for eviction of a tenant on failure to pay the rent.
B. The question involved in this appeal is whether the failure of a tenant to pay the property tax under the NDMC Act would render him liable to be evicted from the property under the DRC Act.

Decision –
The Court decided in favour of the **Respondent (Oriental).**

Legal Principles held –

1. That the object of the Rent Act is to provide protection to tenants who under common law, including Transfer of Property Act could be evicted from the premises let out to them at any time by the landlord on the termination of their tenancy. It restricts the right of the landlord to evict the tenant at their will.
2. That the Rent Act is a special law in relation to landlord and tenant issue. Therefore, the Rent Act has to prevail insofar as landlord and tenant issue is concerned.

Conclusion –

The Court held that the tenant could not be evicted on failure to pay rent as provided under the NDMC Act.

16. CANARA BANK & ANR v. LALIT POPLI (THRIUGH LRs) [SC]

Civil Appeal No. 9666 of 2010

Facts :

A. The **Respondent (Lalit)** was working as a clerk with the **Appellant (Canara Bank).** He was found guilty of fraudulently withdrawing an amount of Rs.1,07,000/- from the saving account of a customer. Accordingly, he was dismissed from service.
B. The Respondent challenged this order of dismissal. During the pendency of the case, the Appellant withheld an amount of Rs.74,180.09, payable to the Respondent, which included the gratuity and provident fund, in order to adjust the said amount towards any loss caused to the bank by the Respondent.
C. Thereafter, the Appellant adjusted Rs.1,07,000/- out of Rs.1,08,923/- towards loss caused to the bank by the Respondent and remaining amount of Rs.1,923/- was released in favour of the Respondent.
D. Being aggrieved by such action of the bank, the Respondent approached the High Court, which allowed the writ. Aggrieved, the Appellant preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That the courts had come to a conclusion that it was the Respondent who committed forgery which ultimately led to the loss caused to the Appellant and that they were entitled to recover the amount of loss caused to it from the person who was the author of the forgery.
2. That the special Rules relating to gratuity and provident fund mention that the if an employee is dismissed for his misconduct and such misconduct is proved to have caused financial loss to the bank, he shall not be eligible to receive the gratuity/PF amount to the extent of financial loss caused to the bank.

Conclusion –

The Court held that the impugned amount was rightly deducted from the payment made to the Respondent.

17. B SUNITHA v. STATE OF TELANGANA & ANR [SC]

Criminal Appeal No. 2068 of 2017

Facts :

A. The **Appellant (Sunitha)** had taken the services of lawyer (say, X) for which they had paid an amount of Rs. 10 Lakh as fees. The lawyer had further made the Appellant draw a cheque in his favour as additional fee based on percentage of the decretal amount.
B. The case was decided in the Appellant's favour and accordingly, X presented the cheque for encashment. The cheque got dishonoured. X filed a case against the Appellant under section 138 of the NI Act.
C. The Appellant took the defence that there was no valid enforceable debt existing against them. The cheque was taken from them by way of abuse of position and the transaction was void under Section 23 of the Indian Contract Act, 1872.

Decision –

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

Legal Principles held –

1. That a claim towards Advocate's fee based on percentage of result of litigation is illegal.
2. That the claim of the advocate is against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.

Conclusion –

The Court held that that there was no valid enforceable debt as the claim of the advocate was illegal

18. SHIV SINGH v. STATE OF HIMACHAL PRADESH & ORS [SC]

Civil Appeal No.4414 of 2018

Facts :

A. The **Appellant (Shiv)** was the owner of a piece of land which was sought to be acquired by the **Respondent (State)** under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
B. A notification was issued under the Act, by which the Respondent sough to acquire the Appellant's land for public purpose. The Appellant had filed objections to the proposed acquisition well within the time prescribed under the Act.
C. The Collector, without considering the objections raised by the Appellant, passed the award and the High Court had confirmed the same. Aggrieved, the Appellant preferred the instant appeal.

Decision –

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

Legal Principles held –

1. That once objections are raised as prescribed under the Act, the Collector is supposed to, after giving an opportunity of being heard to both the parties, prepare a report about the same and present it to the concerned Authority.
2. That in the instant case, no such inquiry was held by the Collector, nor was any Report made by him.

Conclusion –

The Court held that the Collector had not followed the provisions of the Act and directed them to consider the objection as provided for in the Act.

19. STATE OF MAHARASHTRA v. SAYYED HASSAN SAYYED SUBHAN [SC] *Criminal Appeal No.1195 of 2018*

Facts :

A. The **Appellant (State)** Authorities had found certain violations and accordingly, registered FIRs against the **Respondent (Sayyed)** for transportation and sale of Gutka/Pan Masala for offences punishable under the Food and Safety Standards Act, 2006 and certain Sections of the Indian Penal Code, 1860.
B. The Respondents filed Criminal Writ Petitions and Criminal Applications in the High Court for quashing the FIRs. The High Court quashed the criminal proceedings, initiated under the IPC and declared that the Food Safety Officers could proceed against the Respondents under the FSS Act.
C. Aggrieved by this, the Appellant approached the Supreme Court.

Decision –

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

Legal Principles held –

1. That there is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the same offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence.
2. That a perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties.

Conclusion –

The Court held that the Respondent could be prosecuted for violation of both the enactments together.

20. COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA v. GURVINDER SINGH [SC]

Civil Appeal No. 11034 of 2018

Facts :

A. A complaint was filed against the **Respondent (Gurvinder),** who is a Chartered Accountant, relating to sale of 100 shares in 1999, which were transferred by him to his own name. The matter, however, was ultimately been settled between the Complainant and the Respondent.
B. Despite the settlement, Disciplinary Committee took up the case and ultimately found that the conduct of the Respondent was derogatory in nature and highly unbecoming and held him guilty of 'Other Misconduct' under the Chartered Accountants Act, 1949.
C. Accordingly, the **Appellant (Council)** made a recommendation to the High Court to remove the Respondent from the roll for a period of 6 months, which was declined by the High Court. Aggrieved, they filed the instant appeal.

Decision –

The Court remanded the matter back to the High Court.

Legal Principles held –

1. That the High Court did not correctly appreciate the provisions of the Act, especially in light of the findings of the disciplinary committee.

Conclusion –

The Court held that the High Court look into the matter after considering every aspect of fact as well as law.

"It always seems impossible unless it is DONE!"

. GOVERNANCE ISSUES .

(LABOUR LAWS)

1. POONA EMPLOYEES UNION v. FORCE MOTORS LIMITED & ANR [SC] Civil Appeal Nos. 10130-10131 of 2010

Facts :

A. The **Respondent (Force Motors**) had Bhartiya Kamgar Sena ("the BKS") as the recognized union of the company. Meanwhile, the **Appellant (Poona)** filed an application before the Industrial Court, to be recognized as the registered union of the respondent.

B. The Appellant claimed that it had the holding of 85% of total employees of the Respondent and that almost all the members of BKS had tendered their resignation, and had expressed their desire to discontinue their membership therewith. It also claimed that it was a union registered under the Trade Unions Act, 1926.

C. The company challenged the application. The Labour court ruled in the Appellant's favour while the High Court reversed the order. Aggrieved, the Appellant filed the instant appeal.

Decision –

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

Legal Principles held –

1. That in order to be recognized as the recognized union of a company, the union has to have the minimum membership as required, its application has to be bona fide in the interest of the employees and it must not have indulged in any activity of instigating, aiding or assisting the commencement or continuation of a strike during the said period.
2. That the burden is on the applicant union to decisively establish its eligibility and suitability for being conferred the status of a recognized union to be adjudged by the legislatively enjoined parameters.
3. That the affidavits filed by the Appellant by which it is trying to prove that the majority number of workers are its members cannot be relied upon as the workers were made to sign the affidavit under the assurance that it would not be used by the Appellant in any court of law and that if the appellants got successful in getting recognition, they would make sure that the workers got their dues repaid.
4. That the other facts showed that the averments made by the Appellant were not true, and were not in the interests of the workers.

Conclusion –

The Court held that the Appellants could not be granted recognition.

2. EMPLOYEES STATE INSURANCE CORP. v. VENUS ALLOY PVT. LTD. [SC]

Civil Appeal No. 1464 of 2019

Facts :

A. The question raised by the **Appellant (ESIC)** in this appeal was whether the Directors of **Respondent (Venus)**, who were receiving remuneration, come within the purview of "employee" under the Employees' State Insurance Act, 1948.

Decision –
The Court decided in favour of the **Appellant (ESIC).**

Legal Principles held –

1. That in a previous case, the Court held that the Managing Director, even when to be treated as principal employer, could also be an employee and could carry such dual capacity.
2. That The said decision directly applies to the present case.

Conclusion –
The Court held that the directors are to be treated as employees under the Employee State Insurance act.

3. THE REGIONAL PROVIDENT FUND COMMISSIONER v. VIVEKANANDA VIDYAMANDIR & ORS [SC]

Civil Appeal No. 6221 of 2011

Facts :

A. The **Respondents (Vivekanand)** were establishments covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. They had paid certain special allowances to their employees. The **Appellant (PF Commissioner)** sought payment of contribution on this amount from the Respondents.
B. The Respondents contended that special allowances did not form part of the basic salary as defined under the Act. Hence, they were not liable to pay any contribution on that amount.
C. The appeals raise only one question of law, if the special allowances paid by an establishment to its employees would fall within the expression "basic wages" under of the Act for computation of deduction towards Provident Fund.

Decision –
The Court decided in favour of the **Appellant (PF Commissioner).**

Legal Principles held –

1. That "Basic wages", under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. This definition is, however, subject to certain exceptions.
2. That the test adopted to determine if any payment is to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all.

3. That any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages".
4. That the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees.

Conclusion –
The Court held that the Respondent companies had to pay contribution on the amounts paid as special allowances.

4. GLOBE GROUND INDIA EMPLOYEES UNION v. LUFTHANSA GERMAN AIRLINES & ANR [SC]

Civil Appeal Nos. 4076-4077 of 2019

Facts :

A. Globe Ground India Private Ltd was subsidiary of the **Respondent (Lufthansa German Airlines)**. The **Appellant (Employee Union)** was the employees union representing the employees of Globe Ground.
B. Certain disputes arose between the Appellant and its company, i.e., Globe Ground. The matter was referred to the labour court for adjudication. During the pendency of that case, the Appellant sought to implead the Respondent company on the ground that it was the holding company of Globe Ground.
C. The labour court allowed the impleadment. High court, in appeal, reversed the decision. This led to the instant appeal.

Decision –
The Court decided in favour of the **Resondent (Lufthansa).**

Legal Principles held –

1. That whenever an application is filed in the adjudication proceedings for impleadment of a party who is not a party to the proceedings, what is required to be considered is whether such party which is sought to be impleaded is either necessary or proper party to decide the lis.
2. That even in a subsidiary company which is an independent corporate entity, if any other company is holding shares, by itself, it is no ground to order impleadment of parent company per se.

Conclusion –
The Court held that the Respondent could not be impleaded.

5. THE STATE BANK OF INDIA & ORS. v. P. SOUPRAMANIANE [SC]

Civil Appeal No. 7011 of 2009

Facts :

A. The **Respondent (P. Soupramaniane)** was working as a Messenger in the **Appellant (State Bank of India)** at Puducherry. Subsequently, he gopt convicted for the offence committed under section 324 of the IPC [assault] and sentence of 3 months imprisonment was given to him. The appellate court, however, released him on probation on the ground that he was employed as a Messenger in a Bank and any sentence of imprisonment would affect his career
B. Nevertheless, the Appellant discharged the Respondent from service by an order on the ground of his conviction by a criminal court for an offence involving moral turpitude.
C. In the case filed respect with this matter in the lower courts, the Appellants were directed to pay 1/4th of the salary from the date of discharge till the date of reinstatement as back wages. Aggrieved, they filed the instant appeal.

Decision –

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

Legal Principles held –

1. That certain offences can straightaway be termed as involving moral e.g. offences under the Prevention of Corruption of Act, NDPS Act, etc.
2. However, the question as to whether an offence involving bodily injury can be categorized as a crime involving moral turpitude will depend upon certain surrounding circumstances.
3. In the instant case the assault was a simple assault and did not include any aggravated action.

Conclusion –

The Court held that the act of assault, being simple in nature, did not include any moral turpitude.

6. REGIONAL MANAGER, U.P.S.R.T.C. & ANR v. MASLAHUDDIN (DEAD) [SC]

Civil Appeal No. 3959 of 2019

Facts :

A. The **Respondents (Maslahuddin)** was appointed as a driver by the **Appellant (UPSRTC)** and placed under category D, for which the retirement age was 60 years. During the course of their service their pay scale was revised and due to this they got under category C, for which the retirement age was 58 years.

B. When the Respondent reached the age of 58 years, the Appellant informed him about his retirement. Aggrieved by this, and the Respondent raised a dispute and the labour court as well as the High Court held that the Respondent's retirement age should be 60.

C. Aggrieved, the Appellant preferred the present appeal.

Decision –

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

Legal Principles held –

1. That when the pay scale of the respondent was revised, it was done so from the date of his initial appointment and he was also paid the arrears from the date of his initial appointment in accordance with the revised payscale.
2. That, subsequently, it was resolved by the Appellants to fix the age of superannuation of all the Drivers and Conductors as 58 years and place them in Group "C.
3. That it was also clarified that the revision in classification would be applicable while determining the age of retirement of the employees.

Conclusion –

The Court held that the Respondent was supposed to retire at the age of 58 years.

7. JAIBHARAT TEXTILE & REAL ESTATE LTD v. REGIONAL PROVIDENT FUND COMMISSIONER [DEL]

W.P. (C). 10096/2015 & CM No.28059/2015

Facts :

A. The **Respondent (RPF Commissioner)** passed an order against the **Petitioner (Jaibharat)** for default in the payment of contribution to the fund. Feeling aggrieved by the order, an appeal was preferred by the Petitioner before Appellate Tribunal along with an application seeking waiver of pre-deposit, as required under the Act.

B. The Appellate Tribunal directed the establishment to deposit 50% of the amount instead of stipulated 75% 30 days as a precondition. The High court, on a writ petition, extended the time for the payment of the deposit amount.

C. However, due to non-compliance of the order, the appeal was dismissed. Subsequently, warrant of attachment of movable property was issued by the department as a result of which, four machines of the petitioner's establishments were attached.

D. The Petitioner filed the instant petition against the same.

Decision –

The Court decided in favour of the **Petitioner (Jaibharat).**

Legal Principles held –

1. That due to continuous losses suffered by the Petitioner, they had no means of fulfilling the pre-deposit condition. If the petitioner was unable to comply with this condition, at the most the interim protection may not have been granted to the petitioner but the appeal should not have been dismissed on merits.
2. That the petitioner has a good prima facie case on merits as the beneficiaries had not been identified before fastening the liability upon the petitioner.

Conclusion –
The Court held that the appeal could not have been dismissed and directed the Petitioner to file the pre deposit sum and the Appellate Tribunal to entertain the appeal.

8. EMPLOYEE STATE INSURANCE CORPORATION v. BATRA HOSPITAL & MEDICAL RESEARCH CENTRE & ORS [DEL]

CRL.M.C. No.3213 of 2013

Facts :

A. The officials of the **Petitioner (ESIC)** visited the establishment of the **Respondent (Batra)** for inspection of the records. The Respondent refused to provided the records.
B. Aggrieved, the Petitioner filed a complaint against the Respondent for failure of production of records. The Trial Court dismissed the complaint. Aggrieved, the Petitioner filed the instant Petition.

Decision –
The Court decided in favour of the **Respondent (Batra).**

Legal Principles held –

1. That the Respondent came under the provisions of the said Act only with effect from 01.04.2011 and before that the said establishment was not covered under the said Act.
2. That the Petitioner issued the notice on 26.12.2007 to the Respondent i.e., on the date when the Respondent was not even covered by the Act. Therefore, the Respondent was not bound to comply with the Notice so issued.

Conclusion –
The Court held that the complaint was correctly dismissed.

9. DELHI TRANSPORT CORPORATION v. OM KANWAR [DEL]

LPA 117 of 2015 & 118 of 2015

Facts :

A. The **Respondent (Om Kanwar**) was a bus conductor employed by the **Appellant (DTC).**. The bus that he was appointed to work in was intercepted, one day, by a checking squad of Appellant.
B. The squad claimed that five passengers were caught while deboarding travelling without tickets. However, they claimed to have paid the full amount to the conductor. Their statements were recorded.
C. After conducting domestic inquiry, the Respondent was dismissed. Meanwhile the Respondent had raised an industrial dispute. The industrial tribunal held that the inquiry conducted by the Petitioner was vitiated and ordered reinstatement of the Respondent.
D. The writ petition challenging the said order was dismissed by the single Judge. Therefore, the petitioner came up before the Division Bench under Letters Patent appeal.

Decision –
The Court decided in favour of the **Petitioner (DTC).**

Legal Principles held –
1. That the Respondent had been entrusted with a fiduciary duty to collect the revenue by issuing tickets to passengers travelling by a DTC bus which he had not only breached but also made illegal gains for himself and defrauded the Petitioner.
2. That sufficient evidence was adduced to show that the Respondent had actually committed the alleged act.

Conclusion –
The Court held that the Respondent was rightly dismissed.

10. NANDRAM v. GARWARE POLYSTER LTD [SC]

Civil Appeal No. 1409 of 2016

Facts :
A. The **Appellant (Nandram)** was employed by the **Respondent (Garware)** initially in Aurangabad. Thereafter he was promoted but continued to work in the Aurangabad plant only.
B. A few years later, the Appellant was transferred to Silvasa in Gujarat and then finally to Pondicherry. On account of the Pondicherry plant being shut down, the Appellant was terminated from service.
C. Aggrieved by this, the Appellant moved the labour court at Aurangabad. The Respondent challenged this on the ground that the Court did not have jurisdiction. The Industrial Court and the High Court accepted this contention. Aggrieved, the Appellant approached the Supreme Court.

Decision –

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

Legal Principles held –

1. That the registered office of the Respondent was in Aurnagabad, the Appellant was employed by the Company in Aurangabad, he was only transferred to Pondicherry, the decision to close down the unit at Pondicherry was taken by the Company at Aurangabad and consequent upon that decision only the appellant was terminated.
2. That the decision to terminate the Appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad.

Conclusion –
The Court held that labour court in Aurangabad had jurisdiction.

11. JAYA BISWAL & ORS v. BRANCH MANAGER, IFFCO TOKIO GENERAL INSURANCE COMPANY LTD & ANR [SC]

Civil Appeal No.869 of 2016

Facts :

A. The elder son of the **Appellant (Jaya)** worked as a truck driver with one Bikram Keshari Patnaik. One day, he met with an accident while on his way to deliver wheat bags. He sustained severe injuries on the back of his head and died on the spot.
B. The Appellants filed an Employee's Compensation petition before the Commissioner, who allowed a compensation of Rs. 10,75,253/-. Aggrieved by the same, the **Respondent (Insurance Company)** filed an appeal under Section 30 of the E.C. Act.
C. The High Court allowed the appeal. Aggrieved by this, the Appellant filed the instant appeal.

Decision –
The Court decided in favour of the **Appellant (Jaya).**

Legal Principles held –

1. That the E.C. Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work.
2. That in order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment.
3. That mere negligence does not disentitle a workman to compensation.

Conclusion –
The Court held that the Appellants were supposed to receive compensation.

12. ESIC v. A.K. ABDUL SAMAD & ANR [SC]

Criminal Appeal Nos.1065-1066 of 2005

Facts :

A. A criminal proceeding was initiated by the **Appellant (ESIC)** under Section 85 of the Act for conviction and punishment of the **Respondents (Abdul)** for failure to pay contributions required by the Act. The respondents faced trial before the Special Court and were found guilty and were inflicted with imprisonment and fine of Rs.1000/-.
B. The Appellant challenged this and contended that the fine amount could not have been reduced and ought to have been Rs.5000/- as per mandate of law.
C. The lower courts did not accept this contention which resulted in the instant appeal.

Decision –

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

Legal Principles held –

1. That the statutory provision prescribes punishment as imprisonment which shall not be less than six months and fine of five thousand rupees. The proviso however empowers the court that it may, "for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term."
2. That no words are found in the proviso for imposing a lesser fine than that of Rs. 5000. In such a situation the intention of the Legislature is clear and brooks no interpretation.

Conclusion –

The Court held that the prescribed fine could not be reduced.

13. ROYAL WESTERN INDIA TURF CLUB LTD v. E.S.I.C & ORS [SC]

Civil Appeal No.49 of 2006

Facts :

A. The question involved for decision in this appeal is whether casual workers are covered under definition of employee as defined in Section 2(9) of the Employees State Insurance Act, 1948.

Decision –

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

Legal Principles held –

1. That the definition of "employee" as given in the Act is very wide. A person who is employed for wages in the factory or establishment on any work of, or incidental or preliminary to or connected with the work is covered.

2. That the Act is a welfare legislation and is required to be interpreted so as to ensure extension of benefits to the employees and not to deprive them of the same which are available under the Act.

Conclusion –
The Court held that casual employees shall be covered under the Act.

14. PEPSU ROADWAYS TRANSPORT CORP v. S.K.SHARMA & ORS [SC]

Civil Appeal No. 4703 of 2009

Facts :

A. The **Respondent (S K Sharma)** was an employee of the **Appellant** (**PEPSU Roadways).** He was transferred to PEPSU Road Transport Corporation, due to the take-over of PEPSU Roadways by the corporation. The Respondent got promotions etc. and continued to serve the Corporation till he retired.
B. Much after the retirement of the Respondent, the Corporation framed PRTC Employees Pension/ Gratuity and General Provident Fund Regulations, 1992. Under these Regulations, for the first time pension was introduced in the Corporation.
C. The Respondent, who had already received his retiral benefits, filed a writ petition claiming that he continued to be an employee of the State in the department of PEPSU Roadways till PEPSU State was reorganized and from the date of reorganization, they became employees of State of Punjab with right to pension as available to Government servants.
D. The Appellant challenged this stand.

Decision –
The Court decided in favour of the **Appellant (PEPSU).**

Legal Principles held -

1. That when an government undertaking is taken over by a Company as a going concern, the employees working in the undertaking are also taken over. In law, the Company has to be treated as an entity distinct and separate from the Government and therefore, the employees, as a result of the transfer of the undertaking, become employees of the Company and cease to be employees of the Government.
2. That the Respondent had already taken all his retiral benefits without any protest.

Conclusion –
The Court held that the Respondent could nit be considered as a Government employee.

15. INDUSTRIAL PROMOTION & INVESTMENT CORPORATION OF ORISSA LTD v. NEW INDIA ASSURANCE CO. LTD & ANR [SC]

Civil Appeal No. 1130 of 2007

Facts :

A. The **Appellant (Industrial Promotion)** took over the assets of M/s. Josna Casting Centre Orissa Private Limited, which had been insured with the **Respondent (New India)** under the Miscellaneous Accident Policy, the Fire Policy the Burglary and House Breaking Policy.

B. The seized assets were put to auction by the Appellant, at which point of time it was detected that some parts of the plant and machinery were missing from the factory premises. A claim was lodged with the Respondent under the Burglary and House Breaking Policy.

C. The claim of the Appellant was repudiated by the Respondent on the ground that the alleged loss did not come within the purview of the insurance policy. Aggrieved, the Appellant filed a case in the courts of law.

Decision –

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

Legal Principles held –

1. That a contract of insurance which is like any other commercial contract should be interpreted strictly.
2. That the policy covers loss or damage by burglary or house breaking which can be explained as theft following an actual, forcible and violent entry from the premises. A plain reading of the policy showz that a forcible entry should precede the theft.
3. That the Appellant has made out a case of theft without a forcible entry.

Conclusion –

The Court held that the Respondent had rightly rejected the claim.

16. ELECTROTHEM (INDIA) LTD v. PATEL VIPULKUMAR & ORS [SC]

Civil Appeal No. 7222 of 2016

Facts :

A. The **Appellant (Electrothem)** had approached the CBPC for an Environment Clearance Certificate for some expansion work that it wanted to carry out in its industry. The Environment clearance was accorded to them without conducting public hearing.

B. The **Respondent (Patel Vipul)** challenge this on the ground that public hearing/consultation was a necessary action to be done before according the Environment Clearance Certificate to any applicant. Since this was not done in the instant case, the certificate issued was illegal.

Decision –
The Court decided the appeal partly in favour of both the parties**.**

Legal Principles held –

1. That after expansion the capacity of the plant was to increase three-fold. Consequently, the pollution load would also have been of a greater order and the water requirement would also have risen.
2. That increase in pollution load and water requirements were matters where public in general and those living in the vicinity in particular had and continued to have a stake. Public consultation/public hearing is one of the important stages while considering the matter for grant of Environmental Clearance.
3. That on the other hand, in pursuance of Environmental Clearance, the expansion of the project had already been undertaken and most of the recommendations made by CPCB were also complied with. Therefore, passing an order for complete closure of the industry would be against the interest of justice.

Conclusion –
The Court held that a public hearing be conducted the outcome of which shall decide the fate of the industry.

17. DELHI TRANSPORT CORPORATION v. RAJENDER KUMAR [DEL]

LPA 250/2016

Facts :

A. The **Respondent (Rajender)** was appointed as a sweeper/cleaner with the **Appellant (DTC)**.
B. A charge sheet was issued to the Respondent for availing leave without pay for 118 days between the period November 1987 to October 1988. The charge sheet stated that the aforesaid act of the Respondent amounted to misconduct within the meaning of the Standing Orders governing the conduct of DTC employees. The charge sheet also stated that the past record of the respondent showed that he was punished with stoppage of one increment with cumulative effect on three occasions for availing excessive leave.
C. After holding disciplinary proceedings, the workman was dismissed from services on the ground of absenting without authorised leave. The Respondent raised an industrial dispute.
D. The Labour Court passed an Award in favour of the Respondent. Aggrieved, the appellant filed the instant appeal.

Decision –
The Court decided in favour of the **Appellant (DTC).**

Legal Principles held –

1. That when an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorized.
2. That evidence suggests that the conduct of the employee was nothing but irresponsible and can hardly be justified and in view of the Standing Orders, unauthorized leave can be treated as misconduct.

Conclusion –
The Court held that the Respondent had rightky been dismissed from service.

18. M/S SILVER TOUCH ENTERPRISES v. RADHA SHARMA & ANR [DEL]

FAO 212/2016

Facts :

A. Smt. Lachho, a former employee of the **Appellant (M/S Silver)** had resigned from her job three months prior to the alleged incident. On the fateful day, she went to the premises of the Appellant to meet some of her friends where she died a natural death.
B. The **Respondent (Radha)** sought compensation under the EC Act stating that due to the work pressure, the deceased was under tremendous pressure and because of the excessive stress and strain of her employment, she had died at her work place.
C. The Authorities directed the Appellant to pay compensation to the kin of the deceased. Aggrieved by this, they preferred the instant appeal.

Decision –
The Court remanded the matter for fresh adjudication.

Legal Principles held –

1. That the plea of resignation had not been dealt at all in the impugned order.
2. That opportunity must be given to the parties to lead evidence on the issue of resignation and thereafter return the finding about existence of relationship of employer-employee on the date of incident.

Conclusion –
The Court held that the matter be freshly adjudicated.

19. LANCO ANPARA POWER LTD v. STATE OF UTTAR PRADESH & ORS [SC]

Civil Appeal No. 6223 of 2016

Facts :

A. The **Appellants (Lanco)** were setting up an industry which was covered under the definition of a *factory* under the Factories Act, 1948. However, at the relevant time no manufacturing operation had been commenced by the Appellants. They were in the process of construction of civil works/factory buildings etc. wherein they had planned to set up their factories.
B. As the process of construction of civil works was undertaken by the Appellant wherein construction workers were engaged, the **Respondent (State)** took the view that the provisions of the Buildings And Other Construction Workers Welfare Cess Act, 1996 which were meant for construction workers became applicable and the Appellant was supposed to pay the cess for the welfare of the said workers engaged in the construction work.
C. The Appellant submitted that Section 2(d) of the BOCW Act defines 'building or other construction work' and specifically states that it does not include any building or construction work to which the provision of the Factories Act, 1948.
D. The dispute was therefore, referred to the courts of law.

Decision –

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

Legal Principles held –

1. That on the conjoint reading of the provisions under the Factoires Act, 1948, it becomes clear that a "factory" is that establishment where manufacturing process is carried on with or without the aid of power. Carrying on this manufacturing process or manufacturing activity is thus a prerequisite. It covers only those workers who are engaged in the said manufacturing process
2. That the provisions of the Factories Act would "apply" only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. Therefore, the workers who are engaged in construction of the building also do not fall within the definition of 'worker' under the Factories Act.

Conclusion –

The Court held that the Appellant was supposed to pay cess as per the BOCW Act.

20. THE MANAGEMENT OF STATE BANK OF INDIA v. SMITA SHARAD DESHMUKH & ANR [SC]

Civil Appeal No. 3423 of 2017

Facts :

A. The **Respondent (Smita)**, while working with the **Appellant (Management)**, submitted a certificate purportedly issued by the Indian Institute of Bankers claiming that she had passed the CAIIB Part-II Examination, and on that basis, started drawing additional monetary benefits.

B. The Disciplinary Authority, based on the finding in a domestic enquiry, held that the certificate was a forged one and dismissed her from service.
C. Aggrieved, she filed an application with the lower court. The High Court ordered reinstatement of the Respondent with 50% backwages. Aggrieved, the Appellant filed the instant appeal.

Decision –
The Court decided in favour of the **Appellant (Management).**

Legal Principles held –
1. That the High Court should not re-appreciate the evidence but only see whether there is evidence in support of the impugned conclusion.
2. That it is an admitted position that the certificate produced by the employee was a forged one. It had been categorically found by the Industrial Tribunal, on the basis of evidence, that the employee was fully aware of the fact that the document was a forged one.

Conclusion –
The Court held that the Respondent had been rightly discharged from duties.

21. ALL ESCORTS EMPLOYEES UNION v. THE STATE OF HARYANA [SC]

Civil Appeal Nos. 12843-12844 of 2017

Facts :
A. The **Appellant (Employees Union)** was a Trade Union representing the employees of Escorts Group of Industries and was duly recognised by the employers as well. Some of the Establishments of Escorts Group were Escorts Ltd., Escorts Yamaha Ltd., Escorts JCB Ltd., Escorts Class Ltd. and Escorts Hospital.
B. Escorts Yamaha Ltd. was a joint venture of Escorts Management and Yamaha Motor Company, Japan. In the year 2001, this company was taken over by Yamaha Motor Company, Japan and its name was changed to Yamaha Motor India Private Limited (hereinafter referred to as the 'Yamaha').
C. After this separation, the workmen working in Yamaha ceased to be the members of the Appellant, in view of Clause 4 of its Constitution which spelled out who could be the members of the Union. With an intention to take them within its fold again, the Appellant amended Clause 4 of its Constitution.
D. The Registrar, Trade Union did not approve the amendment. Challenging the decision of the Registrar, writ petition was filed in the High Court of Punjab & Haryana, which was also been dismissed by the High Court vide impugned judgment. Hence the present appeal.

Decision –
The Court decided in favour of the **Respondent (State).**

Legal Principles held –

1. That it is evident from the working of the Appellant that they wanted only those workmen to be its members who are the employees of the Establishment in question, namely, the Escorts Group.
2. That the workers of Yamaha had formed their own separate Union, known as Yamaha Motor Employees Union. This Union had been duly registered by the Registrar, Trade Union, Kanpur (Uttar Pradesh). It is this Union which now stood recognised by the Management of Yamaha.
3. That in these circumstances, the purpose in amending Clause stood frustrated.

Conclusion –

The Court held that the amendment could not be registered as it was invalid.

22. BATRA HOSPITAL EMPLOYEES UNION v. BATRA HOSPITAL & MEDICAL RESEARCH [DEL]

W.P (C) No. 5349/2004

Facts :

A. A case was filed with the Industrial Tribunal which held that the provisions of the Payment of Bonus Act, 1965 did not apply to the **Respondent (Batra Hospital)** as it was an establishment being run not for the purpose of making profits**.**
B. Aggrieved by this, the **Petitioner (Employee Union)** filed a petition under Articles 226-227 in the High Court.

Decision –

The Court decided in favour of the **Petitioner (Employee Union).**

Legal Principles held –

1. That the Respondent actually earned certain amount as profits which were all funnelled back into the Hospital to enhance its services.
2. That earning of profit necessarily entails the responsibility of sharing some part of such profit with the employees or workmen, whose effort contribute significantly towards the earning of the profit.

Conclusion –

The Court held that the Respondent was covered under the Payment of Bonus Act, 1965.

23. ARADEEP PHOSPHATES LIMITED v. STATE OF ORISSA & ORS [SC]

Civil Appeal Nos.3997-3998 of 2018

Facts :

A. The standing orders of the **Appellant (Aradeep)** provided that the retirement age of the workmen as 58 years. This was enhanced to 60 years, as a temporary measure, to retain employees and to cut costs for some time and was later restored to 58 years.
B. However, the Appellant did not send a notice to the employees before bringing down the age of retirement back to 58 years.
C. Aggrieved, the Trade Union brought this issue before the Industrial tribunal contending it to be in violation of section 9A of the Industrial Disputes Act. The Tribunal allowed the claim and on appeal the High court affirmed it. Hence, the instant appeal.

Decision –

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

Legal Principles held –

1. That the relationship of the employer and employee is of utmost faith and, as a result, it falls under the ambit of fiduciary relationship. The purpose of the ID Act is to protect the interest of employees as they are the weaker sections since time immemorial.
2. That it is obligatory on the part of the employer to give minimum 21 days' advance notice to the employee if they intend to change certain things as envisaged under Section 9A of the Act read with Fourth Schedule.

Conclusion –

The Court held that the act of the Appellant was not justified in the eyes of law.

24. DTC SECURITY STAFF UNION (REGD.) v. DTC & ANR [SC]

Civil Appeal No.5005 of 2018

Facts :

A. The pay scale of different employees of the **Respondent (DTC)** along with the other organs of the State was revised. However, the pay scale of the **Appellant (Security staff)** was not increased upto the same level as their counterparts from the Delhi police Service.
B. Aggrieved, they filed a case with the Industrial Tribunal which passed the order in their favour. The High Court, however, reversed the order which led to the current appeal.

Decision –

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

Legal Principles held –

1. That there were differences in the methods of recruitment and qualifications for appointment in the two organisations.
2. That there are vast differences in the nature of general duties performed by personnel of the police force in contradistinction to that of security personnel discharging limited security duties in the confines of the Corporation.

Conclusion –

The Court held that the difference in the pay scale was justified.

25. CHENNAI PORT TRUST v. The Chennai Port Trust Industrial EMPLOYEES CANTEEN WORKERS WELFARE ASSOCIATION & ORS. [SC]

Civil Appeal No.1381 of 2010

Facts :

A. The **Appellant (Port Trust)** had a number of employee for the benefit of whom, a canteen was established in the premises of their workplace. The canteen employed another set of employees exclusively for the work of the canteen. These employees formed the Association that is the **Respondent (Employees Association)** herein.
B. The Appellant did not treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly, refused to pay them monetary benefits at par with the regular employees of the Chennai Port Trust.
C. Aggrieved, the Respondents filed a petition in the High Court which was decided in their favour. Aggrieved, the Appellant brough the current appeal.

Decision –

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

Legal Principles held –

1. That the Court had, in a similar matter, already granted the benefits of regular employees upon the canteen workers. It was found that the facts were similar to this case and hence, the principles of that case shall squarely apply here.

Conclusion –

The Court held that the canteen workers should be treated as regular employees of the organization.