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RESOLUTION OF CORPORATE DISPUTES, NON-COMPLIANCES & REMEDIES

MODULE 2

PAPER 6

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Index

| S. No. | Lesson | Pages |
|--------|--|-------|
| 1 | Lesson 1 – Shareholders’ Democracy | 2 |
| 2 | Lesson 2 – Corporate Disputes | 3-4 |
| 3 | Lesson 3 – Class Action Suits | 5 |
| 4 | Lesson 5 – Regulatory Action | 7-18 |
| 5 | Lesson 8 - Crisis Management & Risk and Liability Mitigation | 19-20 |
| 6 | Lesson 9 - Misrepresentation and Malpractices – Civil and Criminal Trial Procedure | 22-23 |

Lesson 1 – Shareholders’ Democracy

Case Study on Apollo Tyres

In 2018, Minority shareholders of Apollo Tyres Limited have steered Chairman and Managing Director to cap their remuneration to 7.5 per cent of profit before tax with effect from Financial Year 2018-19. This cap, the firm suggests, can be further reduced over a period of time. The earlier limit was 10 percent of the net profit. This move came after when the reappointment of Managing Directors was rejected by Minority Shareholders due to the increase in remuneration inspite of Losses in the company.

The Board of Directors decided to cap the remuneration of Chairman and Managing Director both to 7.5% of the Net Profit.

Further, the remuneration of the both doubled during FY 2014 to FY 2018. The E&Y report also suggested few changes in promoter compensation, performance-based remuneration and annual increments to the company’s Nominations & Remuneration Committee (NRC), and these proposals have been approved by the Board of the Company.

Lesson 2 – Corporate Disputes

In the case of *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors,*

On 26th March 2021, the Supreme Court set aside the NCLAT order dated 18-Dec-2019 and also dismissed the two petitions filed by the Petitioners.

The supreme court answered the below questions in this case:

Question No. 1: whether the formation of opinion by the Appellate Tribunal that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members.

It was held by court that NCLAT should have raised the most fundamental question whether it would be equitable to wind up the Company and thereby starve to death those charitable Trusts, especially on the basis of uncharitable allegations of oppressive and prejudicial conduct. Therefore, the finding of NCLAT that the facts otherwise justify the winding up of the Company under the just and equitable clause, is completely flawed.

Question No. 2 whether the reliefs granted and directions issued by NCLAT including the reinstatement of CPM into the Board of Tata Sons and other Tata Companies are in consonance with (i) the pleadings made, (ii) the reliefs sought and (iii) the powers available under SubSection (2) of Section 242.

The Tribunal(NCLAT) should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions. It is on the touchstone of the objective behind these provisions that the correctness of the four reliefs granted by the Tribunal should be tested. If so done, it will be clear that NCLAT could not have granted the reliefs of (i) reinstatement of CPM (ii) restriction on the right to invoke Article 75 (iii) restraining RNT and the Nominee Directors from taking decisions in advance and (iv) setting aside the conversion of Tata Sons into a private company.

Question No. 3 Whether NCLAT could have, in law, muted the power of the company under Article 75 of the Articles of Association, to demand any member to transfer his shares, by injuncting the company from exercising the rights under the Article, even while refusing to set aside the Article.

The order of NCLAT tinkering with the power available under Article 75 of the Articles of Association is wholly unsustainable. It is needless to point out that if the relief granted by

NCLAT itself is contrary to law, the prayer of the S.P. Group in their Appeal C.A. No.1802 of 2020 asking for more, is nothing but a request for aggravating the illegality.

Question No. 4 Whether the characterization by the Tribunal, of the affirmative voting rights available under Article 121 to the Directors nominated by the Trusts in terms of Article 104B, as oppressive and prejudicial, is justified especially after the challenge to these Articles have been given up expressly and whether the Tribunal could have granted a direction to RNT and the Nominee directors virtually nullifying the effect of these Articles.

The claim for proportionate representation on the Board is neither statutorily or contractually sustainable nor factually justified. Section 163 of Companies Act, 2013 which is corresponding to Section 256 of the Companies Act, 1956 is only an enabling provision and it is upto the company to make a provision for the same in their Articles, if they so choose. There is no statutory compulsion to incorporate such a provision.

Question No. 5 whether the reconversion of Tata Sons from a public company into a private company, required the necessary approval under section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT.

NCLAT was completely wrong in holding as though Tata Sons, in connivance with the Registrar of companies did something clandestinely, contrary to the procedure established by law. The request made by Tata Sons and the action taken by the Registrar of Companies to amend the Certificate of Incorporation were perfectly in order.

Lesson 3 – Class Action Suits

Who can file Class Action Suit

There are following set of classes recognized under the Companies Act, 2013 to file class action suits - (i) members (ii) depositors and (iii) any class of them. The Companies Act, 2013 just like its predecessor recognizes the following persons as members of a company:

(i) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

The requirement of members/depositors for filling of class action suit is as under:

| | No. of Required Members/ Depositors | Percentage of total Members/ Depositors | Percentage of shareholding/deposits owed |
|---|--|--|---|
| | <i>Whichever is less.</i> | | |
| Members (In case of a company having a share capital) | 100 | 5% | In the event of a listed company – 2% In the event of an unlisted company – 5% |
| Depositors | 100 | 5% | 5% |

For more details: <https://www.mondaq.com/india/class-actions/809134/class-action-suits-in-india-government-notifies-thresholds-for-filing-class-action-suits>

Lesson 5 – Regulatory Action

1) Investigation under Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021

SEBI notified the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 on 9th August, 2021 which came into force on the seventh day from the mentioned date. The regulation *inter alia* provides as under:

Regulation 52 of these regulations provides the power of investigation to SEBI. These regulation provides that SEBI may *suo-moto* or upon information received by it, appoint one or more persons to undertake the inspection of the books of account, records and documents of the issuer or lead manager(s) or any other intermediary associated with the issue, for any of the following purposes:

- (a) to verify whether the provisions of the SEBI Act, 1992, the Companies Act, 2013, Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder in respect of issue of securities have been complied with;
- (b) to verify whether the requirements in respect of issue of non-convertible securities as specified in these regulations have been complied with;
- (c) to verify whether the requirements of listing conditions and continuous disclosure requirements have been complied with;
- (d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of non-convertible securities governed under these regulations;
- (e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations; and,
- (f) to inquire whether any direction issued by the Board has been complied with.

Regulation 58 (2) of the said regulations provides that while undertaking an inspection under these regulations, the inspecting authority or the SEBI, as the case may be, shall follow the procedure specified by the SEBI for inspection of the intermediaries.

Regulation 53 of the said regulations provides the power of giving direction by SEBI. It provides that Without prejudice to the action under Sections 11, 11A, 11 B, 11D, Section 12(3), Chapter VIA and Section 24 of the SEBI Act, 1992 or Section 439 of the Companies Act, 2013, SEBI may

either *suo-moto* or on receipt of information or on completion or pendency of inspection, inquiry or investigation, in the interests of the securities market, issue or pass such directions as it deems fit including any or all of the following:

- (a) directing the issuer to refund of the application monies to the applicants in an issue;
- (b) directing the persons concerned not to further deal in securities in any particular manner;
- (c) directing the persons concerned not to access the securities market for a particular period;
- (d) restraining the issuer or its promoters or directors from making further issues of nonconvertible securities;
- (e) directing the person concerned to sell or divest the non-convertible securities;
- (f) directing the issuer or the depository not to give effect to transfer or directing further freeze of transfer of non-convertible securities;
- (g) any other direction which the Board may deem fit and proper in the circumstances of the case:

It has been provided that SEBI shall, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued:

Further, it has been provided that if any ex-parte direction is required to be issued, SEBI may give post decisional hearing to affected person.

For more details:https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-regulations-2021_51764.html

2. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 inserted section 144B in the Income-tax Act, 1961

Section 144B has been inserted in the Income-tax Act, 1961(the Act) which provides for the provisions related to faceless assessment. The provisions of this section are applicable w.e.f. 01.04.2021. It provides as under:

Procedure of Faceless Assessment

Newly inserted Section 144B(1) of the Income-tax Act, 1961 provides that notwithstanding anything to the contrary contained in any other provisions of the Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure:

- (i) the National Faceless Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143;
- (ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National Faceless Assessment Centre;
- (iii) where the assessee—
 - (a) has furnished his return of income under section 139 or in response to a notice issued under sub-section (1) of section 142 or under sub-section (1) of section 148, and a notice under sub-section (2) of section 143 has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or
 - (b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer; or
 - (c) has not furnished his return of income under sub-section (1) of section 148 and a notice under sub-section (1) of section 142 has been issued by the Assessing Officer,the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;
- (iv) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(v) where a case is assigned to the assessment unit, it may make a request to the National Faceless Assessment Centre for—

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of certain enquiry or verification by verification unit; and

(c) seeking technical assistance from the technical unit;

(vi) where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit;

(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre;

(viii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(x) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (viii) or clause (ix) to the concerned assessment unit;

(xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 or with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such assessee a notice under section 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;

(xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre;

(xiii) where the assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to—

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;

(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to—

(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in—

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;

(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;

(xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in—

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;

(xxiii) the National Faceless Assessment Centre shall,—

(a) where no response to the show-cause notice is received as per clause (xxii),—

(A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or final draft assessment order to such assessee; or

(B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in any other case, send the response received from the assessee to the assessment unit;

(xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;

(xxv) the National Faceless Assessment Centre shall, upon receiving the revised draft assessment order,—

(a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and—

(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;

(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;

(xxvi) the procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in sub-clause (b) of clause (xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item (A) of sub-clause (a) of clause (xxiii) or item (A) of sub-clause (a) of clause (xxv), such assessee shall, within the period specified in sub-section (2) of section 144C, file his acceptance of the variations to the National Faceless Assessment Centre;

(xxviii) the National Faceless Assessment Centre shall,—

(a) upon receipt of acceptance as per clause (xxvii); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C,

finalise the assessment within the time allowed under sub-section (4) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, prepare a draft assessment order in accordance with sub-section (13) of section 144C and send a copy of such order to the National Faceless Assessment Centre;

(xxxi) the National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C and serve a copy of such order and notice for initiating

penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

Section 144B(2) provides that the faceless assessment under section 144B(1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

Authorities under section 144B

Section 144B(4) provides that the assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—

- (a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;
- (b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;
- (c) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

Communications between National Faceless Assessment Centre and the assessee

Section 144B(6) provides that all communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode:

However, it has been provided that the provisions of this section 144(6) shall not apply to the enquiry or verification conducted by the verification unit in the circumstances referred to in sub-clause (g) of clause (xii) of sub-section 144B(7);

Transfer of the case to Assessing Officer

As per section 144B(8), notwithstanding anything contained in section 144B(1) or 144B (2), the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre may at any stage of the assessment, if considered necessary, transfer the

case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.

Assessment *non est* without the procedure

Section 144B (9) provides that notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in section 144B(2) [other than the cases transferred under section 144B(8)], on or after the 1st day of April, 2021, shall be *non est* if such assessment is not made in accordance with the procedure laid down under this section.

3. Procedure for inquiry under Section 19 the Competition Act, 2002

The procedure for inquiry under Section 19 of the Competition Act, 2002 which provides for Inquiry into certain agreements and dominant position of enterprise has been specified under Section 26 of the Act. The procedure is as under:

1. On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Competition Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

It has been provided that if the subject matter of an information received is, in the opinion of the Competition Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

2. Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Competition Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

3. The Director General shall, on receipt of direction under section 26(1), submit a report on his findings within such period as may be specified by the Competition Commission.

4. The Competition Commission may forward a copy of the report referred to in section 26(3) to the parties concerned:

However, it has been provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Competition Commission shall forward a copy of the report referred to in section 26(3) to the Central Government or the State Government or the statutory authority, as the case may be.

5. If the report of the Director General referred to in section 26(3) recommends that there is no contravention of the provisions of Competition Act, 2002, the Competition Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

6. If, after consideration of the objections and suggestions referred to in section 26(5), if any, the Competition Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

7. If, after consideration of the objections or suggestions referred to in section 26(5), if any, the Commission is of the opinion that further investigations are called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of the Competition Act, 2002.

8. If the report of the Director General referred to in section 26(3) recommends that there is contravention of any of the provisions of Competition Act, 2002 and the Competition Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of Competition Act, 2002.

4. Procedure for investigation of combinations under the Competition Act, 2002

The procedure for investigation of combinations has been specified under Section 29 of the Competition Act, 2002. The procedure is as under:

1. Where the Competition Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

1A. After receipt of the response of the parties to the combination under section 29(1), the Competition Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Competition Commission may direct.

2. The Competition Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under section 29(1A), whichever is later direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

3. The Competition Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under section 29(2).

4. The Competition Commission may, within fifteen working days from the expiry of the period specified in section 29(3), call for such additional or other information as it may deem fit from the parties to the said combination.

5. The additional or other information called for by the Commission shall be furnished by the parties referred to in section 29(4) within fifteen days from the expiry of the period specified in section 29(4).

6. After receipt of all information and within a period of forty-five working days from the expiry of the period specified in section 29(5), the Competition Commission shall proceed to deal with the case in accordance with the provisions contained in section 31

of the Competition Act, 2002.

5. Forms under GST Law

(i) Inspection can be carried out by any officer of Central tax only upon a written authorization in Form GST INS-01.

(ii) Where any goods, documents, books or things are liable for seizure, the proper officer or an authorised officer shall make an order of seizure in Form GST INS-02.

Lesson 8 - Crisis Management & Risk and Liability Mitigation

Directors and Officers Liability Insurance under SEBI regulations

Like most jurisdictions, India is no stranger to corporate fraud and scams. Financial scams, such as the Harshad Mehta episode or the Satyam fiasco has made it necessary for directors and Officer to think in the directions of undertaking Directors and Officers insurance. For the protection of Directors and Officers, SEBI has also mandated Directors and Officers of top 1000 listed companies vide its notification dated August 03, 2021 to undertake Directors and Officers insurance.

As per regulation 25(10) of the SEBI (LODR) Regulations, 2015 the requirement of undertaking Directors and Officers insurance has now been extended to the top 1000 companies with effect from January 01, 2022.

For more details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html

2. Case Study on crisis Management

Chipotle

In July 2015, the E coli outbreaks started for Chipotle and lasted through January 2016. It began in the Northwest and spread across dozens of states. The result was an 82% decrease in profits over the course of a year and Chipotle stock down 15%. 2016 also saw an executive arrested for cocaine possession and 10,000 workers suing the company for unpaid compensation.

Chipotle's Crisis Management

The burrito company's crisis management strategy has been a long and often criticized one. In the midst of the 2015 outbreaks, co-CEO Monty Moran spoke at an industry conference for investors saying:

It's been fueled by the sort of unusual and "even unorthodox way the CDC has chosen to announce cases related to the original outbreak in the Northwest," he said. And: "Because the media likes to write sensational headlines, you'll probably see, you know, when somebody sneezes ... 'Ah, it's E. coli from Chipotle' for a little bit of time.

While truthful, as journalists at Fortune pointed out, “this is not how you win back the world’s confidence.” A few days later, Chipotle founder Steve Ellis appeared on the today show apologizing to consumers and promising that “The procedures we’re putting in place today are so above industry norms that we are going to be the safest place to eat.” It was a bold promise, and one that made some PR professionals nervous for the already queasy company, but Chipotle’s stock made a 5% climb after Ellis’ speech.

In 2017, Moran stepped down as co-CEO, a move that was heralded by many. However, finger pointing, wishywashy answers and apologies, and a lack of company representation at the 125 food safety cases that were settled in 2016 has some feeling that the brand could have done a better, more authentic job of recovering its image.

Source: <https://brandfolder.com/blog/crisis-management>

Lesson 9 - Misrepresentation and Malpractices – Civil and Criminal Trial Procedure

1. Benches of National Company Law Tribunal

| S.NO. | Name Of Bench | Location | Territorial Jurisdiction of the Bench |
|-------|--|------------|--|
| 1 | (a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench. | New Delhi | (1) Union territory of Delhi. |
| 2 | (a) National Company Law Tribunal, Ahmedabad Bench. | Ahmedabad | (1) State of Gujarat (2) Union Territory of Dadra and Nagar Haveli (3) Union Territory of Daman and Diu |
| 3 | National Company Law Tribunal, Allahabad Bench. | Allahabad | (1) State of Uttar Pradesh. (2) State of Uttarakhand. |
| 4 | National Company Law Tribunal, Amaravati Bench. | Hyderabad | (1) State of Andhra Pradesh |
| 5 | National Company Law Tribunal, Bengaluru Bench. | Bengaluru | (1) State of Karnataka. |
| 6 | National Company Law Tribunal, Chandigarh Bench. | Chandigarh | (1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh. (5) State of Haryana. |

| S.NO. | Name Of Bench | Location | Territorial Jurisdiction of the Bench |
|-------|---|---------------|--|
| 7 | National Company Law Tribunal, Chennai Bench. | Chennai | (1) State of Tamil Nadu. (2) Union territory of Puducherry. |
| 8 | National Company Law Tribunal, Cuttack Bench. | Cuttack | (1) State of Chhattisgarh. (2) State of Odisha. |
| 9 | National Company Law Tribunal, Guwahati Bench. | Guwahati | (1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura. |
| 10 | National Company Law Tribunal, Hyderabad Bench. | Hyderabad | (1) State of Telangana. |
| 11 | National Company Law Tribunal, Indore Bench. | Ahmedabad | (1) State of Madhya Pradesh |
| 12 | National Company Law Tribunal, Jaipur Bench. | Jaipur | (1) State of Rajasthan. |
| 13 | National Company Law Tribunal, Kochi Bench. | Kochi | (1) State of Kerala (2) Union Territory of Laksha |
| 14 | National Company Law Tribunal, Kolkata Bench. | Kolkata Bench | (1) State of Bihar. (2) State of Jharkhand. (3) State of West Bengal. |

| S.NO. | Name Of Bench | Location | Territorial Jurisdiction of the Bench |
|-------|--|--------------|---|
| | | | (4) Union territory of Andaman and Nicobar Islands. |
| 15 | National Company Law Tribunal, Mumbai Bench. | Mumbai Bench | (1) State of Goa. (2) State of Maharashtra. |

For more details: <https://nclt.gov.in/national-company-law-tribunal-benches>

2. STATE OF A.P. v. GOURISHETTY MAHESH & ORS. [2010] INSC 504 (15 July 2010) (Case Law)

While exercising jurisdiction under Section 482 (Inherent Power of the Court) of the Code of Criminal Procedure, 1973, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry

Note: Students appearing in June, 2022 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2021.