

CHARTERED SECRETARY

VOLUME XL ✦ JANUARY 2010 TO DECEMBER 2010

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**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

ICSI House, 22 Institutional Area, Lodi Road, New Delhi 110 003
tel 011-4534 1000, 4150 4444 fax +91-11-2462 6727
email info@icsi.edu website www.icsi.edu

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Dues owed to Sales Tax Department take priority over dues of banks and financial institutions – Held, yes.

CHENNAI YETRUMATHI VALAGA UZHIYARGAL MATRUM POTHU THOZHILALAR SANGAM v. DEVELOPMENT COMMISSIONER, MEPZ SPECIAL ECONOMIC ZONE & ORS [2010] 156 COMP CAS 1(MAD) Murugesan D & Sathyanarayanan M. JJ [Decided on 29/3/2010] – Section 529A of the Companies Act, 1956 read with section 73 of the Code of Civil Procedure, 1908 – Company under winding up – Sale of assets by banks under Securitisation Act – Workmen’s dues not quantified – Whether invocation of section 529A possible – Held, No.

CHETTINADU CONSTRUCTIONS v. MUTHUKUMARASAMY TEXTILES LTD [2010] 156 COMP CAS 203 (MAD) Paul Vasanthakumar N. J [Decided on 8/10/2009] – Companies Act, 1956 Sections 433(e), (f), 434(1) and 439(1) – Winding up – Inability to pay debts – Bona fide dispute as to debt – Application by creditor for appointment of arbitrator before filing winding up petition – Whether petition is maintainable- Held, No.

COAL INDIA LTD. v. NICCO CORPORATION LTD [[2010] 157 COMP CAS 521(CAL)] Sanjib Banerjee, J [Decided on 18/6/2010] – Companies Act, 1956 – Section 439 – Winding up sought based on decree – Company claiming to be mining company – Inability to pay debts – Company not fulfilling requirements of section 32 of Coal Mines (Nationalisation) Act, 1973 – Whether petition is maintainable – Held, Yes.

CONTINENTAL CARBON INDIA LTD. v. MODI RUBBER LTD [2009] 152 COMP CAS 398(DEL) Badar Durrez Ahmed & Veena Birbal Ms. JJ [Decided on 9/11/2009] – Sick Industrial Companies (Special Provisions) Act, 1985 – Section 25(1) – Appeal – Limitation – Unsecured creditor of sick industrial company filing objections to draft rehabilitation scheme before BIFR – Order sanctioning scheme passed in absence of unsecured creditor – Appeal filed within 45 days after obtaining certified copy – AAIFR dismissed the appeal – Whether correct – Held, No.

DABRIWALA VANIJYA UDYOG LTD. v. SMT. ALKA DALMIA [[2010] 154 COMP CAS 131 (CAL)] Bhaskar Bhattacharya & Prasenjit Mandal JJ [Decided on 17/12/2009] – Companies Act, 1956 – Section 466 – Winding up – Winding up order – Stay of winding up order – Stay order obtained by suppression of material facts – Reason for grant of stay not recorded- Whether the stay order to be set aside – Held, Yes.

DAIICHI SANKYO CO. LTD., N. NARAYANAN v. JAYARAM CHIGURUPATI [[2010] 157 COMP CAS 380 (SC)] Kapadia S. H., Aftab Alam & Swatanter Kumar JJ [Decided on 8/7/2010] – Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 – Regulations 2(1)(b), (c), (e)(1), (o), 10, 12, and 20(4), (12) – Substantial acquisition of shares – Public announcement – Offer price – Persons acting in concert – Holding and subsidiary companies – When “persons acting in concert”- SC explains the concept.

DAMODAR VALLEY CORPORATION v. AAIFR [2010] 156 COMP CAS 137 (DEL) Madan B. Lokur & Pathak A. K. JJ [Decided on 7/7/2009] – Sick Industrial Companies (Special Provisions) Act, 1985 – Section 19(2) – Draft rehabilitation scheme – Consent not given within period of sixty days from date of circulation of scheme – Written request for extension of time also not given – Whether deemed consent to be inferred – Held, Yes.

392 DCL MARITECH LTD. v. GOVERNMENT OF A. P., REPRESENTED BY LAND ACQUISITION OFFICER AND REVENUE DIVISIONAL OFFICER [2010] 154 COMP CAS 503(AP) Nooty Ramamohana Rao J [Decided on 11.9.2009] – Sections 51 and 457(1)(e) of the Companies Act, 1956 read with Sections 9 and 28A of the Land Acquisition Act, 1894 – Winding up – Compulsory acquisition of land after commencement of winding up proceedings – No notice served upon official liquidator or to registered office of company – Compensation determined at sum lower than paid to other similarly placed owners – Application seeking redetermination of compensation Whether the winding up court has powers to deal with all matters concerning company in liquidation – Held, Yes. 661

963 DEEPAK LOHIA V. KAMRUP DEVELOPERS P. LTD [2010] 157 COMP CAS 82 (GAU) B.P. Katakay, J [Decided on 3/5/2010] – Companies Act, 1956 – Sections 402 and 634A – Enforcement of order passed by CLB – Whether can be enforced as decree passed by civil court – Held, Yes. 1113

967 DHARAMSHIL COLD STORAGE P. LTD. V. UNION OF INDIA [2009] 152 COMP CAS 547(PAT) Ramesh Kumar Datta J [Decided on 16/10/2009] – Companies Act, 1956 – Section 560 – Register of Companies – Restoration of name of company – Notice issued to company not granting three months to show cause nor published in Official Gazette as stipulated under section 560(3) – Name of company struck off for failure to file returns for three years –Whether correct – Held, No. 73

E-CITY MEDIA P. LTD. v. SADHRTA RETAIL LTD [2010] 153 COMP CAS 326 (BOM)] Chandrachud D. Y. DR. J [Decided on 20/11/2009] – Companies Act, 1956 – Section 433(e) – Winding up – Inability to pay debt due – Liquidated damages under contract – Whether a debt – Held, No. – Whether petition can be admitted – Held, No. 389

71 EUROPEAN METAL RECYCLING LTD. v. BLUE ENGINEERING P. LTD. [2010] 154 COMP CAS 35 (DEL) Sudershan Kumar Misra J [Decided on 22/12/2009] – Companies Act, 1956 – Sections 433 and 434 – Winding up – Grounds for winding up – Inability to pay debt – Company not responding to statutory notice or appearing before court – Failure of company to take possession of contracted goods – Sale of goods by petitioner to mitigate loss – No notice issued by petitioner before resale – Whether petition could be admitted – Held, No. 538

542 GAURANGBHAI BIPINBHAI PANDYA v. BANK OF BARODA [2010] 153 COMP CAS 359 (GUJ)] Jayant Patel J [Decided on 18/3/2008] – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Section 13 – Enforcement of security interest – Sale of property due to non-repayment of housing loan – Retention of excess amount realized towards dues of company in which debtors were directors – Whether Bank is liable to return the excess money – Held, Yes. 391

1271 GUANGDONG FUWA ENGINEERING MANUFACTURING CO LTD v. ANG AUTO LIMITED [DEL] Company Petition No. 409 of 2009 Sudershan Kumar Misra, J. [Decided on 15/11/2010] – Companies Act, 1956 – Sections 433(e), 434 – Winding up-Non payment dues against supplies made – Facts establishing admitted debt – Whether petition to be admitted – Held, Yes. 1812

965 HMT LTD. v. N. T. RAHAMATULLA KHAN AND ASSOCIATES [2010] 155 COMP CAS 169(KAR) Shylendra Kumar D. V. & Ananda N. JJ [Decided on

1/2/2010] – Companies Act, 1956 – Section 433(e) – Winding up order – Public sector company – Petition for winding up admitted and advertisement ordered without considering defence of company – Whether correct–Held, No.

IBA HEALTH (INDIA) P. LTD. v. INFO-DRIVE SYSTEMS SDN. BHD [2010] 155 COMP CAS 323 (KAR) Shylendra Kumar D. V. & Narayanaswamy L. JJ [Decided on 21/10/2009] – Companies Act, 1956 – Section 433(e) and (f) – Winding up – Grounds for winding up – Inability to pay debts – Bona fide debt – Merger of companies – Failure of legitimate payments undertaken after deed of settlement – Whether Order of winding up justified – Held, Yes.

ICICI BANK LTD. v. SAURAV CHEMICALS LTD [2010] 153 COMP CAS 429 (P&H) Surya Kant J [Decided on 5/9/2009] – Companies Act, 1956 – Sections 433(e), (f), 434, 439 – Winding up – Inability to pay debts – Contest on question of facts – Whether company court can resolve – Held, No.

INCABLE NET (ANDHRA) LTD. v. AP AKSH BROADBAND LTD [2010] 157 COMP CAS 30 (SC) Altamas Kabir & Cyriac Joseph JJ [Decided on 7/5/2010] – Companies Act, 1956 – Sections 397, 398, 402 and 403 – The JV company awarded the EPC contract to its major shareholder who failed to execute the project – Allegations that majority shareholder mismanaged operations of company under contract awarded to it by company – CLB and High court dismissed the petitions – Petitioner appealed to Supreme Court – Whether allegations constitute oppression and mismanagement – Held, No.

INDIABULLS SECURITIES LIMITED v. SECURITIES AND EXCHANGE BOARD OF INDIA [SAT] Appeal No.51, 57, 168 and 214 of 2009 N.K. Sodhi, Presiding Officer & Samar Ray, Member. [Decided on 26/10/2010] – Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 – Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(b); Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations 1992 – Regulations 7A(1), 7A(2), 7A(3), 7A(4) – Futures and Options Contracts – Aiding and abetting by stock brokers – Whether charges maintainable – Held, No.

INDOWIND ENERGY LTD. v. ICICI BANK LTD [2010] 153 COMP CAS 394 (CLB) Kanthi Narahari (MEMBER) [Decided on 21/10/2009] – Companies Act, 1956 – Sections 397 and 398 – Oppression and mismanagement – Petition for relief – Non-declaration of dividend – Whether amounts to oppression and mismanagement – Held, No.

INOX AIR PRODUCTS LTD. v. KALYANI GERDAU STEELS LTD [[2010] 157 COMP CAS 509 (AP)] Seshasayana Reddy B, J [Decided on 18/3/2010] – Companies Act, 1956 – Sections 433(e), (f), and 439(c) – Winding up – Inability to pay debts – Debts bona fide disputed – Dispute regarding payment of basic facility charges for shut down period was pending before arbitrator – Whether petition to be admitted – Held, No.

J. K. AGRI GENETICS LTD. v. FLORENCE ALUMINA LTD [2010] 157 COMP CAS 200 (CAL)] Patherya, J [Decided on 20/5/2010] – Companies Act, 1956 – Sections 81(1A) and 391 – Demerger – Scheme proposing demerger and also conversion of preference shares and bonds issued under earlier scheme – Conversion resulting in issuance of further shares to promoters and benefiting such class of shareholders

alone- Whether procedure prescribed under section 81(1A) ought to be followed – Held, Yes.

JIWAN MEHTA V. EMM BROS FORGINGS (P) LTD &ORS [P&H] Company Appeal No. 5 of 2008 Hemant Gupta, J. [Decided on 02/11/2010] – Companies Act, 1956 – Section 10(F) – Oppression and mismanagement – CLB rejects the petition on the grounds of maintainability – Appeal-Whether rejection by CLB justified – Held, No.

KAKKU E AND P CONTROL P. LTD. v. REGISTRAR OF COMPANIES, NCT OF DELHI AND HARYANA [2010] 154 COMP CAS 408 (DEL)] Sudershan Kumar Misra J [Decided on 2.12.2009] – Companies Act, 1956 – Section 560 – Register of companies – Restoration of name of company – Name of company struck off for failure to file returns, etc. – Up to date documents filed – Company a running concern – No objection certificates of directors and shareholders for restoration filed – Whether name to be restored – Held, Yes.

KANORIA JUTE AND INDUSTRIES LTD. SANGRAMI SHRAMIK UNION v. AAIFR [2010] 156 COMP CAS 131(CAL) Sanjib Banerjee J [Decided on 2/7/2009] – BIFR directed by High Court to reconsider revival of company and to give all parties reasonable opportunities – Whether invitation to outsiders to submit scheme for revival of company is irregular – Held, No. Powers of BIFR – BIFR requiring company and operating agency to assess locus standi of union to represent workers – Whether correct – Held, No.

KIMSUK KRISHNA SINHA v. SEBI [2010] 155 COMP CAS 295(DEL)] Dr. S. Muralidhar J [Decided on 9/4/2010] – Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 – Powers of SEBI to investigate – Draft red herring prospectus – Misstatement in prospectus – Complaint received after the closure of issue – Whether SEBI can entertain the complaint–Held, Yes.

KITPLY INDUSTRIES LTD. v. CALIFORNIA PACIFIC TRADING CORPORATION [2010] 153 COMP CAS 345(GAU)] Chelameswar J. & Sharma B. K. JJ [Decided on 23/12/2009] – Companies Act, 1956 – Winding up – Winding up ordered on basis of foreign decree – Enforceability of foreign decree not examined – Presumption regarding conclusiveness of such decree rebuttable presumption – Whether company court should examine the foreign decree – Held, Yes.

KITTI STEELS LTD. v. SANGHI INDUSTRIES LTD.[[2010] 154 COMP CAS 102 (AP)] Rao V.V. S. J [Decided on 3/9/2009] – Companies Act, 1956 – Sections 433(e), 434(1)(a), and 439(1)(b) read with rule 95 of the Companies (Court) Rules, 1959 – Winding up sought based on decree – Decree suspended by appellate court – Whether debt under the decree enforceable – Held, No. Winding up – Petition for winding up – Petition by creditor – Requirements – No pleadings of neglect to pay after notice and insolvency of company in the petition – Whether petition is maintainable – Held, No.

M/S. JAYANT AMERCHAND KALIDAS v. SECURITIES AND EXCHANGE BOARD OF INDIA [SAT] Case No : Appeal No. 123 of 2010 Samar Ray & P.K. Malhotra, Members. [Decided on 14.10.2010] – Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalties) Regulations, 2002 – Stock broker – Allegation of cross dealing and front running – SEBI suspended the license for one week – Appeal to SAT – Penalty reduced to warning.

MADRAS CRICKET CLUB v. M. SUBBIAH [2010] 154 COMP CAS 353 (MAD) Selvam C. T. J [Decided on 3/2/2010] – Companies Act, 1956 – Sections 25& 621 – Offences and prosecution – Section 25 company – Offence under 1956 Act – Member of such company not shareholder – Whether prefer complaint against company – Held, No.		
MAHESH RATILAL SHAH v. UNION OF INDIA [2010] 154 COMP CAS 48 (SC) Altamas Kabir & Cyriac Joseph JJ [Decided on 19/1/2010] – Sections 4, 7 and 9 of the Securities Contracts (Regulation) Act, 1956 read with section 12 of the Securities and Exchange Board of India Act, 1992–Stock exchange – Sub-broker – Purchase of scrips later found to be forged – Scrips listed for trading upon information from another exchange where scrip listed and upon information of fraudulent dealing trading barred – No material to show mala fides in stock exchange – Purchaser seeking remedy of de-recognition of stock exchange ten years after incident – Whether tenable – Held, No	543	
MANJU BAGAI v. MAGPIE RETAIL LTD [DEL] Company Petition No.193 of 2007 Sanjiv Khanna, J. [Decided on 02/11/2010] – Companies Act, 1956 – Section 433(e) – Winding up – Lease agreement – Vacation by lessee company – Liquidated damages in the form of rent for the unexpired period of the lease – Landlord filed winding up petition on the basis of liquidated damages – Whether admissible–Held, No.	540	
MARBLE CITY HOSPITAL AND RESEARCH CENTRE P. LTD. v. SARABJEET SINGH MOKHA [2010] 155 COMP CAS 13 (MP)] Rajendra Menon J [Decided on 17. 7. 2009] – Companies Act, 1956 – Sections 53, 193, 194 and 283(1)(g) – Vacation of the office of director – Failure to attend three consecutive meetings – Service of notices by post and in person not proved – Minutes of meetings in statutory form not produced – Company failing to discharge its onus regarding service of notice – Whether removal of director is valid – Held, No.	1811	
MITHRA THOMAS KANAGARATNA DEWARS v. LEGENDS SURFACE DEVELOPERS P. LTD [[2010] 157 COMP CAS 265 (CLB)] Deshmukh J. D. R. (Chairman) [Decided on 30/3/2010] – Companies Act, 1956 – Sections 397 and 398 – Oppression and mismanagement – Patent licence agreement with company for 10 years – Termination of licence before expiry of term based on mala fide petition filed – Business of company coming to halt- Company seeking vacation of stay and dismissal of petition Whether petition to be dismissed – Held, Yes.	656	
MRS. SARITA PAWANKUMAR GOENKA v. JAI PRAKASH STRIPS LTD. [2010] 155 COMP CAS 101 (BOM)] Khanwilkar A. M. J [Decided on 17.12.2009] – Companies Act, 1956 – Sections 433(e), 434(1)(a) and 439(1)(b) – Winding up – Inability to pay debts – Statutory notice sent by telegraphic mode and delivered to registered office – Whether a valid mode of service – Held, Yes.	1272	
NARESH NATH MUKHERJEE (SHIPPING) P. LTD. v. TRITON CONTAINER INTERNATIONAL LTD [2009] 152 COMP CAS 293 (CAL) Surinder Singh Nijjar & Biswanath Somadder JJ. [Decided on 30/6/2009] – Companies Act, 1956 – Section 433(e) – Winding up –Inability to pay debts – Bona fide disputes as to debt – Claim based on lease agreement – Execution of agreement denied – Signatory to agreement not associated with company – Uncertainties in evidence presented against company – Whether the admission of the winding up petition is correct – Held, No.	657	
NU-LINE INDIA P. LTD., In re., SWATI STORWEL P. LTD., IN RE & STURDY INDUSTRIES LTD., In re.[2010] 155 COMP CAS 186 (HP)] Deepak Gupta J [Decided on 10/9/2009] – Companies Act, 1956 – Sections 391 & 394 – Scheme of amalgamation – Documents filed by company contrary to each other – Petition presented in order to overcome any order of Company Law Board – Companies withholding material facts and misleading court – Whether scheme to be approved – Held, No.		828
O. L. OF GUJARAT RUBBER WORKS LTD. v. MANAGER, CENTRAL BANK OF INDIA [2010] 156 COMP CAS 142 (GUJ) Jayant Patel J [Decided on 15/7/2009] – Section 529A of the Companies Act, 1956 read with section 19(19) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Winding up – Preferential payments – Worker's dues – Jurisdiction – Suit filed by secured creditor before Debt Recovery Tribunal after commencement of winding up – Sale of assets under order of Debts Recovery Tribunal – Recovery certificate yet to be issued – Amount lying with bank under orders of Tribunal – Whether company court can order deposit of workers' share on pro rata basis for distribution on ad hoc basis – Held, Yes.		966
OFFICIAL LIQUIDATOR OF KEONICS PENTA SEMI-CONDUCTORS LTD. (IN LIQUIDATION) v. BHARAT B. NARANG [2010] 154 COMP CAS 416 (KAR)] Nagarathna B. V. J [Decided on 23.6.2009] – Companies Act, 1956 – Section 454(1), (2) – Winding up – Statement of affairs – Erstwhile director – Liability – Director resigning before order for winding up passed and discharged from proceedings initiated under section 454(1) – Director actively involved in affairs of company even after resignation – Also participating in post – winding up proceedings – Whether he can be directed to file statement of affairs – Held, Yes.	660	
OMAN INTERNATIONAL BANK S. A. O. G. v. AAIFR [2010] 157 COMP CAS 149(DEL) Sanjay Kishan Kaul & Valmiki J. Mehta JJ [Decided on 5/5/2010] – Sick Industrial Companies (Special Provisions) Act, 1985 – Sections 18, 19, and 22 – Scheme for rehabilitation – Financial concession by secured creditors – Objection by minority creditor to scheme – Whether minority creditors can frustrate revival and rehabilitation of sick industrial company – Held, No.		1113
PHILLIPS CARBON BLACK LIMITED & ORS v. ANIL KUMAR PODDAR & ANR [CAL] Case No: GA No. 938 of 2010 GA No. 2768 of 2010 CS No. 67 of 2010 Sanjib Banerjee, J. [Decided on 14.9.2010] – Companies Act, 1956 – Sections 163, 163(4) and 163(6) – Request for inspection or supply of copies of records – Company rejects on the ground of improper motive – whether correct – Held, No.		1575
PRIYARAJ ELECTRONICS LTD. v. MOTOROLA INDIA P. LTD. [2010] 153 COMP CAS 88 (P&H) Kannan K. J [Decided on 17/4/2009] – Companies Act, 1956 – Sections 433 and 434 – Grounds for winding up – Inability to pay debts – Agreement between parties providing for retention of 20% of amount due till receipt of last payment from third party – Amount not received from third party – Company having sufficient reserve and cash in hand – Whether petition to be allowed – Held, No.		227
PROVAKAR DAS GUPTA v. VETERAN CO. P. LTD [2010] 156 COMP CAS 241(CLB) Balasubramanian S. (Chairman) [Decided on 5/6/2009] – Companies Act, 1956 – Sections 397 and 398 – Oppression and mismanagement – Petition for relief – Articles of association stipulating transfer of shares only to ex-	69	

military/retired military personnel – Amendment of articles to induct heirs of existing directors as members and directors – Whether constitutes oppression and mismanagement – Held, Yes.

967 RAAM TYRES LTD. v. APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION [2010] 155 COMP CAS 80 (DEL)] Sanjay Kishan Kaul & Veena Birbal JJ [Decided on 20.1.2010] – Sick industrial company – Scheme of revival – Strategic investor infusing funds under memorandum of understanding and later withdrawing from arrangement – No participation by strategic investor in management or transfer of shares – BIFR ordering issue of advertisement for change of management – Order of BIFR not proper and set aside – Sick Industrial Companies (Special Provisions) Act, 1985, Section 22.

657 RAJ CHAWLA v. SEBI [2010] 154 COMP CAS 16 (DEL) Jain V. K. J [Decided on 12/1/2010] – Section 27 of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 – Offences and prosecution – Offence by company – Directors' vicarious liability – Collective Investment Schemes – Failure to comply with SEBI Regulations – Director resigning before framing of Regulations – Certified copy of Form No. 32 produced and not disputed – Whether prosecution proceedings to be quashed-Held, Yes.

538 RAJEEV S. MARDIA & RASIK S. MARDIA, In re. [2010] 153 COMP CAS 306 (GUJ)] Puj K. A. J [Decided on 2/2/2009] – Companies Act, 1956 – Sections 391, 394 – Scheme by expromoters of company in liquidation – Scheme for compromise with creditors and reconstruction of share capital as well as transfer of assets and liabilities to wholly owned subsidiaries – Claims of statutory creditors and workers not provided for – Scheme contemplating transfer of assets of company to close relatives of promoters of scheme – No satisfactory provision to discharge liabilities towards secured or unsecured creditors – Only creating legal hindrances for disposal of assets of company in liquidation – Whether scheme to be sanctioned – Held, No.

394 RAM PARSHOTAM MITTAL v. HILLCREST REALTY SDN. BHD [2009] 152 COMP CAS 477 (SC) Altamas Kabir & Cyriac Joseph JJ [Decided on 20/7/2009] – Companies Act, 1956 – sections 3(1)(iii), 44(1)(b), 87(2)(b) and 90(2) – Preference shareholder – Meetings – Voting rights – Dividend not declared for two years – Whether company a public company – Resolutions passed by company altering its memorandum and articles of association and empowering directors to take necessary steps to convert to public company – Form No. 23 filed along with resolutions and statement in lieu of prospectus – Shares issued to more than 50 persons – Company immediately acquires public character – Status not dependent on Registrar effecting change in his records – Preference shareholder acquires right to vote – Supreme court upholds the order of the Delhi High Court.

72 RAMCO SUPER LEATHERS LTD. v. DHANALAKSHMI BANK LTD [2009] 152 COMP CAS 437(MAD) Chockalingam M. & Subbiah R. JJ [Decided on 17/8/2009] – Companies Act, 1956 – Sections 391 & 394 – Scheme of amalgamation and demerger – Secured creditor – Banks – Stipulations in loan agreements that company would not undertake any amalgamation or reconstruction without prior permission of banks – Material facts not placed before sanctioning court – Scheme sanctioned without notice to banks – Order of

sanction modified to be subject to approval of secured creditors – Whether the modification is valid – Held, Yes.

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967 RANBAXY LABORATORIES LTD. v. DR. JAYARAM CHIGURUPATI [2010] 153 COMP CAS 162 (CLB) Kanthi Narahari (M) [Decided on 21/10/2009] – Companies Act, 1956 – Sections 260 and 287(2) – Quorum for Board Meeting – Board meeting convened by single director on account of resignation of two directors to appoint two additional directors to constitute quorum – Whether such appointment is valid – Held, Yes. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 – Regulation 22(7) – Substantial acquisition of shares – Applicant company acting in concert with acquirer company – Applicant company shareholder of target company – Whether applicant company appoint any person on board of target company – Held, No.

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S. KUNJITHAMALA v. HVAC SYSTEMS P. LTD [2010] 154 COMP CAS 405 (KAR)] Shylendra Kumar D. V. & Ananda N. JJ [Decided on 3.2.2010] – Companies Act, 1956 – Section 10F – Interim order appointing auditor to look into misappropriation of funds of company and value shares of company – Professional misconduct by chartered accountant – Whether can be examined by Company Law Board or High Court in appeal – Held, No.

659

538 S. PEER MOHAMED v. S. M. MOHIDEEN AHAMED SHAW [2010] 153 COMP CAS 24 (CLB) Balu K. K. (Vice-Chairman) [Decided on 11/9/2009] – Companies Act, 1956 – Sections 397, 398 and 399 – Petition for relief – Maintainability – Failure to produce share certificates to prove petitioner's shareholding – Annual return disclosing petitioner holding less than 10 % of issued and paid-up capital of company-Whether petition is maintainable – Held, No.

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SADHAN KUMAR GHOSH v. BENGAL BRICK FIELD OWNERS ASSOCIATION & ORS [CAL] Case No : GA No. 2281 of 2008 GA No. 4009 of 2008 CS No. 145 of 2008 Sanjib Banerjee, J. [Decided on 06.08.2010] – Section 166 of the Companies Act, 1956 read with Order 1, Rule 8 of the Code of Civil Procedure, 1908 – Holding of EGM and non-holding of AGM – Derivative action by shareholders – Whether AGM could be held beyond the statutory period – Whether court can give directions to do so – Held, Yes.

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SAMPAT TRADING CO. v. TALAYAR TEA CO. LTD [2010] 153 COMP CAS 64 (MAD) Murugesan D. & Sathyanarayanan M. JJ [Decided on 22/1/2009] – Companies Act, 1956 – Section 433(e) – Winding up – Grounds for winding up – Inability to pay debts – Debts bona fide disputed – Whether winding up to be ordered – Held, No.

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SANJAY SURI V. STATE [2010] 157 COMP CAS 10 (DEL) V.K.Jain, J [Decided on 29/1/2010] – Sections 209(6) and 217(1) of the Companies Act, 1956 read with sections 468, 469(1)(b) and 482 of the Cr.P.C – Failure by company to give proper disclosure in balance-sheet regarding collateral security and activities relating to export-Prosecution initiated by ROC – Trial Court took cognizance of the offence-summons issued against the directors – Whether criminal proceedings can be quashed- Held, No.

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SASKEN COMMUNICATION TECHNOLOGIES LTD., In re. [2010] 155 COMP CAS 463(KAR) Nagamohan Das H. N. J [Decided on 31/3/2010] – Companies Act, 1956 – Sections 211, 391 and 394 – Scheme with shareholders – Creation of business restructuring reserve from securities

premium account – Objections on the ground of violation of AS – Whether ground for rejection – Held, No.

SECURITIES AND EXCHANGE BOARD OF INDIA v. AJAY AGARWAL [2010] 155 COMP CAS 1 (SC)] Singhvi G. S. & Asok Kumar Ganguly JJ [Decided on 25.2.2010] – Securities and Exchange Board of India – Powers – Power to restrain person from accessing securities market – When provisions retrospective – Interpretation of statutes – Duty to adopt construction to further purpose of law.

SHREE KARTHIK PAPERS LTD. v. SEBI [2010] 155 COMP CAS 201(MAD)] Sivagnanam T. S. J [Decided on 25/2/2010] – Sick Industrial Companies (Special Provisions) Act, 1985 – Section 18 – Scheme of rehabilitation-BIFR issuing direction under rehabilitation scheme to stock exchanges and exempting company from various statutory provisions and SEBI guidelines for reducing equity capital and listing of reduced shares – Whether such directions are valid- Held, No.

SHREE RAM URBAN INFRASTRUCTURE LTD. v. R. K. DHALL & ORS (NO. 2) [2010] 153 COMP CAS 150 (BOM) Kathawalla S. J. J [Decided on 11/9/2009] – Company Law Board Regulations, 1991 – Regulation 44 – Powers – CLB extended the time granted by the High Court as interim relief – Whether tenable-Held, No.

SHREE VIJAYALAKSHMI CHARITABLE TRUST v. SUB-REGISTRAR [2010] 155 COMP CAS 549 (MAD) Kirubakaran N. J [Decided on 7/9/2009] – Indian Stamp Act, 1899 read with Registration Act, 1908 – Stamp duty – Winding up – Sale of assets by public auction – Sale certificate sent to Registrar for filing in book No. 1 – Whether attracts stamp duty – Held, No.

SITARAM SINGH CONSTRUCTION P. LTD. v. UNION OF INDIA [2010] 156 COMP CAS 127 (PAT) Ramesh Kumar Datta J [Decided on 11/12/2009] – Companies Act, 1956 – Section 560 – Register of Companies – Name struck off on failure to file annual returns – Notice not published in Official Gazette or sent by registered post to company before its name struck off from Register – Company a going concern – Whether name of the company to be restored- Held, yes.

SIVANANDHA MILLS LTD. v. G. MANICKAMURTHY, ENFORCEMENT OFFICER PROVIDENT FUNDS [2010] 155 COMP CAS 73 (MAD)] Aruna Jagadeesan J [Decided on 29/10/2009] – Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 read with sections 14(1A) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – Sick industrial company – Suspension of legal proceedings – Failure to pay contributions towards provident fund dues – Criminal proceedings initiated – Whether criminal proceedings are barred – Held No.

SMT. BIVA PYNE v. PYNE PROPERTIES P. LTD. [2010] 153 COMP CAS 49 (CLB) Balasubramanian S. (Chairman) [Decided on 30/6/2009] – Companies Act, 1956 – Section 111 – Transfer of shares - Deceased shareholder holding some shares jointly with others and some shares solely – Legal heir sought transmission of shares held jointly – Whether transmission could be directed – Held, No.

STICHTING DOEN-POSTCODE LOTERIJ v. VIN POLY RECYCLERS P. LTD.[2010] 154 COMP CAS 155 (DEL) Shah A. P & Rajiv Sahai Endlaw JJ [Decided on 10/2/2010] – Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 read with section 33 of the Code of Civil Procedure, 1908 – Sick industrial company

– Suit for recovery of money – Application by defendant for leave to defend – Arguments heard and judgment reserved – Reference to BIFR – Whether judgment could be pronounced – Held, No.

SUBHAS AGARWAL, PROP. OF M/S. ANKIT AND CO. v. BIJOY NAGAR TEA CO. LTD [2010] 154 COMP CAS 428(CAL) SANJIB BANERJEE J [Decided on 19.2.2010] – Companies Act, 1956 – Section 433(e) – Winding up – Grounds for winding up – Inability to pay debt – Debt disputed on basis of false and forged documents – Whether defense bonafide – Held, No.

SUN INDUSTRIES v. SHARDA SYNTHETICS P. LTD [2009] 152 COMP CAS 331 (BOM) Bobde S. A. J [Decided on 14/8/2008] – Sick Industrial Companies (Special Provisions) Act, 1985 – Section 22 – Sick industrial company – Goods supplied to company after reference was registered – Company failed to make payments – Supplier filed winding up petition – Whether the petition is barred under section 22 of the SICA – Held, No.

SUNDARAM FINANCE LTD. v. SECURITIES AND EXCHANGE BOARD OF INDIA [SAT] Case No : Appeal No. 69 of 2010 N.K. Sodhi (PO), Samar Ray & P.K. Malhotra (MM). [Decided on 16.09.2010] – Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 – Regulations 13(4), 13(6) – Status of senior vice president of the company – Acquisition of Shares by senior vice president – Not disclosed – Whether he is an “officer” within the meaning of the Regulations – Held, Yes.

TECHNOVA TAPES (INDIA) P. LTD. v. REGIONAL DIRECTOR [2010] 155 COMP CAS 395 (KAR) Anand B Yarareddy J [Decided on 9/9/2009] – Companies Act, 1956 – Section 22 – Name of company – Rectification – Limitation – Change of law – Amendment giving right to proprietor of registered trade mark to apply within five years of knowledge of infringement – Whether revive right to apply for rectification after expiry of limitation under old law – Held, No.

TRS FORMS AND SERVICES P. LTD. v. EDUQUITY TECHNOLOGIES P. LTD [2010] 153 COMP CAS 321(KAR)] Ram Mohan Reddy J [Decided on 11/11/2009] – Companies Act, 1956 – Section 433(e) – Winding up – Inability to pay debts – Bona fide dispute as to debt – Defence raised by company in good faith and one of substance – Whether petition can be admitted-Held, No

U. P. CEMENT VETANBHOGI SAHKARI RIN SAMITI LTD. v. OFFICIAL LIQUIDATOR [2010] 155 COMP CAS 211(ALL) Ashok Bhushan & Pandey K. N. JJ [Decided on 18/12/2009] – Section 483 of the Companies Act, 1956 read with Section 100A of the Code of Civil Procedure, 1908 – Second appeal from order passed by Single Judge in exercise of appellate jurisdiction – Whether further appeal from such order lie under section 483- Held, No.

UNION OF INDIA v. R. GANDHI, PRESIDENT, MADRAS BAR ASSOCIATION [CIVIL APPEAL NO.3067 OF 2004] With MADRAS BAR ASSOCIATION v. UNION OF INDIA [CIVIL APPEAL NO.3717 OF 2005] K G Balakrishnan, CJI, R V Raveendran, D K Jain, P Sathasivam & J M Panchal, JJ [Decided on 11/5/2010] – Companies Act, 1956 – 2002 Amendment Act – Parts 1B and 1C of the Act – Whether constitution of NCLT and NCLAT constitutionally valid – Held, Yes. Whether Parts 1B and 1C of the Act are constitutionally valid- Held, No.

UNIQUE KITCHEN-AIDS PRIVATE LIMITED v. REGISTRAR OF COMPANIES [DEL] Company Petition 510/2009 Sanjiv Khanna, J.[Decided on 02/11/2010] – Companies Act, 1956 – Section 560(6) – Non-filing of returns – Name struck off from the register – Company agreed to pay penalty and to file the returns – Whether name to be restored – Held, Yes.

1812

V.S. GUPTA v. PUNJAB NATIONAL BANK [2010] 154 COMP CAS 1 (DEL) Jain V. K. J [Decided on 30/11/2009] – Negotiable Instruments Act, 1881 – Sections 138 and 141 – Director – Vicarious liability – Petitioner resigning as director prior to issue of cheque – Certified copy of Form No. 32 filed with Registrar of Companies produced and not disputed – Whether proceedings to be quashed – Held, Yes.

537

VARINDER SAHNI v. MGRM NET LTD [2010] 156 COMP CAS 36 (DEL) Gita Mittal, J [Decided on 30/4/2009] – Companies Act, 1956 – Section 433(e) – Winding up – Inability to pay debts – Claim based on rent agreement – Failure by company to pay arrears of rent – Land lord files winding up petition – Company making huge counter claim in suit and seeking permission to contest as an indigent person – Whether petition to be admitted – Held, yes.

964

VIVEK BANSAL v. R.M. ISPAT P. LTD. [2010] 154 COMP CAS 60 (CLB) Vimla Yadav (Member) [Decided on 9/6/2009] – Companies Act, 1956 – Sections 397 and 398 – Oppression and mismanagement – Petition for relief – Maintainability – Meetings held without notice – Annual return showing shareholding of shareholder sufficient to maintain petition – Whether petition is maintainable – Held Yes.

541

WESTERN MAHARASHTRA DEVELOPMENT CORPN. LTD. v. BAJAJ AUTO LTD [2010] 154 COMP CAS 593 (BOM) Chandrachud D. Y. DR. J [Decided on 15.2.2010] – Companies Act, 1956 read with – Securities Contracts (Regulation) Act, 1956 – Public company – Pre-emption clause with regard to shares in public company – Whether permissible – Held, No.

658

YOGESHWARI KUMARI v. INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR. [DEL] Case No : LPA 455/2010 Dipak Misra, CJ & Manmohan, J. [Decided on 13.09.2010] – Companies Act, 1956 – Sections 226(3)(b), 397, 398 read with Section 210 of the Chartered Accountants Act, 1949 – Statutory auditor of subsidiary company is a director of the holding company – Whether this is a professional misconduct – Held, No.

1576

ENVIRONMENT LAWS

ANAND BHIMRAO SALVI v. STATE OF MAHARASHTRA & ORS. [BOM] IN RE: WRIT PETITION NO. 1996 OF 201 A.M. Khanwilkar & S.S. Shinde, JJ. [Decided on 10.06.2010] – Constitution of India – Articles 14, 21, 226 – Bombay Police Act, 1951 – Sections 36(e), 36(ea) – Environment (Protection) Act 1986 – Playing loud speakers and music system – Noise Pollution – Bombay HC issues directions.

1435

DR. K. THIRUTHANIKACHALAM v. UNION OF INDIA & ANR MAD] In re. : W.P. NO. 2442 OF 2010 AND M.P. NO. 1 OF 2010 H.L. Gokhale, CJ & K.K. Sasidharan, J. [Decided on 10.02.2010] – Environment (Protection) Act, 1986 – Generically modified vegetables – Commercialization of Bt-Brinjal – Challenge under writ-whether maintainable-Held, No.

1443

M. NIZAMUDEEN v. M/S. CHEMPLAST SANMAR LIMITED & ORS, [2010 (3) SCJ 382] R.M. Lodha & Dr. B.S. Chauhan, JJ. [Decided on 10.03.2010]. – Constitution of India – Article 32; Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981; Environment (Protection) Act, 1986 – Authorities approved the proposal to establish PVC project – Environment and other clearances obtained – Import and use of hazardous chemicals – environment and other clearances accorded by the authorities – Executive Engineer first granted permission and then withdrawn it – whether tenable – Held, No.

1439

M. VELU v. STATE OF TAMIL NADU & ORS [MAD] In re : WRIT PETITION NO. 50425 OF 2006 Elipe Dharma Rao & K. K. Sasidharan, JJ. [Decided on 19.03.2010] – Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 – Section 3(2) – Acquisition of agricultural lands for industrial purpose – environment impact – environment study not made – Whether acquisition to be allowed – High court issues directions.

1438

M. VETRI SELVAN v. UNION OF INDIA & ORS [AP] In re. : WRIT PETITION NO. 14866/2010 M.Y. Eqbal, CJ & T.S. Sivagnanam, JJ. [Decided on 22.07.2010] – Constitution of India – Articles 14, 21, 118, 212, 226; Environment Clearance Regulation, 2006 – Paris Convention, 1963 – Vienna Convention, 1997 – Public hearing for Nuclear Liability Bill – whether necessary – Held, No.

1437

MAHANADI COAL FIELDS LTD. & ANR v. MATHIAS ORAM & ORS SC] In re. : SPECIAL LEAVE PETITION (C) NO.6933 OF 2007 Aftab Alam & S. Chauhan, JJ. [Decided on 19.07.2010] – Mines and Minerals (Development and Regulation), Act 1957 – Indian Forest Act, 1927 – Coal Bearing Areas (Acquisition and Development) Act, 1957 – Section 4(1); Constitution of India; Land Acquisition Act, 1894 – Acquisition of land for coal mining – Payment of compensation delayed – SC accepts the scheme proposed by the Petitioner.

1444

STATE OF GUJARAT & ANR. v. ALOK PRATAP SINGH & ORS. [SC] In re. : CIVIL APPEAL NO. 1136 OF 2010 K.G. Balakrishnan, CJI, J.M. Panchal & Dr. B.S. Chauhan, JJ. [Decided on 28/01/2010] – Environment (Protection) Act, 1985 – Incineration of waste lying at Union Carbide India Ltd. factory at Bhopal at BEL, Ankleshwar – Operationalization of incinerator – SC accepts the request of MP government.

1444

STATE OF TAMIL NADU & ORS v. M/S.GEM GRANITES & ORS [MAD] IN RE : W.A. NOS. 716 OF 2000, 2044 AND 2045 OF 2001, 94 TO 115, 159 TO 162, 2308 TO 2322, 2543 TO 2553, 2709 TO 2719, 2739 TO 2753, 2796 TO 2815 OF 2004, W.P. NOS. 1930 AND 1931 OF 1999, W.A.M.P. NOS. 141 TO 173, 262 TO 268, 4272 TO 4286, 4684 TO 4694, 5005 TO 5015, 5075 TO 5080, 5083, 5084, 5089, 5169, 5171, 5173, 5175, 5177, 5179, 5181, 5183, 5185, 5187, 5189, 5191, 5193, 5195, 5197, 5199, 5201, 5203, 5205, 5207 OF 2004 AND 242 OF 2007 AND W.M.P. NO. 26313 OF 1999 W.A. NO. 716 OF 2000 R. Banumathi & B. Rajendran, JJ. [Decided on 16.08.2010] – Mines and Mineral (Development & Regulation) Act, 1957 – Section 15, – Granite Conservation and Development Rules, 1999 – Rule 15(1A); Tamil Nadu Minor Mineral Concession Rules, 1959 – Amendment of State Rules providing for prospecting licence for quarry operators – Whether tenable – Held, Yes.

1436

VELLORE DISTRICT ENVIRONMENT MONITORING COMMITTEE v. THE DISTRICT COLLECTOR,

VELLORE & ORS [MAD] In re : WRIT PETITIONS NO. 8335 OF 2008 AND 19017 OF 2009 W.P. NO. 8335 OF 2008 Elipe Dharmarao & N. Paul Vasanthakumar, JJ. [Decided on 28.01.2010] – *Environment (Protection) Act – Section 3(3) – Contempt of Courts Act – Allegation of non implementation of SC directions – Whether the authorities failed to implement the directions – Held, No.*

1442

GENERAL LAWS

ALOYS WOBHEN v. ENERCON (INDIA) LIMITED & ANR [MAD] Case No : W.P.No.20165 of 2010 & M.P.Nos.1&2 of 2010 M.Y.Eqbal, CJ & T.S.Sivagnanam, JJ. [Decided on 08.09.2010] – *Patents Act – Section 64 – Revocation application by respondent – Petitioner sought dismissal of application – Tribunal decided to hear all the applications together – Whether proper – Held, Yes.*

1586

ASHISH DASGUPTA v. STATE OF H.P. & ORS [HP] Case No : CRMMO No. 110 of 2008 Kuldip Singh, J. [Decided on 10.09.2010] – *Criminal Procedure Code, 1973 – Sections 173, 227 & 482 – Forgery of share certificate – Magistrate took cognizance of the offence and issued summons – Petitioner contended that the matter is before the CLB – Whether proceeding to be quashed – Held, No.*

1585

DHOOT DEVELOPERS PVT LTD & ANR. v. UNION OF INDIA & ORS [DEL] Case No : WP (C) No.5166 of 2010 Sanjay Kishan Kaul & Valmiki J. Mehta, JJ. [Decided on 08.10.2010] – *Constitution of India – Article 226 – Joint Venture between two companies – Bid submitted in the name of JV – Bank Guarantee was submitted in the name of One of the JV party – Bank guarantee rejected – Whether proper – Held, No.*

1584

INFOSYS TECHNOLOGIES LTD V. JUPITER INFOSYS LTD & ANR. [SC] Civil Appeal Nos. 5743-5745 of 2005 Aftab Alam & R.M. Lodha, JJ.[Decided on 09.11.2010] – *Trade and Merchandise Marks Act, 1958 – Sections 46 and 56 read with section 100; of the Civil Procedure Code – Removal of trademark from the register – Who is an “aggrieved person” – Supreme Court clarifies the phrase.*

1815

RAHEJA BUILDERS PVT LTD V. RATHI FERROUS TRADING P LTD [DEL] FAO (OS) 624 of 2010 Vikramajit Sen & Mukta Gupta, JJ.[Decided on 12/11/2010] – *Civil Procedure Code – Section 24 – Two different cases against two different companies under the same group – Whether suits to be clubbed and tried together – Held, No.*

1816

RAJ TRAVELS & TOURS LTD. & ORS. v. DESTINATION OF THE WORLD (SUBCONTINENT) PVT. LTD. [DEL] Case No. CrI.M.P.No. 2652/2010 with batch of similar petitions. Shiv Narayan Dhingra, J. [Decided on 23.09.2010] – *Sections 138, 139, 141, 145(2) of the Negotiable Instruments Act, 1882 read with Section 251 of the Criminal Procedure Code, 1973 and Section 291 of the Companies Act, 1956 – Dishonour of cheque – Liability of the director – Whether directors other than nominee directors are entitled for the quashing of the complaint against them – Held, No.*

1582

USHA RANI RUSTAGI & ANR. V. NCT OF DELHI & ANR [DEL] CrI.M.C.No. 2931/2009 Shiv Narayan Dhingra, J. (Decided on 25.10.2010) – *Indian Penal Code, 1860 – Section 409 – Dealings in securities by proprietorship firm – Proprietor died and successor firm continued the business – Allegation of criminal breach of trust by customer against the firm – Whether tenable – Held, No.*

1817

INDUSTRIAL & LABOUR LAWS

ABDUL KADIR v. UNION OF INDIA & ORS In Re: W.P. (C.) No.386/2010 [Del] Anil Kumar & Mool Chand Garg JJ. [Decided on 20.01.2010] – *Railway service – Habitual absenting from work – Dismissal confirmed by the Tribunal – Whether valid-Held, Yes.*

230

BHARAT SINGH v. THE EMPLOYERS IN RELATION TO THE MANAGEMENT, DIGWADIH COLLIERY [JHARKHAND] Case No : W.P. (L). No. 5228 of 2008 Pradeep Kumar, J. [Decided on 01.09.2010]

1589

CEMENT CORPORATION OF INDIA LTD. v. REGIONAL LABOUR COMMISSIONER (CENTRAL) [2010] 156 COMP CAS 266 (KAR) Subhash B. Adi J [Decided on 21/3/2007] – *Section 7(7) of the Payment of Gratuity Act, 1972 read with section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 – Sick industrial company – Suspension of legal proceedings – Payment of gratuity – Appeal from order of Controlling Authority – Pre-requisite condition of deposit of gratuity amount – Whether appeal can be accepted without depositing the payment of gratuity amount – Held, No.*

968

DHIR SINGH BELDAR v.THE PRESIDING OFFICER, LABOUR COURT, GURDASPUR, & ORS. IN RE: C.W.P. NO. 14095 OF 2009 (P&H) Augustine George Masih, J. [Decided on 26.04.2010] – *Workman – Unauthorised absence from duty – Dismissal from services on the ground of abandonment of job – Whether correct – Held, Yes.*

1119

KAPTAN SINGH v. PRESIDING OFFICER & ANR[P&H] Case No : LPA No. 461 of 2010 (O&M) M.M. Kumar & Ritu Bahri, JJ. [Decided on 18.08.2010]

1588

M/S KUNJ & CO. v. THE REGIONAL PROVIDENT FUND COMMISSIONER (ENF) In Re: CM (M) No.193/2000 [Del] and M/S ROOP SAREES EXTENSION v. THE REGIONAL PROVIDENT FUND COMMISSIONER (ENF) In Re: CM (M) No.211/2000[Del] Rajiv Sahai Endlaw, J. [Decided on 21.01.2010] – *Employees Provident Fund and Miscellaneous Provisions Act, 1952-Clubbing of units for the purposes of PF – Interdependent business of units – Common entrance – Whether the clubbing is valid-Held, No.*

229

RAJ NATH YADAV & ORS v. GUPTA ENGINEERING WORKS [DEL] W.P. (C) No. 3778 of 2007 Manmohan Singh, J. [Decided on 01/11/2010] – *Industrial Disputes Act, 1947 – Termination from services and reinstatement thereof – Workmen failed to produce evidence to prove their employment with the employer – Whether petition to be allowed – Held, No.*

1818

ROBIN PAUL v. STATE OF WEST BENGAL [2010] 153 COMP CAS 419 (CAL) Partha Sakha Datta J [Decided on 11/3/2008] – *Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 – Offences and prosecution – Offence by company – Director – Liability – Failure to deposit employer’s and employees’ contribution of provident fund – Whether director can be prosecuted under the Indian Penal Code – Held, No.*

397

SUSHIL KUMAR SINGHAL v. PUNJAB NATIONAL BANK In re: CIVIL APPEAL NO. 6423 OF 2010 P. Sathasivam & B.S. Chauhan, JJ. [Decided on 10/08/2010] – *Industrial Disputes Act, 1947 read with The Probation of Offenders Act, 1958 – Section 12 – Banking industry – Moral turpitude – Embezzlement of money-Conviction by criminal court – Dismissal from services – Probation granted – Whether reinstatement should be made – Held, No.*

1278

TATA MEMORIAL HOSPITAL WORKERS UNION v. TATA MEMORIAL CENTRE & ANR In re: CIVIL APPEAL NO.6394 OF 2010 Altamas Kabir, Cyriac Joseph & H. L. Gokhale, JJ.[Decided on 09/08/2010] – Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 – Sections 2, 2(3), 13, 14; Industrial Disputes Act 1947 – Sections 2(a), 2(j); Trade Unions Act 1926; Bombay Public Trust Act 1950; Societies Registration Act 1860; Societies Registration Act 1860; Appropriate government – Trust maintained by Central grant and funds of the trust – Whether Central government is the appropriate government – Held, No

1279

THE SUPERINTENDING ENGINEER METTUR ELECTRICITY DISTRIBUTION CIRCLE v. V.PALANIAPPAN [MAD] C.M.A.No.1327 of 2006 and C.M.P.No.5726 of 2006 C.S.Karnan, J.[Decided on 05/10/2010] – Workmens Compensation Act – Death of workmen – Quantum of compensation

1818

THE TRIBUNE TRUST v. THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, CHANDIGARH & ANR. IN RE: CIVIL REVISION NO. 3815 OF 2009 (O&M) [P&H] Rajesh Bindal, J. [Decided on 10.05. 2010] – Section 18(1) of the Industrial Disputes Act, 1947 read with sections 141 and 151 of the CPC – Industrial adjudication – Reference of dispute to Tribunal-During pendency of reference settlement arrived at-Management, through an application, sought an order of no-dispute to which the Union opposed – Application of the management was rejected by the Tribunal – Whether the Tribunal was correct in dismissing the application – Held, Yes.

1120

TRIVENI ENGINEERING & INDUSTRIES LTD. v. JASWANT SINGH & ANR. In re : CIVIL APPEAL NO. 6523 OF 2010 Mukundakam Sharma & Anil R. Dave, JJ. [Decided on 11.8.2010] – U.P. Industrial Disputes Act, 1947 – Sections 2(s), 4(K), 10, 11(C) read with Industrial Employment (Standing Orders) Act, 1946 – Section 13(A) – Issue is whether a person is a workman or not – Whether labour commissioner can decide this issue – Held, No.

1277

TAX LAWS

ABAQUS ENGINEERING (I) LTD. v. ADDITIONAL COMMISSIONER[2010] 2 GSTR 387 (MAD) Jyothimani P, J [Decided on 18/1/2010] – Finance Act, 1994 – Section 66A – Service tax – Services received from outside India – Whether taxable in the hands of Indian recipients before introduction of section 66A – Held, No.

969

ALEX CHERIAN v. COMMISSIONER OF INCOME-TAX [2010] 320 ITR 49 (KER) Ramachandra Menon P. R. J [Decided on 14/7/2009] – Income-tax Act, 1961 – Section 179 – Recovery of tax – Tax due from private limited company – Concurrent finding that due amount could not be recovered from company – Whether the same can be recovered from the director – Held, Yes.

231

ANSAL HOUSING AND CONSTRUCTION LTD. v. COMMISSIONER OF INCOME-TAX [2010] 320 ITR 420 (DEL) Sikri A. K. & Valmiki J. Mehta JJ [Decided on 30/10/2009] – Income-tax Act, 1961 – Section 35D – Business expenditure – Amortization of preliminary expenses – Meaning of “industrial undertaking” in section 35D – Company engaged in construction of buildings – Whether an industrial undertaking – Held, No.

396

BHARAT MINES AND MINERALS v. ASSISTANT COMMISSIONER OF CUSTOMS [2010] 2 GSTR 292 (AP) Goda Raghuram & Ramesh Ranganathan, JJ

[Decided on 2/2/2010] – Appeal – Condonation of delay – Tribunal dismissing appeal without condoning delay of 146 days in preferring appeal – Assessee having arguable case on merits but not setting out substantial reasons for condoning delay – Delay not inordinate – Whether Tribunal ought to have exercised discretion for condonation of delay on reasonable terms – Held, Yes.

970

CHIEF COMMISSIONER, LARGE TAX PAYERS UNIT, BANGALORE v. T. N. T. INDIA P. LTD [2010] 3 GSTR 23 (KAR) Manjunath K. L. & B.V. Nagarathna, JJ [Decided on 16/4/2010] – Finance Act, 1994 – Sections 73, 84 and 86- Service tax – Appealable orders – Letter of Additional Commissioner stating door-to-door international courier services not taxable – Subsequent letter informing previous clarification contrary to legal provision and directing assessee to discharge liability immediately – Whether an order appealable before Appellate Tribunal – Held, Yes.

1115

CLIMATE SYSTEMS INDIA LTD. v. COMMISSIONER OF INCOME-TAX [2009] 319 ITR 113 (DEL) SIKRI A. K. & Valmiki J. Mehta JJ [Decided on 9/10/2009] – Income-tax Act, 1961 – Section 37-Capital or revenue expenditure-Agreement for technical collaboration-Provision of technology and technical services – Payment of royalty for technical services at percentage of domestic and export sales for seven years-Whether deductible as revenue expenditure – Held, Yes.

76

COMMISSIONER OF CENTRAL EXCISE v. DRIES SHOES LTD [2010] 3 GSTR 259 (HP) Surjit Singh & V.K.Sharma, JJ [Decided on 5/5/2010] – Rule 6(5)(vi) of the Cenvat Credit Rules, 2002 read with Rule 6(1), (6) of the Cenvat Credit Rules, 2004 – Cenvat credit – Exempted goods cleared for export under bond – Whether eligible to Cenvat credit – Held, Yes.

1118

COMMISSIONER OF CENTRAL EXCISE v. GUJARAT NARMADA VALLEY FERTILIZERS CO. LTD [2010] 1 GSTR 268 (SC) Kapadia S. H. & Aftab Alam JJ [Decided on 17/8/2009] – Cenvat Credit Rules, 2002 – Rule 6(1), (2) – Excise duty – Cenvat credit – Manufacture of exempted goods – Low sulphur heavy stock used as fuel for producing steam and electricity for manufacture of exempted goods – Inputs used as fuel – Whether Credit should be reversed – Held, Yes.

395

COMMISSIONER OF CENTRAL EXCISE v. RAJEEV ELECTRICAL WORKS [2010] 3 GSTR 190 (P&H) Ashutosh Mohunta & Mehinder Singh Sullar, JJ [Decided on 11/5/2010] – Finance Act, 1994 – Section 65(39a) – Service tax-vice – Erection, commissioning or installation – Electrical contractor – Service of laying pipes in walls, roof or floor for crossing wires, fixing junction boxes, MS boxes, wooden boxes, fixing cable trays to lay cables, digging earth to lay cables and digging earth pits for earthing equipment – Whether taxable service – Held, No.

1117

COMMISSIONER OF CENTRAL EXCISE v. VAHOO COLOUR LAB [2010] 2 GSTR 502(P&H) Ashutosh Mohunta & Mehinder Singh Sullar, JJ. [Decided on 3/2/2010] – Finance Act, 1994 – Service tax – Photography – Works contract – Sale – Whether assessee is liable to pay service tax on value of goods/material consumed during processing of photography – Held, No.

969

COMMISSIONER OF INCOME-TAX v. H. P. STATE FOREST CORPORATION LTD [2010] 320 ITR 54 (HP) Deepak Gupta & Ahuja V. K. JJ [Decided on 2/9/2009] – Income-tax Act, 1961 – Sections 144 and 254 – Appeal to Appellate Tribunal – Direction not to assess income at

	<i>figure lower than that declared by assessee in original return – On application by assessee Tribunal directing that assessment not to be at figure higher than that determined by Assessing Officer under section 144 – Whether such directions are sustainable – Held, No.</i>	
232	COMMISSIONER OF INCOME-TAX v. MAX INDIA LTD [2009] 319 ITR 68 (P & H) Adarsh Kumar Goel & Mittal L. N. JJ [Decided on 4/11/2008] – <i>Income-tax Act, 1961 – Sections 48, 50, 50A – Capital gains – Exemption – Slump sale – Sale of one division of assessee – Sale of going concern – Whether to be considered as block of assets – Held, No.</i>	
76	COMMISSIONER OF INCOME-TAX v. PUNJAB TRACTORS LTD [2010] 320 ITR 153 (P&H) Adarsh Kumar Goel & Daya Chaudhary JJ [Decided on 14/9/2009] – <i>Income-tax Act, 1961-Section 36(1)(vii)-Bad debts – Deduction – Assessee having valid reasons for judging that amount not recoverable – Fact that assessee obtained a decree to recover debt does not mean that debt was not bad – Whether assessee entitled to deduction of bad debt-Held, Yes.</i>	
233	COMMISSIONER OF INCOME-TAX v. RAJA PAL AUTOMOBILES [2010] 320 ITR 185 (ALL) Prakash Krishna & Ritu Raj Awasthi JJ [Decided on 30/6/2009] – <i>Income-tax Act, 1961-Section 40A(3) read with Rule 6DD of the Income-tax Rules, 1962-Business expenditure – Disallowance – Payments made otherwise than by crossed cheque or bank drafts – Nature of business and evidence in form of bills and cash memos – Exceptional circumstances explained by the assessee – whether cash payments to be allowed – Held, Yes.</i>	
545	COMMISSIONER OF INCOME-TAX v. SAW PIPES LTD. [2010] 321 ITR 105 (DEL) Sikri A. K. & Siddharth Mridul JJ [Decided on 22/1/2010] – <i>Income-tax Act, 1961 – Sections 234B& 234C – Advance tax – Setting off interest by the assessee – Plea of bona fide default – Whether interest received is chargeable under section 234B – Held, Yes.</i>	
75	COMMISSIONER OF INCOME-TAX v. SINGAPORE AIRLINES LTD [2009] 319 ITR 29 (DEL) Badar Durrez Ahmed & Rajiv Shakhder JJ [Decided on 13/4/2009] – <i>Income-tax Act, 1961 – Section 194H – Deduction of tax at source – Commission – Airlines selling tickets to travel agents – Amount realized by travel agents in excess of net fare retained by them under passenger sales agency agreement – Whether amounts to commission and tax to be deducted on such amount – Held, Yes.</i>	
1276	COMMISSIONER OF INCOME-TAX v. WALFORT SHARE AND STOCK BROKERS P. LTD [[2010] 326 ITR 1 (SC)] Kapadia S. H. & Swatanter Kumar, JJ [Decided on 6/7/2010] – <i>Income-tax Act, 1961 – Sections 10(33), 14A and 94(7) – Purchase of securities “cum-dividend” – Sale at loss – Claim to set-off of loss – Whether permissible – Held, Yes.</i>	
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