Company Law

February 20, 2024	**Veena Ramanathapura Sreenivasarangan & Others (Appellants) Vs. Amruthamgamaya Nature Care and Leisure Private Limited & Anr (Respondents)**	**National Company Law Appellate Tribunal At Chennai** **Company Appeal (AT) (CH) No. 101/2022 & I.A. Nos. 854 of 2022 & 146, 1326 of 2023 (Arising out of the Impugned Order dated 08/06/2022 in**

Whether NCLT is empowered to direct audit of a Company?

Brief Facts:

A Petition under Section 241 of the Companies Act, 2013 was filed before NCLT and NCLT ordered investigation of accounts of the Company by appointing an Independent Chartered Accountant to investigate and audit accounts of the Company for the financial years ending on 31.03.2016, 31.03.2017 and 31.03.2018. Learned Sr. Counsel appearing for the Appellant stated that the Tribunal has erred in directing for Audit of the accounts of the Company through an independent Chartered Accountant without giving a finding of `Oppression and Mismanagement' and without giving a finding of any fraud committed. It was also submitted that appointment of independent Auditor to investigate the books and records of the Company amounts to fishing and roving expedition despite the fact that the allegations made in the Petition were general and vague.

Judgement

The Hon'ble NCLAT reliance placed this Tribunal Order in the case of *`Archer Power System P. Ltd.' Vs. `Cascade Energy P. Ltd. & Ors.',* reported in *2020 SCC OnLine NCLAT 1241* and held that the Tribunal under Rule 11 of NCLT Rules, 2016 has the inherent powers to cause audit of accounts or to make such orders as may be necessary for meeting the ends of justice and we find no fault in the impugned order on this account. As a consequence, the present Appeal fails and is accordingly dismissed. No order as to costs. The connected pending Interlocutory Applications, if any, are closed.

January 17, 2024	**Avanti Metals Private Limited (Appellant) Vs. Alkesh Gupta (Respondent)**	**National Company Law Appellate Tribunal (NCLAT) at Chennai** **(Appellate Jurisdiction)** **Company Appeal (AT) (CH) NO. 87/2023 (IA No. 1099 / 2023)**

Shares of any member in a Company are required to be transferred in the mode and manner provided for under the Articles of Association of the Company and it is bound to meet the requirements of the Article

Order

Hon'ble NCLAT inter alia observed that it is seen from the Section 44 of the Companies Act, 2013, shares

are construed as movable property governed by the Articles of Association of the Company and Article 8.15 mandates that a Succession Certificate is required for the transmission of the shares. When Section 44 of the Act provides that shares of any member in a Company are required to be transferred in the mode and manner provided for under the Articles of Association of the Company, the sole Respondent is bound to meet the requirements of the said article 8.15……. (Para 10)

The `Succession Certificate', specifies the `debts' and `securities entitles a `legal heirs' not only to receive the `Interest' or `Dividends' but also to `negotiate' or `transfer' them, as per decision in *`Themappa Chettiar' Vs. `Indian Overseas Bank', reported in (1943) 13 Comp. Cas. 202 (Madras).* In regard to disputes pertaining to `Will', parties are expected to get that dispute settled from a `Competent Court of Law' as per decision in *`C. Rajesh Kapoor' Vs. `Tirupati Balaji Hotels P. Ltd.', reported in (2017) 204 Comp. Cas 303*. If the `Probate Proceedings are pending in `Civil Court' then the `Petitioner' under the `Companies Act' for `rectification of register' will not be `maintainable'. In the facts of the attendant matter on hand, the Company can effect `transfer of shares', on the basis of `Succession Certificate', as per Section 370 of the `Indian Succession Act, 1925'.

For details:

https://nclat.nic.in/display-board/view_order

April 5, 2024	State of Maharashtra vs. National Organic Chemical Industries Ltd.	Supreme Court of India

Brief Facts:

The respondent company was incorporated with a share capital Rs. 36 crore rupees. It raised its share capital to Rs. 600 crores in 1992, and as a result, it paid Rs. 1.12 crore in stamp duty in accordance with article 10 of Schedule-I of the Bombay Stamp Act, 1958 (the "Stamp Act"). On August 2, 1994, the State of Maharashtra (appellant) changed Article 10 and set a maximum stamp duty amount that a firm could pay of Rs. 25 lakhs.

Following that, in accordance with section 97 of the Companies Act of 1956, the respondent submitted its Notice in Form No. 5, paid Rs. 25 lakhs in stamp duty, and passed a resolution for a further increase in its share capital to Rs. 1,200 crores. The respondent, however, claims that this was done unintentionally because they quickly realized that they were not required to pay stamp duty because they had already paid the maximum amount allowed by the Stamp Act Rs. 25 lakhs on their articles of association in 1992. As a result, the respondent sent the appellant a letter requesting a reimbursement for the Rs. 25 lakhs that they had paid in stamp duty.

The appellant denied this plea, stating that stamp duty was due each time a company's authorized share capital rose and that it was a continuous measure that required payment at the moment Form No. 5 was filed. Enraged, the respondent filed a writ suit in the Bombay High Court, contesting the aforementioned ruling and requesting a reimbursement of the stamp duty of Rs. 25 lakhs, along with interest, which they had unintentionally paid.

Order

It is a well-established legal principle that the general law must give way to the particular law when two laws conflict. When the Stamp Act and the corporations Act are read together, it becomes clear that although the former regulates the stamp duty payment for a variety of instruments, the latter covers all matters pertaining to corporations and other like entities. The Companies Act's several provisions outline the goal and parameters of the law. Therefore, it must be stated that, with regard to articles of association, the

Companies Act is the special law and the Stamp Act is the general law, with the special taking precedence over the general.

In Schedule-I of the Stamp Act, Article 10, the Legislature expressly referred to the articles of association. This is where stamp duty is imposed, among other things, upon an increase in a company's share capital. Therefore, stamp duty will be due on increased share capital even though section 31(2) of the Companies Act says otherwise. However, this is limited to the maximum amount of Rs. 25 lakhs. Stamp duty is not required for any increase in a company's share capital if there is no explicit provision taxing the increase.

Article 10 of the Stamp Act was amended to amend the charging section for Articles of Association. This means that the maximum cap of Rs. 25 lakhs would only apply as a one-time measure and not with each subsequent increase in a company's share capital. The Maharashtra Stamp(Amendment) Act, 2015 directly supports this idea. The 2015 modification has the effect of adding "increased share capital" to Column 2, and for each of the three scenarios, appropriate stamp duty will be computed based on the share capital or increased share capital. As a result, the cap will now be in effect for each distinct increment.

While it is true that the modification has no retrospective impact, the duty already paid on the same instrument must be taken into account because the "Articles of Association" instrument is still in place and the respondent started the increase after the cap was implemented. The only document that needs to be stamped is the increase in share capital contained in the original document, which the legislation has expressly designated as taxable. No new instrument has been produced to be stamped.

The instant civil appeal is dismissed for the grounds mentioned above, and the High Court's order is upheld. As a result, the respondent paid the appellants Rs. 25 lakhs, which they are now required to return together with interest at the rate of 6% annually.

https://api.sci.gov.in/supremecourt/2010/3357/3357_2010_6_1501_52023_Judgement_05-Apr-2024.pdf

July 24, 2024	**Karmyogi Builders (P.) Ltd. vs. Registrar of Companies**	**High Court of Delhi**

Brief Facts:

The petitioner Company's failed to file statutory returns since the year 1996, the Registrar of Companies (RoC) struck off the name of petitioner company from the register of companies. During course of proceeding, the writ court ordered that the petitioner's name be restored, contingent to costs being paid and the company files its pending annual returns as well as balance sheets. In accordance with that, the petitioner paid the cost, and as a result, the company's name and status were recorded in the RoC and converted from inactive to active.

Even after the aforementioned order was passed, the petitioner was not able to file its return due to conflicts between directors and/or shareholders. In accordance with section 248(5) of the 2013 Act, the RoC exercised it powers and removed the petitioner's name from the register of companies. The petitioner filed an instant writ, asking the writ court to give the requisite orders to the RoC to accept the requested delayed filing of the statutory returns and to revive the petitioner company.

Decision:

The registrar's previous action was issued in accordance with section 560(1)(6) of Companies Act, 1956 i.e old statute. This provision was effectively pari materia with section 248 of Companies Act, 2013 i.e new enactment.

In accordance with the old statute, the Registrar was authorized to remove a company's name from the

Register if there was reasonable cause to believe that it was not operating or conducting business. Similarly, in accordance with Section 248 of the new statute, where the company is not carrying on any business operation for a period two immediately preceding financial years, the Registrar has the power to proceed with striking off the name of the company from the Register of Companies.

It is made evident that there is no conflict between the provisions that underpinned the earlier action taken under the old statute and the subsequent action taken under the new statute. Instead, the new law outlines a more detailed process for removing a company's name from the register and a remedial measure for handling the de-registration of a company that is no longer in operation or conducting business. Additionally, the registers kept in accordance with the old statute are also considered to be registers kept in accordance with the new statute and may be used to pursue any kind of legal recourse.

Considering the discussion above, the petitioner's remedy under Chapter XXVII of the Companies Act , 2013 is with the National Company Law Tribunal. As a result, the petitioner's application is being dismissed and according to the law, the petitioner is free to take its grievances to the NCLT for resolution.

For details:

https://dhccaseinfo.nic.in/jsearch/

September 15, 2023	**Ashish Bhalla (Petitioner) vs. State and Anr (Respondents)**	**Delhi High Court**

Once SFIO opens an investigation under the Companies Act, a parallel probe by a different agency not permitted

Petitioner filed this suit for quashing of an FIR filed by Economic Offences Wing of the Delhi Police. The petitioner is an architect and an urban designer besides being a development professional having experience of working on various projects in addition to teaching 'Housing and Urban Design' in different Institutions and Universities.

A complaint to the Ministry of Corporate Affairs (MCA) and the Director, Serious Fraud Investigation Office (SFIO) was made against fraudulent and illegal siphoning of funds by petitioner.

An investigation under Section 212 of Companies Act, was launched into WTC group of companies, ownership of which vests with Mr. Bhalla, alleging that the accused company fraudulently and illegally siphoned the cash through shell companies and gathered funds illegally through a Ponzi scheme under the guise of "Assured Return" and many real estate projects.

The Honorable Court stated that "once the investigation into the affairs of a Company has been initiated by the SFIO, there is no reason for any other agency to conduct investigation into the affairs of such a Company, since the SFIO under Section 212 of the Companies Act itself is a specialized agency consisting of experts from diverse fields with the expertise, knowledge and requisite information under Section 211 of the Companies Act having a demarcated/specialised mechanism.

The Companies Act, 2013 is not in derogation of the Cr.P.C. They both and the proceedings emanating therefrom are very much co-existing and operating though in different spheres but before the same Special Court together. In fact going by what is contained in Section 209, 212(7) and 436(2) of the Companies Act, the provisions of Cr.P.C. are very much applicable to the SFIO proceedings." Therefore, FIR was quashed.

August 21, 2023	**In Re Singh Packwell Private Ltd (Petitioner) Vs RoC Delhi (Respondent)**	**Registrar of Companies, NCT of Delhi & Haryana**

Penalty Order passed by Ministry of Corporate Affairs against Singh Packwell Pvt. Ltd for non-maintenance & wrong mentioning of registered office

In case of Singh Packwell Private Limited upon physical inspection of registered office of the company on, it was found that company was maintaining its registered office in violation of Section 12 of the Companies Act, 2013. It was also found that wrong registered office was mentioned on the letter head used for issuing notice, Director's report and even on balance sheet filed along with e-form AOC -4 for the F.Y 2019-20 and there was delay in filing form INC-22 for change in registered office.

Taking the above-mentioned facts into consideration, a Penalty Order was passed by Ministry of Corporate Affairs against Singh Packwell Pvt. Ltd for non-maintenance of registered office, wrong registered office were mentioned on the letter head used for issuing notice, Director's report and even on balance sheet filed along with e-form AOC -4 for the F.Y 2019-20 pointing towards lack of transparency from Company's end. Amount of penalty as provided under sub section (8) of Section 12 is levied on the company and its two directors for violation of Section 12(1), 12(3)(c) and 12(4) of the Companies Act, 2013 separately and ordered to pay by the parties.

For details:

https://www.mca.gov.in/bin/dms/getdocument?mds=b9QwZvOBGLVHUv3ZyP0Ikw%253D%253D&type=open

June 01, 2023	**Bharat Goyal, Director (Petitioner) vs. Registrar of Companies, Mumbai (Respondent)**	**Registrar of Companies, Mumbai**

It is unsustainable to struck off the name of company by RoC which has substantial movable and immovable assets.

In this matter the appellant company has failed to file its Financial Statements and Annual Returns for the two consecutive Financial Years due to unavoidable circumstances. The court observed that the as per the filed audited accounts for the later Financial Years i.e. 2016-17 and 2017-18 shows that the company is in active state and carrying on day-to-day business.

Keeping in view of the above facts, the Appellant Company is having substantial movable as well as immovable assets, therefore, it cannot be said that the Appellant Company is not carrying on any business or operations.

Hence, the court is of the view that the order passed by the National Company Law Tribunal (Mumbai Bench) as well as Registrar of Companies, Mumbai is not sustainable in law and liable to be set aside. The name of the Company be restored.

For details:

https://nclat.nic.in/display-board/view_order

03 May, 2023	**Union of India and another (Petitioner) vs. Deloitte Haskins and Sells LLP & Anr. (Respondent)**	**Supreme Court of India**

Resignation of Auditor will not end proceedings under Section 140(5)

The Apex Court held that the subsequent resignation of an auditor after the application is filed under section 140(5) by itself shall not terminate the proceedings under section 140(5). Resignation and/or removal of an auditor cannot be said to be an end of the proceedings under section 140(5).

The Supreme Court upheld the constitutional validity of Section 140(5) of the Companies Act, 2013 and held that that the provision is "neither discriminatory, arbitrary and/or violative of Articles 14, 19(1)(g) of the Constitution of India". It is required to be noted that the role of auditors cannot be equated with directors and/or management. Auditors play very important role in the affairs of the company and therefore they have to act in the larger public interest and all other stakeholders including investors etc. Chapter X of the Act specifically for the "Audit and Auditors" looking to the importance of the auditors. Therefore, section 140(5) cannot be said to be discriminatory and/or violative of Article 14 of the Constitution of India.

July 10, 2023	**Siddharth Sahib Singh (Petitioner) vs. Apex Council 0f DDCA (Respondent)**	**High Court of Delhi**

Power of the NCLT under Section 245 & 244 of the Companies Act, 2013

In the above case, Hon'ble the Delhi High Court refused to entertain a writ petition filed by the petitioner and granted liberty to the petitioner to approach the NCLT for the redressal of its grievances and inter alia observed that "Section 245 of the Companies Act gives the power to the NCLT to restrain a company from committing an act which is ultra vires the articles or memorandum of the company. It also restrains the company from committing breach of any provision of the company's memorandum or articles and to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misrepresentation to the members or depositors and also restrain its directors from acting on such resolution……..

Though Section 244(1)(b) of the Companies Act provides that an application under Section 241 of the Companies Act can be entertained only if it is supported by one-fifth of the total number of members of the company but the NCLT has power to waive of this requirement. The Petitioner, therefore, ought to have approached the NCLT and if the NCLT would have refused to waive off the stipulated requirement of support of one-fifth members of the company then it was always open for the Petitioner to approach this Court by contending that no equally efficacious alternative remedy is left to him. It cannot be said that if this Court does not exercise its jurisdiction under Article 226 of the Constitution of India an irreversible damage would be caused to the DDCA and the same cannot be rectified by the Courts or that the DDCA will be subjected to an irreparable loss which needs urgent restraint orders."

For details:

https://ibbi.gov.in//uploads/order/ab0ce6736dab232c3a45cab0b692be3a.pdf

March 27, 2023	**Pranab Kumar Roy (Petitioner) vs Securities and Exchange Board of India (Respondent)**	**High Court of Calcutta**

Intimation of director's resignation by him to RoC is effective even if company failed to intimate RoC

As per Section 168 of the Companies Act, it is the duty of the company who shall inform the Registrar of Companies about the resignation of director. However, as per the provisions of the Companies Act the resigning director may also inform the RoC. In this matter, in the month of November 2013 in the General Meeting of the members, the petitioner resigned from the post of the Additional Director by serving his resignation letter to the Board of Directors i.e. after 4 months of his appointment. Despite receipt of the aforesaid letter, the name of the petitioner was not removed from the books of the Registrar of Companies, as the company failed to report the same to the Registrar of Companies. Meanwhile, the company violated the provisions of Companies Act and SEBI regulations while making public issue of securities (allotment of the Non- Convertible Debentures).

It was decided by the Hon'ble Court that the director cannot be arranged in a matter pertaining to year 2017 merely because his name continued to be reflected in RoC records as director in 2017 due to non-intimation of resignation by company. The criminal complaint for default in issuance of Non- Convertible Debentures (NCDs) pertained to 2017 i.e. after director had resigned. Thus, proceedings against the petitioner are liable to be quashed.

January 20, 2023	**Surendra Kumar Singhi (Petitioner) vs. Registrar of Companies (Respondent)**	**High Court of Calcutta**

Additional Directors equally responsible for company affairs as other Directors Facts of the Case:

The petitioner's case is that the Opposite party has filed a complaint before the learned Chief Metropolitan Magistrate, Kolkata against the petitioner stating there in that, M/s Mani Square Limited was incorporated under the Companies Act, 1956 and according to the provisions of Section 217(3) (Board's Report) of the Companies Act, 1956, the Board of the company was bound to give fullest information and explanation in its report on every reservation, qualification or adverse remark contained in Auditor's report.

Opposite party upon scrutiny of the Balance-sheet and other documents found that the Board of Directors did not furnish fullest information and explanation in their Director's report with respect to the Auditors in their report on Balance Sheet on their remark of that "there are no dues of Service Tax, VAT, Provident Fund, ESIC which had been deposited on account of any dispute except disputed amount of WBST/VAT". This has resulted in violation of provisions of Section 217(3) of the Companies Act, 1956 and the said violation was pointed out to the Directors of the company vide Show Cause Notice. On account of receipt of not satisfactory reply, the competent authority has issued instruction to launch prosecution for the aforesaid violation.

Consequently, the petitioner being a director of a company was accused of violating the provisions of Section 217(3) of the Companies Act. The Metropolitan Magistrate issued summons against the petitioner and other accused persons. The petitioner stating himself to be innocent and having no connection with the circumstances of the case chose not to take the course adopted by the rest of the accused persons and prayed for discharge by filing a petition but the same got rejected.

Following were the two issues before the High Court:

1. What post was held by the petitioner on the date of filing the report?
2. Whether the petitioner is responsible/liable for the offence alleged?

The High Court with regard to the first issue noted, "Form No. DIR – 11 clearly shows that on the date of resignation (30.12.2016) the petitioner was the "Director" of the Company…… Inspite of being shown on the portal as "Additional Director /Director" the petitioner did not lodge any complaint with the Ministry about the alleged wrong information. There is no case that the petitioner had filed any objection to the said wrong information (as alleged) on the portal."

With regard to the second issue, the Court said that from the records it is seen that the petitioner was then an "Additional Director" of the Company and that admittedly the other accused persons pleaded guilty.

"ROC must be informed by filing a new Form DIR 12 that the additional director has been regularized as a director in the Company", the Court further said.

It was further observed by the Court that the petitioner was an Additional Director on the date the board report was filed and that to counter the same, the evidence is required to be adduced during the trial.

Decision:

The Court, therefore, held, "The responsibility of an Additional Director being the same as that of a director they remain responsible, as the statute provides for the same. Thus, to quash the proceedings by exercising this Courts inherent powers would amount to an abuse of the process of Court and would also amount to serious miscarriage of justice."

Accordingly, the Court dismissed the plea of the petitioner.

December 21, 2023	**Sterlite Ports Limited & Ors vs. Regional Director (Southern Region)**	**NCLAT** **Company Appeal (AT) (CH) No. 99 of 2023/ (IA No. 1262 / 2023)**

Brief facts:

This Appeal was filed by the Appellants (Transferor Company), aggrieved by the Order NCLT- Chennai Bench in the amalgamation petition filed by them. The Mumbai -NCLT had allowed the amalgamation petition filed by SESA Mining Corporation Limited (Transferee Company') with the appointed date being 01.10.2020 as mentioned in the Scheme. However, the NCLT-Chennai while sanctioning the Scheme, modified the Appointed Date to 01.10.2022 as against the Appointed Date of 01.10.2020, as stated in the Scheme approved by NCLT, Mumbai.

Judgement

The brief point which falls for consideration in this Appeal is whether the NCLT was correct in fixing the Appointed Date to 01.10.2022, while allowing the Chennai Second Motion Petition and sanctioning the Scheme, when the NCLT - Mumbai, had sanctioned the Scheme filed by the Transferee Company with the Appointed Date of 01.10.2020.

It is not in dispute that the NCLT, Mumbai had already sanctioned the Scheme with the Appointed Date of 01.10.2020, vide Order dated 06.06.2022. In the IA filed on 31.03.2023, the Appellants had sought for rectification of the Appointed Date to 01.10.2020, which was dismissed on the ground that NCLT did

not have the power to review its own order. It is seen from the record that the Appointed Date as per the Scheme is 01.10.2020 and the same is within a period of one year from the date of filing of the Application for Approval of the Scheme with NCLT i.e., 29.09.2021.

At this juncture, it is relevant to rely on the Judgment of this Tribunal, *Accelyst Solutions Private Limited reported in 2021 SCC OnLine NCLAT 548,* in which matter, this Tribunal placed reliance on the Judgment of the Hon'ble Apex Court in *Miheer H. Mafatlal v. Mafatlal Industries Limited., (1997) 1 SCC 579,* in which case, the Court had laid down the broad contours of the jurisdiction of the Company Court in granting a sanction to the Scheme.

It is held by this Tribunal in the aforenoted *Accelyst Solutions Private Limited (supra)*, that the settled legal position, while exercising its power in sanctioning a Scheme of Amalgamation, the Courts / Tribunal has to examine as to whether, the Provision of Statute has been complied with. The Courts / Tribunal would have no further jurisdiction to sit in Appeal over the Commercial Wisdom of the Shareholders of the Company.

In the instant case, apart from the fact that NCLT - Mumbai, had already fixed the Appointed Date of the Scheme as 01.10.2020, the date of filing of the Application for Approval of the Scheme with NCLT - Chennai is 29.09.2021 and therefore is within a period of one year, and hence, attracts Clause 6(c) of the MCA General Circular No. 09/2019 dated 21.08.2019.

Additionally, NCLT has the discretion to fix the Appointed Date which could be beneficial to the interests of the Company, which in the instant case ought to have been fixed at 01.10.2020 as having two different Appointed Dates, would render the Scheme unworkable. The NCLT has powers under Rule 11 of the NCLT Rules, 2016, to fix the Appointed Date, which would be beneficial to the Scheme of Amalgamation.

For all the foregoing reasons, this Company Appeal is allowed and the Orders of the National Company Law Tribunal, Chennai, dated 22.03.2023 and 09.10.2023 are set aside.

July 07, 2022	**M/s. Roopya Finbizz Limited (Petitioner) Vs Registrar of Companies of Gujarat (Respondent)**	**Registrar of Companies of Gujarat**

Delayed compliance doesn't save a company from violation committed and it attracts penalty under the Companies Act, 2013

Facts of the Case:

M/s. Roopya Finbizz Limited was incorporated on 15th July 2008 having its registered office in Ahmedabad, Gujarat. The company had five directors on its board. The company was involved in the area of providing logistics services of D2C businesses which affects the customer experience, brand image, delivery economics and more. The company is unlisted public company. The company delayed in filing e-form SH-7 amounting to violation of section 64 of the Companies Act, 2013. The delayed period for filing the form was 36 days beyond the due date. The company filed an application in e- form GNL-1 suo-moto on 19th May 2022 for the delay in filing of form SH-7 to the Registrar of Companies stating that the company had violated the provisions of section 64 of the Companies Act 2013 and would like the matter to be adjudicated admitting their violation and agreeing for paying the applicable penalty.

The Registrar of Companies being the Adjudication Officer issued notice on 14th June 2022 to the company and its directors in default by giving an opportunity of being heard in the matter on 20th June, 2022. The authorized representative of the company along with two of its directors appeared for the adjudicating process and the company and its directors accepted that the default has been committed by them

unintentionally and that it has happened due to oversight from their part and requested the Adjudicating Officer to levy a minimum penalty.

Order:

The Adjudicating Officer had taken note of the submissions made by the company in the application and as well as at the time of personal hearing and having regard to the facts and circumstances imposed a total penalty of Rs. 54,000/- on the company and two of its director i.e. Rs. 18,000/- each on company and its two directors. The company and the directors shall have to pay the amount of penalty individually by way of form No. INC- 28 of e-payment under "Pay miscellaneous fees" category in MCA fees category within 90 days of this order and the Challan/SRN generated after payment of penalty through online mode shall have to be forwarded to the Registrar office along with the copy of form No. INC- 28. The order also states that in the event of non-compliance of this order prosecution will be filed under section 454(8)(ii) of the Companies Act, 2013 at the risk and cost of the company's responsibility without any further notice.

For details:

https://www.mca.gov.in/bin/dms/getdocument?mds=b8KsfwyM32onbf%252FIL7hF2Q%253D%253D&type=open

July 15, 2022	**Nitin Rekhan (Petitioner) vs. Union of India & Ors (Respondent)**	**Registrar of Companies of Gujarat**

Definition of 'Deposit' under section 2(31) of the Companies Act, 2013 cannot be applied retrospectively for a Share-Purchase Agreement

Facts of the Case:

The petitioner paid Rs. 40, 00,000/- to the directors of respondent company for issuance of shares which they failed to allot and therefore returned the money. The petitioner alleged that the Respondent failed to repay the interest @ 18% p.a. on the deposits accepted by a private company from the public as per Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014. The Petitioner approached the Registrar of Companies by filing an online complaint for non-compliance of the Rules and the recovery of the Interest amount.

The counsel for the ROC submitted that the amount in question, given as share application money by the Petitioner, returned without any interest to the Petitioner. He further contended that Petitioner had given the amount in question for allocation of shares in the year 2010 which falls under the operation of Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975 and not under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014.

In this case, the court framed two questions that required determination-

a) whether the Companies Act 2013 and the Companies (Acceptance of Deposit) Rules, 2014 were applicable on the amount in question and;

b) Whether the amount in question could be treated as "deposit".

Decision:

The Court opined that Section 2(31) of the Companies Act, 2013 that defines "deposit", came into force from 1st April 2014 and as such, could not be applied retrospectively for the share-purchase agreement between the Company and Petitioner that was entered into between the parties back in the year 2010. For

the same reason, Rules of 2014 could also not be applied on the amount in question.

Thus, the Act of 1956 and the Rules of 1975 were held to be applicable in the case.

Accordingly, as per Rule 2(b)(vii) of 1975 Rules read with General Circular of 2015, the Court stated that the share application money given by the Petitioner for allotment of shares could not be treated as "deposits". Therefore, the court held that the question of applicability of penal interest does not arise.

Thus, the Court found no cogent reasons to entertain the petition and dismissed the same.

For details:

http://164.100.69.66/jupload/dhc/CDS/judgement/15-07- 2022/CDS15072022CRLW5592022 _181236.pdf

September 27, 2022	**M/s Comviva Technologies Limited (Petitioner) Vs Registrar of Companies, New Delhi (Respondent)**	**Registrar of Companies, New Delhi**

Non-compliance of CSR Provisions will attract penalty under section 135 of the Companies Act, 2013.

Facts of the Case:

M/s Comviva Technologies Limited was incorporated in 1999 having its registered office in Haryana. The company is engaged in business of courier services nationally and as well internationally. During the financial year 2020-21, the company was required to spent a total amount of Rs. 2,88,65,811/- towards the CSR activities. However, the company has spent only Rs. 2,83,15,689/- thereby leaving a balance of an unspent amount of Rs. 5,50,122/-. During the end of the financial 2020-2021, the company was required to transfer the unspent amount of Rs. 5,50,122/- to the fund specified in schedule VII of the Companies Act 2013, as per the provisions of section 135 (5) of the Companies Act 2013 read with Rule 10 of the Companies (Corporate Social Responsibility Policy) Rules 2014.

The company, accordingly transferred the unspent amount of Rs. 5,50,122/- to PM Relief Fund on 22nd April 2021. However due to some technical error, the said amount came back into the company's bank account on the same day and the same remained unnoticed by the company officials.

However, the default was made good by the company and its officers by depositing the said unspent amount to the Prime Minister's National Relief Fund on 30th March 2022. The company admitted its non-compliance towards section 135(5) of the Companies Act 2013 by filing an application with the Registrar of Companies on 26th of July, 2022.

The Registrar of Companies issues a show cause notice to the company and its officers on 7th September 2022 directing the company to provide the requisite information on this matter. The company in response to the show cause notice issued by the Registrar submitted all the required details and also admitted the non-compliance of section 135(5) of the Companies Act 2013 on 16th September 2022.

The Registrar of Companies concluded that the company, its directors and officers have made the default in complying with the provisions of section 135(5) of the Companies Act 2013, by not transferring the unspent CSR amount to a fund specified in schedule VII of the Companies Act 2013, within a period of 6 months from the expiry of the financial year and therefore, are liable for penalties under section 135(7) of the Companies Act 2013.

Decision:

The Registrar of Companies has imposed a total penalty of Rs. 15, 40,341.60 on the company and its directors / officers in default for violation of section 135(5) of the Companies Act 2013 read with Rule 10 of the Companies (Corporate Social Responsibility Policy) Rules 2014. Penalty of Rs. 55,012.20 was imposed on each of the directors, MD, CFO and CS. Whereas the penalty of Rs. 11, 00,244.00/- was imposed on the company. The company and the directors were ordered to make the penalty payment through online by using the website www.mca.gov.in (Misc. head) in favour of "Pay and Accounts Officer,"

For details:

https://www.mca.gov.in/bin/dms/getdocument?mds=qd9jv%252BkO7XOJaAXfqvzFxA%253D%253D&type=open

April 25, 2022	**HGR Logistics Private Limited (Petitioner) vs. Kishor Goyal & Co. (Respondent)**	**Regional Director, North-Western Region, Ahmedabad.**

Removal of Statutory Auditor of Company by Regional Director upon complaint made by the company against Statutory Auditor for not conducting its audit in time.

Facts of the Case:

HGR Logistics Private Limited has filed an online application seeking approval for removal of its Statutory Auditors under Section 140 (1) of the Companies Act, 2013 by filing e-form no. ADT-2 on 20.02.2021.

The company has stated in its application that it has faced heavy penalties because the auditor was not able to conduct the audit in timely manner. The company also stated that the auditor was unwilling to visit the company even after multiple request made by the company. This creates the deadlock for the company as the auditor was not completing the audit nor was resigning from the company.

On the other hand, the auditor of the company claimed that they were unable to complete the audit as the company had not provided them with the financial information necessary to conduct the audit.

In this regard, ROC, Ahmedabad has submitted its report in the aforesaid matter vide letter dated 30th March, 2021. ROC in its report stated that the company has filed its last Balance sheet for the year ended as on 31.03.2019 and has failed to file Balance sheet for the year ending as at 31.03.2020 and relevant annual returns as per the requirement of Section 137(1) and Section 92(4) of the Companies Act, 2013. As the company/officers have violated the aforesaid provisions the adjudication u/s 454 of the Act is under process.

Decision

After careful examination of the application made under section 140(1) of the Companies Act and considering all the averments made by both the parties, the application filed by the company for removal of auditor deserves to be approved as the auditor could not establish or satisfy the authority as to why he should not be removed and why he should be continued as the auditor in the company even after complete loss of trust between both the parties. Thus, the matter has been decided on merits and in the interest of justice.

Hence, exercising powers vested with the Regional Director u/s 140 (1) of the Companies Act, 2013 as per the Notification No. S.O. 4090 (E) dated 19-12-2016, and having regards to all the facts & circumstances, the application for removal of Statutory Auditor under Section 140 (1) is approved. The application stands disposed of with these orders.

August 05, 2022	Rajender Singh Rawat (Petitioner) vs. ROC NCT of Delhi and Haryana (Respondent)	ROC NCT of Delhi and Haryana

NCLT Delhi sets aside the order of ROC for strike-off of company's name and orders to restore the name of the company failed to file its statutory returns and other requisite documents inadvertently and not willfully.

Facts of the Case

The appeal was filed by one shareholder of M/s Indigo Management & Consultancy Pvt. Ltd. for restoration of the name of the company which was struck off by ROC vide impunged order dated 08.08.2018. The action was taken on account of failure of the Company to file its statutory returns and other requisite documents since FY 2015-2018 giving rise to reasonable belief that company was not operational.

Appellant submitted that the failure to file annual return and financial statement for FY 2015- 18 was inadvertently and without malafide motive. Applicant has also placed on record the bank financial statements for FY 2014-20 and that they own various immovable property in the name of company. The applicant has prayed for acceptance of appeal.

ROC stated that the company had zero revenue from the operations in the FY 2015-2020 but the company own certain immovable properties hence they must be directed to file its annual return and balance sheet till date alongwith requisite late fees as per law.

Income Tax department stated in its reply that the applicant had been filing ITRs regularly for FY 2007 to 2021 and there is no demand pending against the company and they do not have any objection regarding the restoration of the name of company.

Decision

The NCLT set aside the order passed by the RoC stating that filings of annual returns and balance sheet before RoC were only inadvertent in nature and not willful. As per order the company's name will stand restored to its original position, as it had not been struck-off, subject to deposit of Rs. 1.00 Lac in PM Relief fund and filing of all pending documents with late fees.

For details:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/07101020015120 22/04/Order-Challenge/04_order-Challange_004_16599366171252644066662f09f69c37d6.pdf

January 15, 2021	Anuj Mittal & Anr. (Petitioners) vs. Union of India & Anr. (Respondents)	High Court of Delhi

Directors who were disqualified before May 2018 can continue to hold office of director in companies other than defaulting company

In the instant case, the directors of a company were disqualified from 1st November 2017 to 31st October 2022 due to non-filing of financial statements or annual returns for any continuous period of three financial years which is a non-compliance under section 164(2)(a) of the Companies Act, 2013. Therefore, DINs and DSCs of the directors were de- activated.

Because of disqualification and de-activation of DINs, the petitioners were facing problems in other active

companies. They were appointed as directors as they claim to be directors in other active companies and now wish to start business afresh.

The Court considered the judgment relating to activation of DIN/DSC numbers of directors of defaulting companies in Anjali Bhargava v. UOI [W.P. (C) No. 11264 of 2020, dated 6-1- 2021] and taken reference from the Ministry of Corporate Affairs CFSS scheme and stated that the directors of struck off companies who seek to be appointed as directors of other/new companies, ought to be provided with an opportunity to avail of CFSS. The scheme seeks to provide a fresh start for directors of defaulting companies who seek appointments in other companies or wish to start new businesses.

Decision:

The Court observed that since the disqualification of petitioners was prior to 7th May, 2018, petitioners would be directors who had been disqualified before 7th May, 2018, qua other companies in addition to defaulting company and proviso section 167(1)(a) would not apply. Directors would continue to be directors in companies other than defaulting company and, therefore, DINs and DSCs of petitioners would be re-activated within ten days. If the Petitioners wish to seek restoration of the struck off company, they are permitted to seek their remedies in accordance with law before the NCLT.

For details:

https://164.100.69.66/jupload/dhc/PMS/judgement/19-01-2021/ PMS15012021CW2812021_220353.pdf