CASE DIGEST

-SERIES 2

(Case Snippets and Case Studies)

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CASE DIGEST – SERIES 2

(Case Snippets and Case Studies)

◆ May 2020 ◆

President

- Ashish Garg

Vice President

- Nagendra D. Rao

Editorial Team

- Alka Kapoor
  Joint Secretary (SG)
- Lakshmi Arun
  Joint Director

Directorate of Academics

Content

PART A – CASE SNIPPETS

Company Law	2
Securities Laws	8
Direct Tax Laws	14
Indirect Tax Laws	22
Environment Laws	28
Arbitration Act	29
Foreign Contribution & Regulation	30
Constitution of India	31
Right to Information Act	32
Competition Act	33
Insolvency & Bankruptcy Code	34
Labour Laws	36
Cyber Laws	38
Laws relating to Consumer Protection	40

PART B – CASE STUDIES

CG Power and Industrial Solution Ltd. - Corporate Governance Failure?	42
PACL Collective Investment Scheme – Case Study	60

© The Institute of Company Secretaries of India.

All rights reserved. No part of this case digest may be translated or copied in any form or by any means without the prior written permission of The Institute of Company Secretaries of India.

Disclaimer : Although due care and diligence have been taken in preparation and uploading this case digest, the Institute shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this case digest. Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.

Part A
Case Snippets

COMPANY LAW

1.	**18.03.2020**	***Mona Aggarwal and Ors. (Appellant*) vs. *Ghaziabad Engg. Company Ltd. and Ors*. (Respondent)** **(Company Appeal (AT) No. 320 of 2019)**	**The National Company Law Appellate Tribunal (NCLAT)**

Section 248 of the Companies Act, 2013 in no manner will affect the powers of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

The National Company Law Appellate Tribunal (NCLAT), New Delhi held that from sub-section (8) of Section 248 of the Companies Act, 2013, it is clear that Section 248 in no manner will affect the powers of the Tribunal to wind up the company, the name of which has been struck off from the register of companies. Therefore, even after removal of the name of the company from the register of companies, the NCLT can proceed with the petition for winding up under Section 271 of the Companies Act, 2013.

2.	**03.03.2020**	***Sunita Palta & Ors. (Petitioners*) vs. *M/s Kit Marketing Pvt. Ltd.* (Respondent)** **(CRL. M.C. 1410/2018)**	**The Delhi High Court**

The Non-Executive Directors of a company are exempted from Cheque Dishonour Proceedings under Section 138 of The Negotiable Instruments Act, 1881.

The Delhi High Court has held that the petitioners are neither the Managing Directors nor the Authorized Signatories of the accused company. A perusal of the complaint filed under Section 138 r/w Sections 141/142 of The Negotiable Instruments Act, 1881 filed by the complainant shows that except for the general allegation stating that the petitioners were responsible for control and management of day to day affairs of the accused company, no specific role has been attributed to the petitioners. To fasten the criminal liability under The Negotiable Instruments Act, 1881, the above generalised averment without any specific details as to how and in what manner, the petitioners were responsible for the control and management of affairs of the company, is not enough.

The impugned order with respect to summoning the present petitioners for the offence under Section 138 of The Negotiable Instruments Act, 1881, is thus quashed.

3.	**4.02.2020**	***Vijay Pal Garg & Ors. (Appellants)* vs. *Pooja Bahry* (Liquidator in the matter of Gee Ispat Private Limited) (Respondent)** **(Company Appeal (AT) Insolvency No. 949 of 2019)**	**The National Company Law Appellate Tribunal (NCLAT)**

The term 'Adjudicating Authority', as defined in Section 5(1) of IBC cannot come within the ambit of court as defined in Section 2(29) of the Companies Act, 2013.

The National Company Law Appellate Tribunal (NCLAT), New Delhi held that the term 'Adjudicating Authority', as defined in Section 5(1) of IBC cannot come within the ambit of court as defined in Section 2(29) of the Companies Act, 2013. Thus, keeping in mind a prime fact that the Tribunal/Adjudicating Authority is guided by the Principles of Natural justice and is to follow the procedure prescribed u/s 213(b) of the Companies Act, 2013 comes to an 'irresistible' and inescapable conclusion that the Adjudicating Authorities (Tribunal) in law is not empowered to order an investigation directly to be carried out by the Central Government.

It was observed that an Adjudicating Authority (Tribunal), as a competent / appropriate authority in terms of Section 213 of the Companies Act, 2013 has an option to issue notice in regard to the charges / allegations levelled against the promoters and others (including the Appellants) of course after following the due procedure enshrined under Section 213 of the Companies Act, 2013. In case, an *ex facie / prima facie* case is made out, then, the Tribunal is empowered to refer the matter to the Central Government for an investigation by the inspectors and upon such investigation, if any action is required to be taken and if the Central Government subjectively opines that the subject matter in issue needs an investigation, through the Serious Fraud Investigation Office, it may proceed in accordance with the law.

4.	**29.01.2020**	***Bank of Baroda (Appellant)* vs. *Aban Offshore Limited (Respondent)*** **(Company Appeal (AT) No. 35 of 2019)**	**The National Company Law Appellate Tribunal (NCLAT)**

Remedies available for Preference shareholders in relation to redemption of preference shares

The National Company Law Appellate Tribunal (NCLAT), New Delhi held that intention of the legislature while promulgating Section 55 of the Companies Act, 2013 was to compulsorily provide for redemption of preference shares by doing away with the issue of irredeemable preference shares. Therefore, even though there is no specific provision stipulated under the Companies Act, 2013 through which relief can be sought by preference shareholders in case of non-redemption by the company or consequent non-filing of petition under Section 55 of the said Act, the intention of the legislature being clear and absolute, Tribunal's inherent power can be invoked to get an appropriate relief by an aggrieved preference shareholder(s).

Alternatively, preference shareholders coming within the definition of 'member(s)' under Section 2(55) read with Section 88 of the Companies Act, 2013, may file a petition under Section 245 of the said Act, as a class action suit, being aggrieved by the conduct of affairs of the company. Thereby, it was held that preference shareholders are not remediless and for redemption of preference shares, they can file an application under Section 55(3) of the Companies Act, 2013 or alternatively they may also file application under Section 245 of the Companies Act, 2013 as a class action suit and the NCLT while exercising the inherent power viz. Rule 11 of NCLT Rules, 2016 can pass appropriate order.

5.	**20.12.2019**	***Joint Commissioner of Income Tax (OSD), Circle (3)(3)-1, Mumbai and Income Tax Officer, Ward 3(3)-1, Mumbai (Appellants)* vs. *Reliance Jio Infocomm Ltd. & Ors. and M/s Reliance Jio Infratel Pvt. Ltd & Ors. (Respondents)*** **(Company Appeal (AT) Nos. 113 and 114 of 2019)**	**The National Company Law Appellate Tribunal (NCLAT)**

Mere fact that a Scheme of Arrangement may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

The National Company Law Appellate Tribunal (NCLAT), New Delhi, held that without going to the record and without placing any evidence or substantiating the allegation of avoidance of tax by appearing before the Tribunal, it was not open to the income tax department to hold that the composite scheme of arrangement amongst the petitioner companies and their respective shareholders and creditors is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance. The NCLAT observed that mere fact that a scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

The Income Tax Department, which sought for liberty, while accepted by the Petitioner Companies (Respondents herein) and the NCLT, Ahmedabad bench while approving the Composite Scheme of Arrangement has granted liberty. Such liberty to the Income Tax Department to enquire into the matter, if any part of the Composite Scheme of Arrangement amounts to tax avoidance or is against the provisions of the Income Tax and is to let it take appropriate steps if so required.

Thus, NCLAT upheld the decision of NCLT, Ahmedabad bench and in view of the liberty given to the Income Tax Department decided not to interfere with the Scheme of Arrangement as approved by the Tribunal and dismissed the appeals filed.

6.	**04.12.2019**	***Regional Director, Southern Region, MCA and Registrar of Companies, Chennai (Appellants) vs. Real Image LLP and Ors. (Respondents)*** **(Company Appeal (AT) No. 352 of 2018)**	**The National Company Law Appellate Tribunal (NCLAT)**

If an Indian Limited Liability Partnership ('LLP') is proposed to be merged into an Indian company then firstly, the LLP has to apply for registration under Section 366 of the Companies Act, 2013.

The National Company Law Appellate Tribunal (NCLAT), New Delhi held that, it is apparent that as per Section 232 of the Companies Act, 2013, a company or companies can be merged or amalgamated into another company or companies. The Companies Act, 2013 has taken care of merger of LLP into company. In this regard Section 366 of the Companies Act, 2013 provides that for the purpose of Part I of Chapter XXI the word company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity which can apply for registration under this part. It means that under this part LLP will be treated as company and it can apply for registration and once the LLP is registered as company then the company can be merged in another company as per Section 232 of the Companies Act, 2013.

NCLAT further observed that the provisions of Act 2013 as a whole in reference of conversion of Indian LLP into Indian company there is no ambiguity or absurdity or anomalous results which could not have been intended by the legislature. The principal of casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. There is no such occasion to apply the principal of casus omissus.

The NCLAT set aside the order of the NCLT, Chennai bench, which is allowing the merger of an Indian LLP with an Indian company without such registration.

7.	**04.12.2019**	***Registrar of Companies, Kerala (Appellant) vs. Ayoli Abdulla (Respondent)*** **(Company Appeal (AT) No.145 of 2019)**	**The National Company Law Appellate Tribunal (NCLAT)**

NCLT per se has no power to waive the filing fee & additional fee.

The National Company Law Appellate Tribunal (NCLAT), New Delhi set aside the order passed by the NCLT, Chennai Bench to the extent of waival of additional fee for filing of Balance Sheet and Annual Return and held that NCLT per se has no power to waive the filing fee & additional fee.

The Registrar of Companies, Kerala is directed to charge minimum additional fee. The Respondent is directed to file all the pending statutory returns viz., Balance Sheet and Annual Return with filing fee and additional fee within a period of 30 days from the date of receipt of this order and RoC, Kerala is directed to accept the same with minimum additional fee.

8.	**14.11.2019**	***Oswal Greentech Ltd. and Ors (Appellant)* vs. *Pankaj Oswal and Ors. (Respondent)*** **(Company Appeal (AT) Nos. 410,411 and 412 of 2018)**	**The National Company Law Appellate Tribunal (NCLAT)**

Right arising out of an instrument does not vest with nominee automatically on the death of the original holder of the instrument.

The National Company Law Appellate Tribunal (NCLAT), New Delhi dismissed the appeals filed by the Appellants and held that application filed under Sections 241, 242 & 244 of the Companies Act, 2013 was maintainable at the instance of Mr. Pankaj Oswal (1st Respondent) otherwise also, in view of the matter that his claim relating to the shares of Late Mr. Abhey Kumar Oswal which is pending in a suit before the Court of Competent Jurisdiction, this is a fit case for waiver under sub-section(4) of Section 244 of the Companies Act, 2013 and for that the application under Sections 241, 242 should be heard on merit.

NCLAT observed that the right arising out of an instrument does not vest with nominee automatically on the death of the original holder of the instrument. Nominee does not mean that the amount or the share belongs to the nominee. On the death of the holder of the instrument, the amount/share vests with the legal heirs, the nominee merely holds the amount/share herein till the matter of vesting is decided in favour of the legal heirs.

9.	**6.11.2019**	***M/s J.R. Diamonds Pvt. Ltd. (Vinod Tarachand Agrawal (Liquidator of the company)) (Appellant)* vs. *Registrar of Companies, Gujarat (Respondent)*** **(Co. Appeal No. 53/252(3) / NCLT / AHM/ 2019)**	**The National Company Law Tribunal, Ahmedabad Bench**

The name of the company should not be struck off, if there is some pending litigation by or against the company

The National Company Law Tribunal, Ahmedabad Bench set aside ROC order of striking off the name of the company and held that name of the company should not be struck off, if there is some pending litigation by or against the company and directed the Registrar of Companies, Gujarat to restore the name of the company in statutory register of companies but subject to compliance of prescribed conditions.

10.	**24.10.2019**	***Jindal Steel and Power Limited (Appellant)* vs. *Arun Kumar Jagatramka and Ors. (Respondents)*** **Company Appeal (AT) No. 221 of 2018**	**The National Company Law Appellate Tribunal (NCLAT)**

During the Liquidation proceeding under Insolvency and Bankruptcy Code, 2016 (IBC), a petition under Section 230 to 232 of the Companies Act, 2013 is maintainable.

The issue raised is this case was whether in a liquidation proceeding under Insolvency and Bankruptcy Code, 2016 (IBC), the Scheme for Compromise and Arrangement can be made in terms of Sections 230 to 232 of the Companies Act, 2013 and if so permissible, whether the Promoter is eligible to file an application for Compromise and Arrangement, while he is ineligible under Section 29A of IBC to submit a Resolution Plan.

The National Company Law Appellate Tribunal (NCLAT), New Delhi held that during the liquidation process, step required to be taken for its revival and continuance of the 'Corporate Debtor' by protecting the 'Corporate Debtor' from its management and from a death by liquidation. During a Liquidation proceeding under IBC, a petition under Section 230 to 232 of the Companies Act, 2013 is maintainable.

NCLAT further, stated that even during the period of Liquidation, for the purpose of Section 230 to 232 of the Companies Act, 2013, the 'Corporate Debtor' is to be saved from its own management, meaning thereby the Promoters, who are ineligible under Section 29A of IBC, are not entitled to file application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act, 2013. Proviso to Section 35(f) of IBC prohibits the Liquidator to sell the immovable and movable property or actionable claims of the 'Corporate Debtor' in Liquidation to any person who is not eligible to be a Resolution Applicant

Promoter, if ineligible under Section 29A of IBC cannot make an application for Compromise and Arrangement for taking back the immovable and movable property or actionable claims of the 'Corporate Debtor'.

NCLAT thus, set aside the order passed by the NCLT, Kolkata bench and remitted the case to Liquidator/Adjudicating Authority to proceed in accordance with the judgement.

SECURITIES LAW

1.	**04.03.2020**	***Picture house Media Ltd. (Appellant*) vs. *Bombay Stock Exchange Ltd. (Respondent)***	**Securities Appellate Tribunal**

Penalty imposed for non-compliance of SEBI LODR Regulations on delay appointment of women director

The provisions of the LODR regulations require that every listed company should have a women director. The appellant hereby is a public listed company and one women director resigned and consequently the post became vacant which was require to be filled up by another woman under the LODR Regulations. Since there was a delay in appointing a woman director of the company, the penalty was imposed by BSE under LODR Regulations. The appellant has filed the appeal against the order passed by BSE imposing a penalty of Rs.7,59,920/- for violation of Regulations 17(1) and 19(1) and 19(2) of SEBI LODR Regulations, 2015. In the light of default committed by the appellant SAT did not find any error in the impugned order and dismissed the appeal.

2.	**21.02.2020**	***Pacific Finstock Ltd. (Appellant)* vs. *BSE Ltd. (Respondent)***	**Securities Appellate Tribunal**

For Listing of a security, the Listing norms as on date of Application filed alone is required to be considerd but status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application.

The appellant filed listing application to BSE Limited on July 29, 2017. In the meanwhile, the promoters/ directors of the appellant company were debarred from accessing the securities market vide SEBI's order dated September 28, 2019. This fact was brought to the notice of the appellant and sought clarification as to how the company is required to comply with the requirements for direct listing of its securities. The promoters/ Directors of the appellant company were debarred from accessing the securities market therefore the direct listing requirements norms had not been complied with and accordingly the listing application was rejected by BSE Ltd. The listing norms that was in force on the date when the listing application was filed was alone required to be considered. Subsequent norms or amended norms or regulations are not required to be considered. However, the status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application. If on the date when the listing application was being considered the promoters/ directors of the company committed default and thereby incurred a debarment from accessing the securities market then it was imperative upon the authority to consider such debarment while considering the listing application. In the instant case, the debarment was in direct conflict when the norms stipulated for considering the listing agreement. The

said listing requirements norms were not rectified and consequently the BSE had no option but to reject the listing application. SAT dismissed the appeal.

3.	**24.12.2019**	***Star India Market Research (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Penalty imposed by SEBI on violating SEBI (Investment Advisor) Regulations, 2013, further reduced by SAT keeping in view the financial capability of appellant

SEBI imposed a penalty of Rs. 40 lakh on a SEBI registered Investment Advisor on violation of Regulation 15, 16 and 17 with Schedule III of the SEBI (Investment Advisor) Regulations, 2013. The main alleged violations against the appellant are (i) Offering products without considering the risk profile of the clients (ii) Offering high net-worth individual (HNIs) services to unsuitable clients (iii) Receiving payments in advance for future services (iv) Charging high and unreasonable fee from clients. Appellant filed appeal to SAT and appeal was partly allowed. Though it is admitted fact that the appellant has committed certain violations however SAT finds that the penalty imposed was too harsh and disproportionate. The appellant is a small investment advisor with a profit of about Rs. 30 lakh in a year and with a small amount of net worth. The penalty therefore is reduced from Rs. 40 lakh to Rs. 20 lakh.

4.	**17.03.2020**	***Susheel Somani & Ors.* (Appellant) vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Penalty imposed by SEBI on violating SAST Regulations, further reduced by SAT considering it a technical breach

Aggrieved by the order of the Adjudicating Officer of the respondent SEBI dated December 27, 2017 imposing a penalty of Rs. 15 lacs for violation of provisions of public announcement of an open offer under Regulation 3(2) read with Regulation 13(1) of the SEBI (SAST) Regulations, 2011, the present appeal is preferred.

The appellants contended before the AO that there was no violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulations, 2011 since the transfer was inter se between the promoters, the same was exempted from making a public announcement as provided by Regulation 10 of the SAST Regulations.

As regard the exemption, the AO found that while Regulation 10 of the SAST Regulations provides for making disclosures to the stock exchanges and to the company within a period of two working days. In the present case, the appellants made the disclosures on 7th day as against the provisions of Regulation 29(3).

[Reg. 29(3) - the disclosures are required to be made within two working days]

Thus, technically the appellants were not exempted from making public announcement and, thus, are in violation of the relevant regulations. The AO has observed that as the condition of making disclosures within two working days is not fulfilled, the act was not fit for grant of exemption. In the circumstances, the penalty was imposed. The appellants made the disclosures though belatedly after five days as required by Regulation 29 of the SAST Regulations.

Thus, it was a technical breach and, therefore, AO instead of imposing a penalty of Rs. 15 lacs, imposed a penalty of Rs. 5 lacs which would have been just and sufficient. The appeal was partly allowed.

5.	**27.02.2020**	***Mr. Sandeep Chatterjee (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Inordinate delay in appeal to Tribunal not allowed

The appellant were directed jointly and severally to refund the money collected through the issue of non-convertible redeemable secured debentures to the allottees along with interest at the rate of 15% per annum and were further restrained from associating themselves with any listed public company for a period of four years or till the date of refund of money to the allottees. Further, there is a delay of 1181 days in filing the appeal to the tribunal in as much as the appeal was filed on February 6, 2020.

Accordingly, an application of condonation of delay has also been filed by the appellant. The Application for condonation of the delay is rejected on account of inordinate delay in approaching the Tribunal, as a result of which the appeal is also dismissed.

6.	**25.02.2020**	***Zenith Highrise Infracon Ltd., Mr. Katyal banerjee (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Once allotment is made to less than fifty allottees by way of private allotment the first proviso to Section 67(3) clearly makes it a private issue and not a public issue.

The appellant company raised its capital in the financial year 2012-2013 by allotment of Redeemable Preferential Shares ("RPS") of Rs. 100 each through private placement, that is, to friends and relatives of the members/ directors and raised an amount of Rs. 43,04,000 from 47 allottees. A list of the allottees was filed before the Registrar of Companies (ROC). Three allottees made complaints to SEBI in respect of issue of RPS with regard to non-inclusion of their names in the list submitted before the RoC. On enquiry of the SEBI it was observed that the company had raised an amount of Rs. 43,04,000 from 52 allottees whereas the RoC record showed allotment of RPS to 49 persons. Based on this discrepancy SEBI found that the RPS was made to 50 persons in violation of Section 67(3) of the Companies Act, 1956 and consequently the WTM directed the company and its directors to refund the monies collected through RPS along with interest at the rate of 15% per annum and further restrained the directors from associating them with any listed company which would operate from the date of completion of refund to the investors. The appellants being aggrieved by the order of the WTD of SEBI have filed the appeal. The appeal is allowed on the finding that no evidence has come forward to show that the company had made a public offer other than these 49 persons. Once allotment is made to less than fifty allottees by way of private allotment the first proviso to Section 67(3) clearly makes it a private issue and not a public issue. Consequently, there is no violation of the provisions of the Companies Act, 2013. Thus, the order of the WTM cannot be sustained and is quashed. The appeals are allowed.

7.	**12.02.2020**	***Shruti Vora (Appellant)* vs. *SEBI Respondent)***	**Securities Appellate Tribunal**

No duty cast upon the Adjudicating Officer to disclose or provide all the documents which are not relied upon while issuing Show Cause Notice

Appellant (Shruti Vohra) requested to the respondent (SEBI) to be allowed for the full inspection of other documents obtained during the investigation of the appellant and copies be supplied thereof. According to appellant, the inspection of the documents was only confined to the show cause notice and documents relied upon in the show cause notice. The core issue is whether the appellant is entitled for inspection and for supply of all the documents in possession of the adjudicating authority including those documents upon which no reliance has been placed by the Adjudicating Officer (AO) of the SEBI in the show cause notice. SAT observed that Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by 9 Adjudicating Officer) Rules, 1995 does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. Hence, there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.

8.	**07.09.2017**	***Mega Resources Ltd. (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Ignorance of law will not excuse the appellant to escape the liability of violating the law

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any mala fide intentions. However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct.

Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-

disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs. Five Lakh to Rs. Twenty Five crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Judgement : It is true that the maximum monetary penalty imposable for non disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. Five Lakh and by the amendment dated October 29, 2002 it is up to Rs. Twenty Five Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. Twenty Five Crore, SAT finds that the penalty of Rs. Fifty Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. Fifty Lakh is upheld and the appeal is dismissed.

9.	**16.03.2020**	***G P Shah Investment Private Limited & Ors. (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

The present appeal has been filed against the order of the Adjudicating Officer, SEBI dated March 13, 2019 imposing a penalty of 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011" for convenience).

This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement of an open offer for acquiring the shares of the target company.

Judgement : SAT finds that no relief can be granted to the appellants as AO granted several opportunities but the appellants chose not to appear or file any reply. In the light of the aforesaid, SAT are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise. With regard to the quantum of penalty, SAT finds that the order of the Whole Time Member (WTM) directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, SAT did not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of Rs. 25 crores or three times the amount of profits could have been

imposed. In view of the aforesaid, SAT do not find any merit in the appeal and the same is dismissed with no order as to costs.

10.	**01.12.2014**	***Vidharbha Industries Ltd. (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

Penalty under Section 15HB of SEBI Act, 1992 for not obtaining SCORES authentication

Appellant is aggrieved by the order passed by Adjudicating Officer (AO), SEBI on August 28, 2014. By that order the penalty of 2 lakh rupees was imposed on the appellant under Section 15HB of the SEBI Act, 1992 on ground that appellant had failed to comply with the requirements specified in SEBI circular dated April 17, 2013 for SCORES authentication.

Relevant facts are that SEBI had introduced an online electronic system for resolution of investors grievances i.e., SCORES in the year 2011. For the purpose of accessing the complaints of the investors against the companies as uploaded in the SCORES, listed companies were required to log in to SCORES system electronically through a company specific user id and password to be provided by SEBI.

Where a listed company fails to obtain SCORES authentication within the time stipulated by SEBI, then it amounts to violating the directions of SEBI and in such a case penalty is imposable under Section 15HB of SEBI Act which shall not be less than one lakh rupees but which may extend to one crore rupees.

Thus, in the present case, the AO had imposed penalty of Rs. 2 Lac which cannot be said to be arbitrary, excessive or unreasonable. Accordingly, the appeal was dismissed with no order as to costs.

DIRECT TAX LAWS

1.	**16.03.2020**	***Auto Fuel Centre (Appellant)* vs. *JCIT (Respondents)***	**ITAT Kolkata Bench**

Whether the repayment of loan in cash in contravention of the provisions of section 269T of the Income Tax Act 1961 will attracts Penalty u/s 271E of the Income Tax Act, 1961?"

The assessee filed its return of income for the A.Y. 2013-14 on 19-09-2013 disclosing total income of Rs. 1,79,515. An assessment u/s 143(3) of Income Tax Act, 2016 (I.T. Act, 1961) has been made on 21/03/2016 on a total income of Rs. 2,72,280. The assessing officer noticed that the assessee had repaid cash loan of Rs. 1,40,000 and 4,40,000 in aggregate to loan creditors Sri Bijay Guha and Sri Samarendra Sinha Babu respectively, on different dates.

The assessing officer observed that total repayment of loan in cash to the tune of Rs. 5,80,000 (Rs. 1,40,000 + and 4,40,000) was made by assessee during A.Y. 2013-14 which is in contravention of the provisions of section 269T of the I.T. Act, 1961,which attracts Penalty u/s 271E of the I.T. Act, 1961. Therefore, AO issued notice to the assessee u/s 271E of the I.T. Act 1961.

The assessee replied that entire round of transactions took place within the relatives and friends of the family and he had made repayment of the money to the persons who were in dire need of funds on those days, in order to enable them to carry on their business. Further, the transactions of repayment of loan in question in the instant case are genuine and bona fide, therefore the penal proceedings u/s 271E of the I.T. Act, 1961 should not be initiated.

However, the assessing officer rejected the contention of the assessee and imposed the penalty of Rs. 5,80,000 u/s 271E of the I.T. Act 1961 for violation of provisions of section 269T of the I.T. Act 1961.

Judgement : The Income Tax Appellate Tribunal (ITAT) head that the provisions of section 271E of the Income Tax Act, 1961 lays down conditions for imposition of penalty for repayments of loans and deposits in cash, where the amount exceeds Rs. 20,000 in violation of section 269SS of the Act. Considering the fact that this provision is brought in for identification of source for repayment, there should not be any levy of penalty where the persons are otherwise properly identified and the transactions are genuine, because there can be no attempt to evade tax, where the identities of the persons dealt with are known. In the instant case, the repayment of advances from regular parties are identifiable and the assessee has explained the circumstances in which it was constrained to make the repayment of the loans in question in cash. That being so, the penalty imposed in the sum of Rs. 5,80,000 on repayment of advances from two persons should be deleted, hence the penalty of Rs. 5,80,000 is deleted.

2.	**15.12.2017**	***Justice K.S. Puttaswamy (RETD.) (Appellant)* vs. *Union of India (Respondents)***	**Supreme Court of India**

Whether linking of Aadhaar number with PAN u/s 139AA of the Income Tax Act, 1961 were not examined in the context of privacy rights enshrined in Article 21 of the Constitution.

The Finance Act, 2017 inserted a new section 139AA in the Income-Tax Act, 1961. With effect from July 1, 2017 this provision requires every eligible person to link the Aadhaar no. with PAN and quote the Aadhaar number in the Income-Tax Return (ITR). If any person does not possess the Aadhaar Number but he has applied for the Aadhaar card then he has to quote Enrolment ID of such Aadhaar application in the ITR.

Judgement: The Supreme Court had already upheld the validity of Section 139AA of the Income Tax Act, 1961 by repelling the contention raised on Articles 14 and 19 of the Constitution of India in the case of *Binoy Viswam* v. *Union of India [2017]*. However, Section 139AA of the Income Tax Act, 1961 was not examined in the context of privacy rights enshrined in Article 21 of the Constitution. The Supreme Court in the case of *K S Puttaswamy* v. *Union of India* writ petition (civil) no 494 of 2012 held that, though privacy is a fundamental right, yet it is not an absolute right and is subject to certain limitations. The following are the triple tests which need to be satisfied for judging the permissible limits for invasion of privacy while testing the validity of any legislation:

a) Existence of a law

b) Legitimate State interest

c) Test of Proportionality

The first requirement stands satisfied as section 139AA of the Income Tax Act, 1961 is a statutory provision and, therefore, there is a backing of law. Insofar as requirement of 'legitimate State interest' is concerned, Section 139AA of the Income Tax Act, 1961 seeks to safeguard the following interest:

"To prevent income tax evasion by requiring, through an amendment to the Income Tax Act, that the Aadhaar number be linked with the PAN."

Regarding the aspect of proportionality, there was specific discussion on that aspect in BinoyViswam's case (supra) as well. Therefore, the provision of Section 139AA of the Income Tax Act, 1961 has successfully met the triple test of right to privacy.

3.	**06.06.2018**	**MasterCard Asia Pacific Pte. Ltd.**	**AAR RULING**

Whether MasterCard shall have a Permanent Establishment (PE) in India and its fees for processing card payments taxable as business income?

The Applicant, MasterCard Asia Pacific, is a Singaporean company engaged in processing of electronic payments. Customers are provided with a MasterCard Interface Processor (MIP) that connects to MasterCard's Network and processing centres. Indian subsidiary owns and maintains MlPs placed at Customers' locations in India. The applicant approached the Authority for Advance Ruling (AAR) to decide if it had a PE in India.

RULING : The Authority for Advance Rulings held that MasterCard has a PE in India under provisions of Article 5 of India-Singapore Double Tax Avoidance Agreement (DTAA) in respect of services rendered with regard to use of a global network and infrastructure to process card payment for Customers in India. It was held that the applicant has fixed place PE, service PE and dependent agency PE in India.

The applicant was held to have a PE in India because the MIPs in India play a crucial role while facilitating the authorization of payment. AAR concluded that the preliminary verification of payment request and transmission of data, which is crucial to authorization, happens in India through MIP. These initial verification and validation of details are important and are crucial functions in the context of overall functions performed by the applicant to facilitate authorization. These functions cannot be called preparatory or auxiliary in nature.

4.	**03.04.2018**	***Godaddy.com LLC (Appellant)* v. *ACIT (Respondents)***	**ITAT**

Whether Domain registration fee received by 'GoDaddy' is taxable as royalty?

The assessee-co. was engaged as accredited domain name registrar authorized by Internet Corporation for Assigned Names and Numbers. The assessee had income from domain registration fees which was claimed to be not taxable in India. However, the Assessing Officer assessed the same as royalty, which was confirmed by the Dispute Resolution Panel (DRP). The aggrieved-assessee filed the instant appeal before the ITAT. It was submitted by assessee that it merely facilitated getting domain registered in the name of the customer who paid for availing of such services. Hence, the receipt in respect of domain name registration was not in the nature of royalty under Explanation 2 to section 9 of the Income Tax Act, 1961.

Judgement: The ITAT ruled in favour of revenue on basis of a judgment delivered by the Apex Court in the case of Satyam *Infoway Ltd*. v. *Siffynet Solutions (P.) Ltd.* AIR 2004 SC 3540. In the instant case, the Supreme Court held that the domain name is a valuable commercial right and has all the characteristics of a trademark and, accordingly, domain names are subject to legal norms applicable to trademarks.

Thus, the rendering of services for domain registration was equivalent to rendering of services in connection with the use of an intangible property which was similar to trademark. Therefore, charges received by the assessee for said services in respect of domain name was royalty as per Explanation 2 to section 9(1)(vi) of the Income Tax Act, 1961.

5.	**10.08.2018**	***Sachin R. Tendulkar (Appellant)* v. *DCIT (Respondents)***	**ITAT Mumbai Bench**

Whether assessee entitled to vacancy allowance if he failed to find tenant for vacant flat?

The Assessee owned two properties in Pune – Flat S and Flat T. Flat T was let out, however, Flat S was vacant for the whole year as suitable tenant couldn't be found. He claimed that the said flat had remained vacant throughout the year despite his reasonable effort to let out the same. In this regard, he submitted three letters written to the builder. In first letter, he thanked the builder for identifying the tenant for the flat at Flat T and also requested to identify tenant

for Flat S. Subsequently, the assessee had written second letter and after that third letter being reminders for identifying the tenant to let out Flat S.

Therefore, he claimed vacancy allowance under Section 23(1)(c) for Flat S and declared nil income. During the course of assessment proceedings, the Assessing Officer made additions for the notional rental income from Flat S, which was also upheld by the CIT(A).

Judgement : The ITAT held in favour of assessee when same builder had helped the assessee to find tenant for another flat, it couldn't be said that these letters to the same builder to help him identify one more tenant, to be considered as fake, defied logic. Therefore, if a property was held with an intention to let out in the relevant year coupled with efforts made for letting it out, the same would fall within the purview of section 23(1)(c) of the Income tax Act, 1961.

6.	**19.02.2020**	***Ananda Social and Educational Trust (Appellant)* vs. *The Commissioner of Income Tax (Respondents)***	**Supreme Court of India**

Whether High Court erred in holding that newly registered Trust was entitled for registration under Section 12AA of Income Tax Act, 1961 Act on basis of its objects, without any activity having been undertaken?

The Trust was formed as a society and it applied for registration. No activities had been undertaken by the Respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the Trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the Trust are genuine. The Income Tax Appellate Tribunal reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion that in case of a newly registered trust even though there were no activities, it was possible to consider whether the Trust could be registered under Section 12AA of the Act.

Judgement : The purpose of Section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the objects of the Trust are genuine and that its activities are in furtherance of the objects of the Trust that is equally genuine.

Since Section 12AA pertains to the registration of the Trust and not to assess of what a Trust had actually done, the term activities in the provision includes proposed activities. That was to say, a Commissioner was bound to consider whether the objects of the Trust were genuinely charitable in nature and whether the activities which the Trust proposed to carry on were genuine in the sense that they were in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under Sub-section (3) of Section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust were not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the Trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

Therefore the view of the High Court in the impugned judgment was correct and liable to be upheld.

7.	**05.03.2020**	***Commissioner of Income Tax, Udaipur (Appellant)*** **vs.** ***Chetak Enterprises Pvt. Ltd. (Respondents)***	**Supreme Court of India**

Whether Assessee-Company qualified for deduction under Section 80-IA of Income Tax Act, 1961 in case of Firm was converted into private limited company.

The erstwhile partnership firm entered into an agreement with the Government of Rajasthan for construction of road and collection of road/toll tax. The construction of road was completed by the said firm and the same was inaugurated. The firm was converted into a private limited company. On conversion of the firm into company, an intimation was given to the Chief Engineer (Roads). The said authority noted the change and cancelled the registration of the firm and granted a fresh registration code to the Assessee-Company. The road was inaugurated and the Assessee-Company started collecting toll tax. For the relevant assessment year, the Assessee-Company claimed deduction under Section 80-IA of the Income Tax Act, 1961. The assessing officer declined that claim of the Assessee-Company, which decision was reversed by the Commissioner. The Income Tax Appellate Tribunal confirmed the decision of the first appellate authority. As a result, the Department preferred an appeal before the High Court. The High Court held that Respondent/Assessee-Company qualified for the deduction under Section 80-IA of Act.

Judgement : For the purpose of considering compliance of Clause (a) of Section 80-IA(4)(i), the Assessee must be an enterprise carrying on business of developing, maintaining and operating or developing, maintaining and operating any infrastructure facility, which enterprise was owned by a company registered in India. That stipulation was fulfilled in the present case, as the registered firm was converted into a company under Part IX of the Companies Act, which was before the commencement of Assessment Year. For the assessment year under consideration, the activity undertaken by the Assessee was only maintaining and operating or developing, maintaining and operating the infrastructure facility, in as much as, the construction of the road was completed and the same was inaugurated, whereafter toll tax was being collected by the Assessee-Company.

As regards Clause (b) of Section 80-IA(4)(i), the requirement predicated is that the Assessee must have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating or developing, maintaining and operating a new infrastructure facility. In the present case, the agreement was initially executed between the erstwhile partnership firm and the State Government, but with clear understanding that as and when the partnership firm was converted into a company, the name of the company in the agreement so executed be recorded recognising the change. Notably, the agreement itself mentions that the erstwhile partnership firm as party to the agreement was meant to include its successors and assignee. Further, the State Government had granted sanction to the company and the original agreement entered into with the firm automatically stood converted in favour of the Assessee-Company, which came into existence being the successor of the erstwhile partnership firm. Thus understood, even the stipulation in Clause (b) of Section 80-IA(4)(i) was fulfilled by the Assessee-Company. Since these were the only two issues which weighed with the assessing officer to deny deduction to the Assessee-Company as claimed under Section 80-IA of the Income Tax Act 1961, the first appellate authority was justified in reversing the view taken by the assessing

officer. For the same reason, the Tribunal, as well as, the High Court had justly affirmed the view taken by the first appellate authority, holding that the Respondent/Assessee-Company qualified for the deduction under Section 80-IA being an enterprise carrying on the stated business pertaining to infrastructure facility and owned by a Company registered in India on the basis of the agreement executed with the State Government to which the Respondent/Assessee-Company had succeeded in law after conversion of the partnership firm into a company.

8.	**04.03.2020**	***Cognizant Technology Solutions India Pvt. Limited (Appellant)* vs. *Dy Commissioner of Income Tax, Large Tax Payer Unit-1 (Respondents)***	**Supreme Court of India**

Whether communication by department was in the nature of determination of the liability?

The Appellant was engaged in the business of development of computer software and related services. The Appellant approached the High Court with a Scheme of Arrangement and Compromise to buy-back its shares. The High Court sanctioned the Scheme in Company Petition, pursuant to which the Appellant purchased shares from its four shareholders and made a remittance. Thereafter, the Appellant made statutory filing under Form 15 CA after obtaining requisite certificate from a Chartered Accountant in Form 15CB furnishing details of remittances made to non-residents. A letter was received by the Appellant from the Deputy Commissioner of Income Tax in connection with non-payment of tax on the remittances made to the non-residents. Later, a communication was addressed by the Department to the Appellant that the payments made to the shareholders, under purchase of shares through the scheme of arrangements and compromise, was a dividend within the meaning of Section 2(22)(d) and 2(22)(a) of the Income Tax Act, 1961, requiring to remit the taxes in to the government account under Section 115-O of the Income Tax Act 1961. Further, since the company had failed to remit the taxes within the stipulated period, the company was deemed to be an Assessee in default, under Section 115-Q of the Act. Therefore the Assessee Company was required to remit the taxes. An application was preferred by the Appellant before the Authority for Advance Ruling (AAR) under Section 245Q of the Income Tax Act, 1961 seeking a ruling on the issue whether the Appellant was liable to pay tax on buy-back of its shares under Section 115QA or Section 115-O Income Tax Act, 1961 or any other provision of the Act. The Appellant challenged the communication by filing Writ Petition in the High Court submitting inter alia that while the issue was pending before the AAR under Section 245Q of the Income Tax Act, 1961, in view of the bar provided under Section 245RR of the Income Tax Act, 1961, the matter could not have been considered. The Single Judge dismissed the Writ Petition as not being maintainable and relegated the Appellant to avail the remedy before the Appellate Authority under the Act. The Single Judge did not find any merit in the contention that the shares purchased pursuant to the order of the Company Court could not be treated as dividend. The Appellant, being aggrieved, challenged the aforesaid view by filing Writ Appeal before the Division Bench which was dismissed.

Judgement : On the issue whether communication by department was in the nature of determination of the liability, both the Counsels were heard at considerable length, at the end of which it was agreed by the Department, that the communication could be treated as a show cause notice and the Department be permitted to conclude the issue within a reasonable time,

provided the interim order passed by the Single Judge of the High Court was continued. The course suggested by the Counsel for the Department was acceptable to the Counsel for the Appellant.

It was, therefore, suggested that the Appellant may file an affidavit of undertaking to withdraw the proceedings initiated by it before the AAR and the Department may also file an appropriate affidavit stating that it was willing to treat the communication as a show cause notice. An appropriate affidavit of undertaking to withdraw the proceedings initiated before the AAR had since then been filed by the Appellant.

9.	**25.01.2018**	***Dhananjay Kumar Singh (Appellant)* vs. *Assistant Commissioner of Income Tax (Respondents)***	**High Court (Patna)**

Whether the order passed by the Assessing Officer hastily without considering the documents and other materials on record is valid?

The Assessing Officer passes an order in a haste to meet the time limit for passing the assessment order without considering the relevant documents or information produced by the assesse before him/her.

Judgements : The Hon'ble High Court held that it is a cardinal principle of law that if relevant materials and objections are produced before a quasi-judicial authority, the quasi-judicial authority is duty-bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. Therefore, the Hon'ble Court remanded the matter back holding the order as perverse based on his *ipse dixit* (assertion without proof) and in violation to the principles of natural justice.

Therefore, the Assessing Officer is duty bound to consider all the submissions made before him.

10.	**12.03.2018**	***ITO (Appellant)* vs. *Venkatesh Premises Co-Operative Society Ltd. (Respondents)***	**Supreme Court of India**

Whether certain receipts by co-operative societies, from its members i.e. non-occupancy charges, transfer charges, common amenity fund charges and certain other charges, are exempt from income tax based on the doctrine of mutuality.

Judgement : The Hon'ble Apex Court held that the income of a co-operative society from business is taxable under Section 2(24)(vii) Income Tax Act, 1961 and will stand excluded from the principle of mutuality. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participators in the surplus are contributors to the common fund. The law envisages a complete identity between the contributors and the participants in this sense. The principle postulates that what is returned is contributed by a member. Any surplus in the common fund shall therefore not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. A common feature of mutual organizations in general can be stated to be that the participants usually do not have property rights to their share in the

common fund, nor can they sell their share. Cessation from membership would result in the loss of right to participate without receiving a financial benefit from the cessation of the membership. It was finally held that the surplus, if any, from the business was not shared by the members but was used for providing better facilities to the members and therefore, not taxable.

The doctrine of mutuality is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and taxable.

Therefore, amount of surplus which is to be used for the common benefit of members cannot be taxable due to the Principal of Mutuality.

Source:

1. Taxmann
2. Manupatra

INDIRECT TAX LAWS

1.	**21.04.2020**	***Mahadeo Construction Co. (Appellant)* vs. *Union of India (Respondents)***	**Jharkhand High Court**

Interest liability cannot be recovered under section 79 of CGST Act, 2017 without initiation of adjudication proceeding in the event assess disputes the computation or very leviability of interest/issuance of Show Cause Notice.

The issues involved in the present writ application were, namely—

(i) Whether interest liability under Section 50 of the Central Goods and Services Tax Act, 2017 ('CGST Act') can be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act in the event of an assessee raising dispute towards liability of interest?

(ii) Whether garnishee recovery proceedings u/s 79 of the CGST Act can be initiated for recovery of interest u/s 50 of the said Act without initiation and completion of the adjudication proceedings under the Act?

Judgement : The honorable Jharkhand High Court held that interest liability under section 50 of the CGST Act, 2017 is although automatic, but it's computation and demand can be raised only after initiation of Adjudication proceedings under Section 73 or 74 of the CGST Act, 2017 in case the assessee disputes the demand of interest.

Garnishee proceedings under Section 79 of the CGST Act, 2017 cannot be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee.

2.	**09.04.2020**	***Choe Jae Won (Appellant)* vs. *Principal Secretary to the Government (Respondents)***	**Madras High Court**

High Court refuses release of Korean Nationals arrested for GST non-payment.

Choe Jae Won came up with the present Writ Petitions seeking to release them from the Special Camp at Tiruchirapalli and allow them to stay at Belchem 804, Hiranandini Post, Oragadam, Kancheepuram, due to the prevailing pandemic, based on their representations dated 2. March 2020.

Finding justification in the plea made by the learned Government Pleader and considering the fact that, several Non-Bailable Warrants have already been issued to the Petitioners and that, there is every possibility of the Petitioners fleeing away from the clutches of Law, the Court while declining the relief sought by the Petitioners, without prejudice to the rights of the parties in the pending Habeas Corpus Petitions, directs the learned Additional Chief Metropolitan Magistrate (Economic Offences-I), Egmore, Chennai to take up the case in C.C.No.1 of 2020, after normalcy is restored post COVID-19 lockdown, and proceed with the

same on a day-to-day basis, without adjourning it beyond ten working days at any point of time.

Judgement : High Court refused release of Korean Nationals arrested for GST non-payment. The High Court of Madras had denied the bail application of two Korean Nationals who were alleged of not settling the GST collection to the government. The court feared that they might intend flight risk without the payment of GST collection.

3.	**17.03.2020**	***Assistant Commissioner of State Tax (Appellant) vs. N. Rai Delights LLP (Respondents)***	**National Anti-Profiteering Authority (NAA)**

Anti-profiteering provisions to apply in cases where commensurate benefits are not passed in respect of each supply at invoice level

Where a respondent supplier has not passed on the benefit of tax rate reduction by way of a commensurate reduction in prices on each of his supplies at the level of each invoice, anti-profiteering provisions will apply. Increase or decrease in cost of supplier due to royalty, advertisement costs etc. has no relevance in so far as the provisions of anti-profiteering are concerned.

Judgement : National Anti-Profiteering Authority (NAA) found 'subway Franchisee' guilty of Profiteering for Non-Passing of GST Rate Reduction Benefit and Hiking Food Price. Confirming the penalty on the restaurant, the NAA held that "It has been revealed from the DGAP's Report that the Input Tax Credit (ITC) which was available to the Respondent during the period July 2017 to October 2017 is 6.32% of the net taxable turnover of restaurant services supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the ITC was not available to the Respondent. It has been found that the Respondent had increased the base prices of different items by more than 6.32% i.e. by more than what was required to offset the impact of denial of ITC, supplied as a part of restaurant services to make up for the denial of ITC post-GST rate reduction and on comparison of pre and post GST rate reduction prices of the items sold in respect of items sold."

Accordingly, the quantum of profiteering has been computed as Rs. 1,49,896/- as per the DGAP's Report.

Accordingly, the Respondent is directed to reduce his prices commensurately in terms of Rule 133 (3) (a).

Respondent has committed an offence and therefore is liable for the imposition of penalty under the provisions of the Section 171 (3A).

4.	**13.03.2020**	***State Tax of officer (Appellant) vs. M/s Bonne Sante (Respondents)***	**National Anti-Profiteering Authority (NAA)**

Benefit of Tax Reduction includes both Base Price and Tax amount.

The Respondent has further contended that the Directorate General of Anti-profitteering (DGAP), while calculating the profiteered amount, was wrongly added a 5% notional amount without explaining any reasons and hence, the profiteered amount be reduced appropriately.

Judgement : NAA held that Benefit of Tax Reduction includes both Base Price and Tax amount. Section 171(1) of CGST Act, 2017 *"Any reduction in* rate *of tax on any supply of goods or services or the benefit of* ITC *shall be passed on to the recipient by way of commensurate reduction in prices."* Thus, the legal requirement as per the above provisions was abundantly clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services being supplied by a registered person and the final price being charged for each supply had to be reduced commensurately with the extent of the benefit and there was no other legally tenable mode of passing on such benefit of rate reduction or ITC to the recipients/consumers.

5.	**22.01.2020**	***Vimal Raj (Appellant)* vs. *State Tax Officer (Respondents)***	**Kerala High Court**

Assessment order passed under GST after death was invalid.

Validity of order passed against a deceased – Section 93 of CGST Act, 2017 not followed – service of Show cause Notice. Assessment order passed under GST after death was invalid. Assessee was already dead as on the date of assessment order and therefore, the assessment orders is a nullity and no other issues are decided by this Court and such other issues are left open. Legal representatives or legal heirs of the said deceased assessee would be given reasonable opportunity of being heard.

Judgement : It appears that the respondent does not raise any serious dispute as to the factual assertion made by the petitioner that the assessee concerned (who appears to be the paternal grandfather of the petitioner herein) is said to be one of the legal hairs of the deceased assessee as the petitioner's father who is the son of the assessee has died as early as on 27.03.2018 as evident from Ext.P3 death certificate issued by the Registrar of Births and Deaths, which is much before the rendering of the impugned Ext.P3 series of the assessment orders issued in March 2019 – Since, that appears to be the undisputed position, it is only to be held that Ext.P3 series of assessment orders rendered as late as in March, 2019 has been passed as against an assessee who is already dead by then and therefore, the impugned assessment orders is a nullity in the eye of law.

The 1st respondent will be at liberty to take fresh action in the said assessment proceedings, after ascertaining from the competent Revenue Officials as to who all are the legal representatives or legal heirs of the said deceased assessee and then the respondent will be at liberty to render reasonable opportunity of being heard to such legal representatives and then finalise the assessment proceedings in the manner known to law.

Petition disposed off.

6.	**14.02.2020**	***Nodal Officer (Appellant)* vs. *GST Council (Respondents)***	**Gujarat High Court**

Filing of GST TRAN-1 allowed which cannot be filed despite efforts due to Technical Glitches

The respondents herein had tried to upload form GST TRAN-1, but it could not be filed on account of technical glitches in terms of poor network connectivity and other technical difficulties at common portal. Under the circumstances, this Court has gone into the question that in such circumstances what would be the remedy if a person who tries to follow Rule 117 of the CGST Rules, 2017 but, without there being any fault on his side he could not upload the form due to technical glitches. This Court had directed the applicants herein – original respondents to permit the respondents herein – original petitioners to allow filing declaration form in GST TRAN-1 and GST TRAN-2, so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the GST Act.

7.	**13.09.2019**	***Kamlesh Suvalal Soni (Appellant)* vs. *State of Gujarat (Respondents)***	**Gujarat High Court**

GST defaulter can be released on conditional bail on bond with sureties.

In the given case, the applicant was facing charges under Sections 132(1)(b) and 132(1)(c) of the Central Goods and Services Tax Act, 2017, for which maximum sentence is of five years. Hence the applicant wanted to apply for regular bail. The applicant was ready and willing to file an undertaking to the effect that he shall not transfer or alienate or in any manner create third party rights over those immovable properties which belong to him and shall also supply the details of all the immovable properties belonging to the applicant to the Directorate General of GST Intelligence, Zonal Unit, Ahmedabad.

Judgement: Considering the offence as alleged in the FIR and also considering the nature of allegations made in the FIR, High Court was of the opinion that this is a fit case to exercise the discretion to enlarge the applicant on bail. Hence, the application is allowed and the applicant is ordered to be released on bail.

8.	**6.11.2019**	***Maturu Panchakshari (Appellant)* vs. *Assistant Commissioner of State Tax (Respondents)***	**Andhra Pradesh High Court**

Manual Filing of Tran – 1 allowed or open GST portal even after expiry date because the appellant faced technical glitches with GST portal

The **GST regime** which came into effect from 01.07.2017 repealed a host of indirect taxes which were previously in force. Section 140 of SGST Act provides for transfer of the amount of Value Added Tax Credit carried forward under the APVAT Act, 2005 to the GST regime.

Rule 117 of the SGST Rules prescribed a period of 90 days from the appointed day to file Form GST TRAN-1 mentioning the amount of transitional **Input Tax Credit** claimed by the registered person. The Form GST TRAN-1 is to be filed electronically on the common portal within the time fixed in the Rule initially or extended by notifications.

The prescribed period of 90 days from the appointed day expired on 29.09.2017 and thereafter, it was being extended from time to time. The claim of the petitioner was that initially, it tried to upload the details of the VAT credit in Form TRAN-1 on 27.12.2017 but the same could not be uploaded due to some technical errors. As the time fixed for filing the GST TRAN-1 electronically expired, the petitioner approached the authorities to submit the application manually but the authorities have not taken any action on the same.

This Writ Petition is disposed of directing the respondents to either open the portal to enable the petitioner to again file the Form GST TRAN-1 electronically or in the alternative, accept the Form GST TRAN-1 presented manually, on or before 31.12.2019. It is needless to say that the petitioner's claim shall be processed in accordance with law.

9.	**28.03.2018**	**In re *R. K. Gupta, Partner M/s Deepak & Co.***	**Authority for Advance Ruling Delhi**

Supply of food and beverages in trains to be considered as supply of 'Goods'

The applicant has entered into agreements with IRCTC/Indian Railways, for supply of food and beverages (packed/ MRP/ cooked) to the passengers of Rajdhani Trains as also Mail/ Express Trains. Pursuant to these agreements, the applicant is engaged in supplying of food on board the trains to the passengers travelling on these trains vide the menu approved by the Indian Railways/ IRCTC. Likewise, the applicant is also engaged in supply of food items to passengers/ public through food plaza/ food stall on the railway station.

Judgement

- In the case of supply of food and beverages (cooked/ MRP/ packed), at defined menu and tariff, by the applicant to IRCTC/ passengers on behalf of IRCTC, on board the Rajdhani/ Duronto Express trains, the service charges are covered under Service Code (Tariff) 996335 in Group 99633 of heading 9963 of Annexure/ Scheme of Classification of Services as "catering services in train". The same are covered under S. No. 7 (ix) of Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017 as amended vide **Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017** and parallel Notifications of IGST and Delhi GST. A train is a mode of transport and hence cannot be called as a restaurant, eating joint, mess or canteen etc. and hence catering services provided on-board a train are not covered under S. No. 7 (i) of the said Notifications as claimed by the applicant. The supply of goods i.e. food, bottled water etc. shall be charged to GST on value of goods (excluding the service charges) at applicable rates as pure supply of goods, as the same have no element of service. The supply of newspaper is separately invoiced and hence it shall be at `Nil" GST under S. No. 120 of **Notification No. 2/2017 — Central Tax (Rate) dated 28.06.2017** and parallel Notifications of IGST and Delhi GST.
- In the case of supply of food and beverages (cooked/ MRP/ packed) on board the Mail/ express trains by the applicant directly to the passengers as per the menu/ rates fixed by IRCTC/ Railways does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. The benefit of S. No. 7 of Notification No. 11/2017 —

Central Tax (Rate) dated 28.06.2017 vide **Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017;** amendment made in **Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017** vide Notification No. 48/2017 — Central Tax (Rate) dated 14.11.17; amendment made in Notification No. 11/2017 — State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 — State Tax (Rate) dated 28.11.17 are not admissible to the applicant.

- The supply of food and beverages (cooked/ MRP/ packed) by the applicant to the passengers/ general public at the rates fixed by the Indian Railways/ IRCTC at food stalls at Railway platforms does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. The mere heating/ cooling of beverages or similar other services are incidental and minimal required to supply of goods and such supply cannot be called composite supply. The benefit of S. No. 7 of Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017 vide **Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017**; amendment made in **Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017** vide Notification No. 48/2017 — Central Tax (Rate) dated 14.11.17; amendment made in Notification No. 11/2017 — State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 — State Tax (Rate) dated 28.11.17 are not admissible to the applicant.
- For the supply of food (Cooked/ MRP/ Packed) in food plaza, the relevant document pertaining to details of items supplied, pricing detains, extent of services provided are not submitted. Hence, no ruling can be given in respect of supply from Food Plaza on the Railway Platform

10.	**21.08.2018**	**In re *M/s Coffee Day Global Ltd***	**Authority for Advance Ruling Karnataka**

Supply of Goods by Cafe Coffee Day to SEZ units will not be treated as Zero rated supply

The applicant, Café Coffee Day, was engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines. It contended that all supplies to SEZ, without any distinction, to be treated as zero-rated supplies. The applicant was of the view that the supplies made by CCD to the SEZ units are in the nature of zero rated supplies, notwithstanding fact that they are not used for authorized operations.

Judgement: The Authority for Advance Ruling observed that IGST ACT provides same meaning to SEZ which is assigned to it in the Special Economic Zones Act, 2005. SEZ Act also provides that the operations to be carried out in the Special Economic Zone and also in the units located therein have to be in accordance with the authorization to be given by the Central Government. It is also observed by the AAR that the rule relating to refund under GST Act stipulates that the supply, in respect of which tax has been paid and refund is sought, shall be necessarily for authorized operations. Therefore, it is decided that the supply of non-alcoholic beverages/ingredients, to SEZ units using coffee vending machines by the applicant, would not qualify as zero rated supply.

Source:

3. TaxGuru
4. Manupatra

ENVIRONMENT LAWS

1.	**08.05.2020**	**Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh, Original Application No. 73/2020,**	**National Green Tribunal, Principal Bench**

Vishakhapatnam Gas Leak: National Green Tribunal directs LG Polymers India Pvt., Limited to forthwith deposit an initial amount of Rs. 50 Crore, with the District Magistrate, Vishakhapatnam.

National Green Tribunal, Principal Bench noted that Styrene gas is a hazardous chemical as defined under Rule 2(e) read with Entry 583 of Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. The Rules require on-site and off-site Emergency Plans to ensure prevention of damage. There appears to be failure to comply with the said Rules and other statutory provisions. Leakage of hazardous gas at such a scale adversely affecting public health and environment, clearly attracts the principle of 'Strict Liability' against the enterprise engaged in hazardous or inherently dangerous industry. Such an entity is liable to restore the damage caused under the Environment Law, apart from other statutory liability. The statutory authorities responsible for authorizing and regulating such activities may also be accountable for their lapses, if any, in dealing with the matter. It is also necessary to ensure that all necessary steps are taken to prevent recurrence of such an incident. Without prejudice to any other proceedings, this Tribunal has to perform its statutory obligation of providing relief and compensation to the victims of "environmental damage", as statutorily enacted, and restitution of damaged property and environment. With a view to deal with the issue, it is necessary to ascertain the facts relating to the extent of damage, extent of failure and consider remedial measures. The affected parties have to be given the opportunity of being heard.

Having regard to the prima facie material regarding the extent of damage to life, public health and environment, we direct LG Polymers India Pvt., Limited to forthwith deposit an initial amount of Rs. 50 Crore, with the District Magistrate, Vishakhapatnam, which will abide by further orders of this Tribunal. The amount is being fixed having regard to the financial worth of the company and the extent of the damage caused.

ARBITRATION ACT

1.	**12.05.2020**	***Spentex Industries* vs. *Quinn Emanuel Urquhart & Sullivan***	**High Court of Delhi**

According to Sections 44 & 45 Arbitration Act, relationship of a foreign law firm and a client is in 'commercial in nature'.

Essentially, the defendant has initiated arbitration proceedings for his outstanding fees. The defendant being a law firm was advising and acting for the plaintiff subsidiary. It was to be paid for the services as agreed upon. It cannot be urged that such an agreement was completely bereft of elements of commerce. The claim of the law firm is that the plaintiff have defaulted in paying its professional charges and other aspects. The claim does not relate to professional issues. As the proceedings are substantially for recovery of money, the same would tantamount to a commercial relationship as per section 45 of the Arbitration Act. Hence, the plea of the learned counsel for the plaintiff that section 44 and 45 of the act are not attracted is a plea without merits.

2.	**20.04.2020**	***GTPL Hathway Ltd.* vs. *Strategic Markering Pvt. Ltd. R/Special Civil Application No. 4524 of 2019.***	**High Court of Gujarat**

In order passed during arbitration proceedings by the Arbitration Tribunal cannot be challenged under Articles 226 and 227 of the Constitution of India

In view of aforesaid settled legal proposition , considering the policy, object and the provisions of the Act, 1996, an order passed during arbitration proceedings by the Arbitration Tribunal cannot be challenged under Articles 226 and 227 of the Constitution of India as the Act, 1996 is a special act and a self-contained code dealing with arbitration. Therefore, the impugned order of the Arbitration Tribunal deciding the preliminary objection raised by the petitioner cannot be challenged under Article 226 or 227 of the Constitution of India.

FOREIGN CONTRIBUTION & REGULATION

1.	**06.03.2020**	***Indian Social Action Forum (INSAF)* vs. *Union of India in Civil Appeal No.1510 of 2020* (Arising out of SLP (C) No.33928 of 2011)**	**Supreme Court of India**

Only those organisations which are actively involved in politics or associated with political parties can be declared as organisations of a political nature under Foreign Contributions (Regulation) Act, 2010 & Rules made thereunder.

The object sought to be achieved by the Act is to ensure that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life should function in a manner consistent with the values of a sovereign democratic republic without being influenced by foreign contributions or foreign hospitality. The long title of the Act makes it clear that the regulation of acceptance and utilisation of foreign contribution is for the purpose of protecting national interest. Candidates for election and political parties or office bearers of political parties are barred from accepting any foreign contribution. The legislative intent is also to prohibit organisations of a political nature from receiving foreign contributions. It is clear that preventing foreign contribution into the political arena is the object sought to be achieved by the Act. Prevention of foreign contributions routed through voluntary organisations which are not connected to party politics is the reason behind introduction of Section 3 (1) (f) and Section 5 of the Act. The Central Government is required to take into account the activities, ideology or the programme of the organisation including the association of the organisation with activities of any political party before declaring an organisation as an organisation of political nature not being a political party. Guidelines that are prescribed by the Rules indicate that only those organisations which are actively involved in politics or associated with political parties can be declared as organisations of a political nature. The question that falls for our consideration is whether the guidelines in Rule 3 suffer from vagueness and ambiguity and whether they can be stated to be conferring uncanalised power on the executive. According to Rule 3 (i) an organisation having avowed political objectives in its memorandum of association or bye laws is an organisation of a political nature. As the intention of the legislature is to prohibit foreign funds in active politics, an Association with avowed political objectives (i.e. to play a role in active politics or party politics) cannot be permitted access to foreign funds. There is no ambiguity in the provision and hence, cannot be termed as vague. Therefore, we find no substance in the contention of the Appellant that Rule 3 (i) is ultra vires the Act.

CONSTITUTION OF INDIA

1.	**04.03.2020**	***Internet and Mobile Association of India* vs. *Reserve Bank of India Writ Petition (Civil) No. 528 of 2018***	**Supreme Court of India**

RBI Circular on Cryptocurrency set aside by the Supreme Court of India on the ground of Proportionality Test

But nevertheless, the measure taken by RBI should pass the test of proportionality, since the impugned Circular has almost wiped the VC exchanges out of the industrial map of the country, thereby infringing Article 19(1) (g). On the question of proportionality, the learned Counsel for the petitioners relies upon the four-pronged test summed up in the opinion of the majority in *Modern Dental College and Research Centre v. State of Madhya Pradesh (2016) 7 SCC 353*. These four tests are (i) that the measure is designated for a proper purpose (ii) that the measures are rationally connected to the fulfilment of the purpose (iii) that there are no alternative less invasive measures and (iv) that there is a proper relation between the importance of achieving the aim and the importance of limiting the right. The court in the said case held that a mere ritualistic incantation of "money laundering" or "black money" does not satisfy the first test and that alternative methods should have been explored.

RIGHT TO INFORMATION ACT

1.	**04.03.2020**	***Chief Information Commissioner* vs. *High Court of Gujarat and another* Civil Appeal No(S). 1966-1967 of 2020 (Arising out of SLP(C) No.5840 of 2015)**	**Supreme Court of India**

The non-obstante clause of the RTI Act does not mean an implied repeal of the High Court Rules and Orders framed the Constitution of India

The non-obstante clause of the RTI Act does not mean an implied repeal of the High Court Rules and Orders framed under Article 225 of the Constitution of India; but only has an overriding effect in case of inconsistency. A special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a non-obstante clause, unless there is clear inconsistency between the two legislations.

COMPETITION ACT

1.	**11.05.2020**	***Directorate of State Lotteries, West Bengal* vs. *West Bengal Lottery Stockists Syndicate Pvt. Ltd.***	**Competition Commission of India**

Only primary, inalienable and non-delegable functions of a constitutional government have been held to qualify for exemption within the meaning of 'sovereign functions' of the government under section 2(h) of the Competition Act, 2002.

Regulation, sale and distribution of lottery tickets, by no stretch of arguments, can be taken as an activity relatable to sovereign functions of a Government. The question as to what constitutes 'sovereign' or 'non-sovereign' function is well-settled and the courts have taken a very narrow view of the term 'sovereign function' by confining the same to strict constitutional functions of the three wings of the State. Welfare activities, commercial activities and economic activities have been kept outside the purview of the term 'sovereign functions'. Resultantly, only primary, inalienable and non-delegable functions of a constitutional government have been held to qualify for exemption within the meaning of 'sovereign functions' of the government under section 2(h) of the Act. Welfare, commercial and economic activities, therefore, are not covered within the meaning of 'sovereign functions' and the State, while discharging such functions is as much amenable to the jurisdiction of competition regulator as any other private entity discharging such functions (Union of India v. Competition Commission of India & Ors., W.P.(C) 993/2012 decided on 23.02.2012).

INSOLVENCY & BANKRUPTCY CODE

1.	**22.05.2019**	***Allahabad Bank* vs. *Link House Industries Limited*** **Company Appeal (AT) (Insolvency) No. 1304 of 2019**	**National Company Law Appellate Tribunal (NCLAT)**

The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the 'I&B Code'.

The dictum of law propounded by the Hon'ble Apex Court is loud and clear. The Adjudicating Authority cannot travel beyond the letter of law and the dictum of the Hon'ble Apex Court. The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the 'Financial Creditor'. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the 'I&B Code'. If the 'Financial Creditor' fails to provide evidence as required, the Adjudicating Authority shall be at liberty to take an appropriate decision. If the application is incomplete, it can return the same to the 'Financial Creditor' for rectifying the defect. This has to be done within 7 days of the receipt of notice from the Adjudicating Authority. However, the 'I&B Code' does not envisage a pre-admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the 'Financial Creditor', 'Corporate Debtor' or any 'financial institution'. Viewed thus, the impugned order cannot be supported. Application under Section 75 of the 'I&B Code' on behalf of the 'Corporate Debtors' cannot be permitted to frustrate the provisions of the 'I&B Code' when the matter is at the stage of admission. Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of 'Corporate Insolvency Resolution Process' unless in a given case forgery or falsification of documents is patent and prima facie established.

2.	**05.02.2019**	***K. Sashidhar* vs. *Indian Overseas Bank & Ors.***	**Supreme Court of India**

The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan under Section 30(4) of the I&B Code.

There is no provision in the I&B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section

30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the "approved" resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite percent of voting share to approve the resolution plan; and in the process authorize the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority und er Section 31 of the I&B Code dealing with approval of the resolution plan.

3.	**26.07.2018**	***Kannan Tiruvengandam* vs. *M. K. Shah Exports Ltd. & Ors.***	**National Company Law Appellate Tribunal (NCLAT)**

Committee of Creditor (CoC) being an expert body, Adjudicating Authority cannot sit in appeal over the matters such as eligibility criteria etc. approved by the Committee

National Company Law Appellate Tribunal held that the question of eligibility criteria regarding requirement of minimum tangible net worth for one or other category of Resolution Applicants and other criteria are matters which can be dealt with by expert committee like CoC. Further NCLAT held that the AA has no jurisdiction to sit in appeal over the decision of expert bodies relating to eligibility criteria till it is not shown that the same is perverse or against any of the provisions of the Code or existing law'. The appeal was allowed with direction to the RP and the CoC to complete the process immediately.

LABOUR LAWS

1.	**07.02.2020**	***Oil and Natural Gas Corporation (Appellant)* vs. *Krishan Gopal and Ors. (Respondent)***	**Supreme Court of India**

Upon the completion of two hundred forty days of service in a calendar year, the workmen have acquired valid statutory right and ought to have been granted the status of regular employees of the corporation on the ground that the corporation which is an instrumentality of the State under Article 12 cannot act arbitrarily or unreasonably.

In this matter, High Court directed regularization of workmen without seeking reference before Industrial Tribunal under Industrial Disputes Act 1947. The Judgment of High Court had relied upon the decision of this Court in case of PCLU.

The Honorable Supreme Court held, while referring the matter: (i) The decision of the two judges Bench in PCLU had placed a construction on the provisions of Clause 2(ii) of the Certified Standing Orders which prima facie did not appear to be correct. Besides, the fact that the decision in PCLU had not noticed the earlier judgment in Engineering Mazdoor Sangh which pertained to ONGC's Certified Standing Orders, the principles of law which had been expounded in PCLU would require to be revisited.

It held that indeed, the decision in PCLU needs to be revisited in order to set the position in law which it adopts in conformity with the principles emerging from the earlier line of precedent. Accordingly request the Registry to place the proceedings before the Chief Justice of India so as to placing this batch of appeals before an appropriate Bench.

2.	**10.01.2020**	***Nandkishore Shravan Ahirrao (Appellant)* vs. *Kosan Industries (P) Ltd. (Respondent)***	**Supreme Court of India**

The High Court had no justification to set aside the award of back wages awarded by the Labour Court which was eminently fair and proper.

Appellant was dismissed from service on charge of causing disruption of work - In pursuance of reference made under Industrial Disputes Act 1947, Labour Court held that findings in enquiry were perverse, order of dismissal was harsh and granted reinstatement in service with back wages for surplus days. The Order of Labour Court was questioned before High Court - Single Judge of High Court while affirming order of reinstatement, set aside order for payment of back wages - Appellant then filed Letters Patent Appeal - Division Bench of High Court dismissed appeal on ground that it was not maintainable - Hence, present appeal - Whether High Court erred in denying back wages to Appellant.

Having come to the conclusion that the findings in the disciplinary enquiry was perverse, the Labour Court observed that it was a matter of record that the workman had been gainfully employed over a part of the period after dismissal, with another employer. It was in the above circumstances, that the entire component of back wages was not awarded to the Appellant and only twenty five percent was awarded. The High Court had no justification to set aside the award of back wages awarded by the Labour Court which was eminently fair and proper. The direction of the High Court for deletion of back wages was therefore unsustainable and was set aside.

3.	**17.03.2020**	***Joint Labour Commissioner And (Appellant)* vs. *Kesar Lal (Respondent)***	**Supreme Court of India**

As a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner

Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986.

The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case.

Consequently, and for the reasons that we have indicated, there is no reason to interfere with the ultimate decision of the State Commission to award the claim, subject to the modification of the rate of interest by the order of the National Commission.

Thus, it was decided that as a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner.

CYBER LAWS

1.	**15.01.2020**	***State (Appellant) vs. M. Murugesan and Ors. (Respondent)***	**Supreme Court of India**

The jurisdiction of the Court under Section 439 of the Code is limited to grant or not to grant bail pending trial

In this matter, the State is aggrieved against an order passed by the High Court of Judicature at Madras on 24th April, 2019 constituting a Heterogeneous Committee of named persons to give its recommendations on the reforms that can be brought into practice for reformation, rehabilitation and re-integration of the convict/accused person to society and best practices for improving the quality of investigation.

In the appeal before the Honorable Supreme Court find that learned Single Judge has collated data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State.

The jurisdiction of the Court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court. In view of the above, the Apex Court find that order passed by the High Court on 24th April, 2019 is not sustainable in law and the same is set aside.

2.	**10.01.2020**	***Anuradha Bhasin and Ors. (Appellant) vs. Union of India and Ors (Respondent)***	**Supreme Court of India**

Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.

Honorable Supreme Court issued the following directions:

a. The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.
b. We direct the respondent State/competent authorities to review all orders suspending internet services forthwith.
c. The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.

d. The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.
e. An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.
f. While exercising the power under Section 144, Cr.P.C., the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.
g. Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.
h. The Respondent State/competent authorities are directed to review forthwith the need for continuance of any existing orders passed under Section 144, Cr.P.C in accordance with law laid down above.

LAWS RELATING TO CONSUMER PROTECTION

1.	**30.10.2018**	***Sahara Prime City Ltd. and Ors. (Appellant)* vs. *Tamil Nadu Consumer Protection Organisation and Ors (Respondent)***	**National Consumer Disputes Redressal Commission (NCDRC)**

It was appropriate to refund deposited amount along with interest at rate of 12% PA

In view of Section 12(1)(b) of Consumer Protection Act, 1986, the question was 'Whether refund of amount deposited by complainants with an interest at rate of 9% p.a. was valid and legal. It was Held, Section 12(1)(b) of Act allows a voluntary consumer organization to file complaint on behalf of consumer.

In none of complaints, Appellants have filed any document to prove that complainant organization was not authorized by concerned complainant to file complaint on his behalf. Compensation required to be quantified and it could not be awarded in a continuing manner.

It was appropriate to refund deposited amount along with interest at rate of 12% pa. - Appellants were directed to refund amount deposited by complainants along with interest at rate of 12% pa.

2.	**19.03.2013**	***Consumer Education and Research Society and Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. (Appellant)* vs. *IFFCO-TOKIO General Insurance Co (Respondent)***	**National Consumer Disputes Redressal Commission (NCDRC)**

Insurance company held liable to pay damages suffered by complainants.

In Consumer Protection Act, 1986 - Sections 2(g), 2(r) and 21 and Deficiency in service was discussed. Complaint claiming compensation (or loss) caused to stock of molasses by spontaneous combustion. Claim of complainant supported by report of surveyor. And there was no other evidence to contrary. Opposite party-insurance company by repudiating claim of complainants committed deficiency in service.

Insurance company held liable to pay damages suffered by complainants.

No much difference between amount claimed by complainants and surveyor report. Direction to insurance company to pay complainant No. 2 a sum of Rs. 1,14, 06,950 with interest of 10% from date of report of surveyor till date of payment--Complaint allowed.

***

Part B
Case Studies

CG POWER AND INDUSTRIAL SOLUTION LTD - CORPORATE GOVERNANCE FAILURE ?*

Background

CG Power and Industrial Solution Ltd. is a power company having its registered office at Mumbai. The shares of the company are listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The news of' the financial fraud worth thousands of crores detected at CG Power and Industrial Solutions Ltd.' was published in the several national newspapers on August 20, 2019. (The issue was mainly related to the unauthorised transactions and loans without authorization). The company filed a corporate announcement with BSE and NSE on August 20, 2019, by which it disclosed the outcome of its board meeting held on August 19, 2019). In the board meeting of the company the operational committee was informed that the company received a letter from the finance company 'Aditya Birla Finance Limited' with regard to the failure of interest payment by the company, which was not traceable from the financials of the company. As per Media reports, KKR India Financial services Limited (KKR India) may have had a role in the unfolding of the events at CG Power, since the private equity investor(KKR) had debt exposure to the holding company Avantha Holdings (was promoter group of CG power), which the latter was unable to repay fully. This may be why the relations went downhill between KKR India and the promoter of CG Power, Gautam Thapar.

Moreover, KKR India had asked for appointment of Narayan Seshadri initially as a consultant and later as an independent director, who then set up an operations committee and hired Vaish Associates to investigate certain transactions.

Case Facts

A1: Genesis/Evolution of the scam

Certain assets of the Company were purportedly provided as collateral without due authority and the Company was made a co–borrower and/or guarantor for enabling ostensibly unrelated third parties to obtain loans without due authorisation. The moneys so obtained were immediately and without due authorisation routed out of the Company, either by itself or from its subsidiaries or ostensibly unrelated parties to certain related parties. These transactions were prima facie prejudicial to the interests of the Company. These were purportedly carried out by identified company personnel (both current and past) including certain Non–Executive Directors, certain KMPs and others identified employees ("CIP") in breach of the Rules of Procedure of the Company ("ROP"), and/or without proper information to or authorization of either the RAC (Risk and Audit Committee) or the Board, and/or in breach of the Companies Act 2013, applicable SEBI Regulations and other applicable laws. (The Company plans to conduct a detailed forensic investigation to establish wrongdoing, accountability and other residual implications).

---

* *Case Study written by Rahul Ratna, Assistant Director and reviewed by Dr. Akinchan Buddhodev Sinha, Assistant Director, The ICSI.*

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

The report has cited that fees paid for non-audit services, including tax audit fees, certificate work, fees for other services and expenses, were usually more than 50 per cent of the total auditor's remuneration for any given year.

(As a good corporate governance practice, it should never exceed 30 per cent of the total auditors' remuneration).

The total liabilities of the company and the group was understated by approximately ₹1053.54 crores and ₹1608.17 crores respectively as on March 31, 2018 and by ₹ 601.83 crore and ₹ 401.83 crore respectively as on April1, 2017. Further, the advances to related and unrelated parties of the company and the group was understated by approximately Rs.1990.36 crores and ₹ 2806.63 crores respectively as on March 31, 2018 and by ₹ 1479.34 crores and Rs.1331.47 crores respectively as on April1, 2017.

A2: Peak

SEBI sought information on the matter in order to examine as to whether or not there were any violations of the provisions of securities laws, etc. by the Company and its Directors/Promoters, during the period 2016–2019. The company on August 26, 2019 submitted to the SEBI a copy of the preliminary investigation report prepared by M/s Vaish Associates aided by Deloitte, Chartered Accountants. SEBI sought responses from the chairman of the company (Gautam Thapar), past Directors (Madhav, Acharya, B. Hariharan) and Chief Finance Officer (V.R. Venkatesh) on the matter including the Preliminary Investigation Report. Replies from the above entities were received by SEBI with regard to shareholding pattern of CG Power as on quarter ended June 30, 2019 and the promoters of the CG Power. The non-promoter shareholding of the company as on the quarter ended June 30, 2019, the Board of Directors of the company during the preliminary examination period i.e. for the FY 2016-17, 2017-18, 2018-19, 2019-20. K.N Neelkant vide an email dated August 30, 2019 to SEBI informed that he stayed away from the operations of the company during the independent investigation period. V.R Venkatesh (Chief Financial Officer) was terminated from employment by the company w.e.f. August 30, 2019. Gautam Thapar was removed as chairman of the company however he continues as a Non-Executive Director in the company. The share price movement of the company during the period from January1, 2018 to September 4, 2019 was also provided to the SEBI.

Findings of the Preliminary Investigation Report

An examination of the Preliminary Investigation Report revealed certain prima facie irregularities, which are summarized as under:

A. ***Sale of Nashik property to Blue Garden Estate Private Limited ("Blue Garden")***

a. In 1979, Maharashtra Industries Development Corporation ("MIDC") had leased a property it owned in Nashik ("Nashik property") to CG Power for a lease term of ninety–five years. As per the terms of the Lease Agreement, CG Power cannot assign/part with possession of land without the consent of MIDC.

b. In May 2016, CG Power entered into an Assignment Agreement with Blue Garden for assignment of its lease rights in the Nashik property, for a consideration amount of ₹264 Crore, without obtaining approval from MIDC. The Assignment Agreement was executed by Madhav Acharya (Executive Director–Finance) on behalf of CG Power and Atul Gulatee (Director) for Blue Garden. For payment of the consideration amount, Blue Garden took a loan of ₹200 Crore from Aditya

Birla Finance Limited ("ABFL"), which was guaranteed by Avantha Holdings Limited (Holding Company of CG Power) ("Avantha Holdings") on behalf of CG Power. The Nashik property was used as a collateral security for the loan taken by Blue Garden from ABFL (by way of right of creation of mortgage). The aforementioned amount was immediately paid to CG Power as an advance wherein the Company had to pay an interest of 15% per annum on such advance. CG Power then further advanced said amount to Avantha Holdings (₹145 Crore) and Acton Global Private Limited ("Acton") (₹53 Crore) without any interest.

c. The majority shareholder of Avantha Holdings was Gautam Thapar (approximately 87%) and it also had Gautam Thapar, Ramni Nirula and B. Hariharan as its Directors at the relevant time. These three individuals were Directors of CG Power.

d. Blue Garden was incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Acton, Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power).

e. Acton was incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power).

f. The amount so raised by Blue Garden and the onward lending to Avantha Holdings and Acton were not reflected/recorded in the financial statements of the Company.

g. The following Directors/employees of CG Power and Acton were involved in the instant transactions, viz. –

- GautamThapar (erstwhile Chairman of CG Power) – Had executed the Letter of Awareness (of loan availed by Blue Garden and subsequent payment to CG Power).
- Madhav Acharya (erstwhile Executive Director of CG Power) – Had executed various documents on behalf of CG Power.
- Atul Gulatee (erstwhile Global Head of CG Power – Treasury and one of the first Directors of Blue Garden) – Had executed various documents on behalf of Blue Garden.
- B. Hariharan (erstwhile Director of CG Power) – Had executed an Undertaking (collateral security) on behalf of CG Power.
- V. R. Venkatesh (CFO of CG Power) – Had executed a Mortgage (in the event of default) Undertaking in 2018.
- Nagendra Sayyaparaju (employee of CG Power) – One of the Directors and initial shareholder of Acton, Holding Company of Blue Garden.
- Abhishek Kabra (Senior Manager – Treasury in CG Power) – One of the Directors and initial shareholder of Acton.

B. ***Sale of Kanjurmarg property to Blue Garden***

a. CG Power had earlier entered into an Agreement ("Evie Sale Agreement") to sell a property it owned in Kanjurmarg ("Kanjurmarg Property") to Evie Real Estate

Private Limited ("Evie") for a consideration of ₹498 Crore. The Company had received ₹11 Crore from Evie, as initial consideration. The sale was to be completed before October 27, 2019. However, even before the aforesaid transaction could get terminated, CG Power entered into an Memorandum of Understanding in February 2017 ("MOU") with Blue Garden for transfer of the same property for a consideration amount of ₹498 Crore (₹189 Crore to be paid in advance) with a condition that the MOU will take effect only upon the failure of the Evie Sale Agreement.

b. For payment of a part of the consideration amount, Blue Garden took a loan of ₹190 Crore from ABFL. When the aforesaid amount was received by Blue Garden in February 2017, it was immediately paid as an advance by Blue Garden to the Company in terms of the MOU. CG Power thereafter advanced the money to Acton (₹192 Crore) without charging any interest. Acton in turn, utilised the aforementioned amount towards payment against the liability owed by BILT Graphic Paper Products Limited ("BILT") to ABFL.

c. At the time of execution of the MOU, there was a charge in the form of negative lien created in favour of Yes Bank Limited ("Yes Bank") on the Kanjurmarg Property. Despite such prior charges, a Power of Attorney was created in favour of Blue Garden for creation of the mortgage in the case of default under the MOU by CG Power.

d. No approval was obtained from the Board of CG Power for the execution of the MOU or transfer of money/advance received therein. The amount of ₹190 Crore received from Blue Garden and subsequent transfer of ₹192 Crore to Acton were not disclosed in the Audited Financial Statements of CG Power as the asset was offset against the liability (i.e. there was third party liability of Blue Garden and the asset for receivables from Acton). Thus, the financials have been misrepresented to the aforementioned extent.

e. The following Directors/employees of CG Power and Acton were involved in the instant transactions, viz. –

- Gautam Thapar – BILT is an Avantha Group Company.
- Madhav Acharya – Had executed various documents on behalf of CG Power including signing of the MOU.
- Atul Gulatee – Had executed various documents on behalf of Blue Garden including signing of the MOU.
- V. R. Venkatesh – CFO of CG Power and one of the Directors of Blue Garden and Acton.
- Nagendra Sayyaparaju – One of the directors of and initial shareholder of Acton (i.e. holding company of Blue Garden).
- Abhishek Kabra – Senior Manager – Treasury as he was one of the Directors of and initial shareholder of Acton (i.e. holding company of Blue Garden).
- Anirudh Chopra – Director of Acton and Blue Garden.

C. ***Cheques issued by the Company in favour of Yes Bank Limited***

Yes Bank had sanctioned Credit facility amounting to ₹500 Crore to Avantha Holdings vide a Sanction Letter dated October 25, 2015. CG Power had issued a Comfort Letter dated November 4, 2015 and had furnished a cheque for ₹210 Crore in favour of Yes Bank for the aforementioned Credit facility. The Board of CG Power only became aware of the Comfort Letter when a request was made by Yes Bank in April, 2019, for renewal of the above mentioned cheque. Avantha Holdings and CG Power were involved in the instant transaction.

The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- GautamThapar – Personally represented to Yes Bank that he was the person–in–charge of CG Power.
- Atul Gulatee – Had signed the cheques issued by CG Power.
- B. Hariharan – Had signed the cheques issued by CG Power.
- V. R. Venkatesh – Had signed the cheques issued by CG Power.

D. ***€44 million borrowing by CG International Holdings Singapore Pte. Limited ("CG Singapore") from Standard Chartered Bank ("Standard Chartered"), which was guaranteed by a Corporate Guarantee from CG Power.***

a. The Board of CG Power had purportedly authorized its overseas subsidiaries (vide a Resolution dated November 9, 2017) to avail of new fund–based and non–fund based banking facilities of upto €175 million from banks and financial institutions. Accordingly, CG Singapore, a wholly owned subsidiary of CG Power, entered into a Facility Agreement with Standard Chartered in 2017 for availing a term loan of € 44 million, the guarantee for which was provided by CG Power. The term loan was availed to finance the general corporate purposes, including working capital, of the Borrower Group and any other member of the Group Companies of CG Power (including by way of inter–company loans). The entire facility was drawn by CG Singapore on February 14, 2018. On that same day, there was a remittance instruction provided by CG Singapore for remittance of €44 Million to an overseas entity by the name of Avantha International Assets B.V. (private investment entity of Gautam Thapar) ("Avantha International").

b. The Board of CG Power was not aware of the aforementioned borrowing. Further, the remittance was contrary to the provisions of the Facility Agreement, which required the term loan to be used only to finance the general corporate purposes, etc. of CG Power. Further, the Board of CG Power was also not informed of the aforementioned deviation. In addition, while the facility from Standard Chartered was availed at an interest rate of 2.25% + EURIBOR per annum, by CG Singapore, the advance/remittance to Avantha International was interest free. Avantha International and CG Singapore were involved in the transaction.

c. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- GautamThapar – Chairman of CG Power. Further, Avantha International is the private investment entity of GautamThapar.
- B. Hariharan – Had signed the remittance instruction for CG Singapore.
- V. R. Venkatesh – Had signed the remittance instruction for CG Singapore.

E. ***$40 million foreign currency Term Loan by CG Middle East from IndusInd Bank, India, which was guaranteed by a Corporate Guarantee from CG IBV***

a. CG Middle East FZE ("CG Middle–East"), an indirect wholly owned subsidiary of CG Power, availed of a Term Loan borrowing from IndusInd Bank, India on the basis of a Sanction Letter dated October 25, 2017. There is a corporate guarantee from CG International BV ("CG IBV"), the parent company of CG Middle–East. The entire facility was drawn down in October 2017 by CG Middle–East but the monies were received by CG IBV. Once drawn, substantially the whole sum was paid by CG IBV to the Company (CG Power), which in turn remitted the said monies to CG Power Solutions Limited ("PSOL") and which in tum further remitted the said monies to Solaris Industrial Chemicals Limited ("Solaris").

b. The Board of CG Power was not aware of the aforementioned borrowing. No Board resolution was passed by CG Power for the corporate guarantee furnished to IndusInd Bank. Further, CG Middle–East (V. R. Venkatesh is its sole Director) is a mainly a sales office and does not have any significant business operations or employees. CG Middle–East had availed of the credit facility at an interest rate of 4.5% + 3 months LIBOR. However, the amounts were advanced/remitted to Solaris on an interest free basis.

c. The borrowing of $40 million was not reflected in the financial statements of CG Middle–East and the provision of guarantee was not reflected in the financial statements of CG IBV.

d. CG IBV (wholly owned subsidiary of CG Power and CG Singapore), PSOL (wholly owned subsidiary of CG Power) and Solaris (an entity forming a part of the Avantha Group and having the same registered officer address as Avantha Holdings) were involved in the transaction.

e. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- GautamThapar – Solaris Industrials Chemicals Limited is an Avantha Group Company.
- B. Hariharan – Had, without Board authorization, executed the Deed of Guarantee with IndusInd Bank.
- V. R. Venkatesh – Had, without Board authorization, executed the Facility Agreement along with Deed of Guarantee with IndusInd Bank.

F. ***Outstanding advances to Vendors in CG Singapore***

a. In accordance with a Services Agreement executed in January 2013 ("Mirabelle Agreement"), CG Singapore had made certain advances to Mirabelle Trading Pte. Limited ("Mirabelle") during the period March 2018–July 2018. The services provided by Mirabelle in accordance with the Mirabelle Agreement inter alia included:

i) Creating new business opportunities for the transformer business and other businesses of CG Power.

ii) Setting up of JV in Indonesia and all activities connected thereto – The services were with respect to a joint venture of CG Singapore with a local utility company in Indonesia. A 51: 49 Joint Venture in Indonesia was pursued between CG Singapore and a local utilities Company i.e. PT Prima Layanan Nasional Enjiniring. The JV entity was set up in May 2014 by the name of PT Crompton Prima Switchgear Indonesia.

iii) Establishing business in Malaysia.

iv) Identifying customers and getting orders, arranging for financing, etc. for a total fee of $20.15 million.

b. The Mirabelle Agreement was executed on behalf of CG Singapore by Madhav Acharya, a Director of CG Power but not CG Singapore. No Board Resolution, etc. authorizing Madhav Acharya to enter into the said Agreement was available. At the relevant time of executing the Mirabelle Agreement, Mirabelle was a 'related party' of CG Singapore. Mirabelle (an associate Company of Avantha Holdings) had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. Further, payments made to Mirabelle did not carry any interest. CG Singapore and Mirabelle were involved in the transaction.

c. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- GautamThapar – Mirabelle is an associate Company of Avantha Holdings.
- Madhav Acharya – Had, without Board authorization, executed the Mirabelle Agreement.

G. ***Outstanding advances to Vendors in CG Middle East***

a. Several advances amounting to approximately €34 million have been identified by M/s SRBCC & Co. LLP (Auditors of CG Power appointed in September 2018) ("SRBCC") in the books of CG Middle–East between the Financial Years FY 2017–18 and 2018–19, which are outstanding as on date of the Preliminary Investigation Report.

TABLE IX OUTSTANDING ADVANCES TO VENDORS IN CG MIDDLE EAST	
NATURE OF PAYMENT	**AMOUNT (IN MILLION EURO)**
ADVANCES/PAYMENTS TO VENDORS (CONSUMER CONTRACTS) (ITEM 1)	26.50
ADVANCES TO GROUP ASSOCIATE COMPANIES (ITEM 2)	0.62
INTEREST ON INDUSIND TERM LOAN (ITEM 3)	1.20
OTHER ADVANCES/ACCOUNTS RECEIVABLES (ITEM 4)	5.60
TOTAL	**33.92**

b. In relation to Item 1, CG Middle–East appointed various Service Agents in relation to the certain Customer Contracts (sale/purchase of transformers, etc.) in order to mitigate the risk of any potential claims. The aggregate value of such Contracts made with Service Agents is approximately €35 million, which represents in excess of 45% of the aggregate value of the aforesaid Customer Contracts, which do not appear to represent a sound and viable business strategy. Further, such Service Agents did not appear to have any expertise in the service proposed to be provided by them.

c. As regards Items 2–4, €0.62 million was advanced as an interest free loan by CG Middle–East to Ballarpur International Holdings BV (wholly owned subsidiary of Ballarpur Industries Limited, an associate company of Avantha Holdings) ("Ballarpur International"); €1.2 million was towards interest costs incurred in relation to the Term loan facility availed by CG Middle–East from IndusInd Bank; €5.6 million represented balances from debtors which have been written off as CG Middle–East has not been able to realise the same.

d. No Board resolution was passed by CG Middle–East for the execution of contracts with Service Agents. Further, no Board approvals were granted in respect of loan facility provided to Ballarpur International.

e. CG Singapore and Ballarpur International were involved in the transaction. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- GautamThapar – Ballarpur International is an associate Company of Avantha Holdings.
- V. R. Venkatesh – Had, without Board authorization, executed contracts with Service Agents.

H. ***Outstanding trade receivables aggregating to ₹108 Crore from Identified Customers***

a. The Company had entered into Tripartite Agreement on January 1, 2017, with Identified Suppliers and PSOL (subsidiary of CG Power) for purchase of commodities. The liability of the Company towards the Identified Suppliers (Jointly, Mahalaxmi Traders, Swastik Trading Company, Star International, Kaushal Trading Company, Shri Bala Ji Projects and Shri Sai Sales Projects) owing to purchase of commodities shall be discharged by PSOL as PSOL owed certain monies to the Company pursuant to a Loan Agreement dated May 2, 2016. The inventory appeared to have been sold to the Identified Customers (Jointly, Miriam International, Sidhi Vinyank Traders and Jain Enterprises) for an aggregate amount of ₹120 Crore. The Company made a provision to the extent of ₹155.67 Crore towards slow moving and non–moving inventory. Further, the Company made a provision of ₹12 Crore as liquidated damages out of the aggregate amount of ₹120 Crore receivables.

b. The Supplier Agreements were executed on the letterhead of each of the Identified Suppliers, who were all based out of Delhi and also had identical formats in respect of their letterheads. Necessary documentation to support the purchase from the Identified Suppliers were not made available and many such Suppliers did not appear to exist at their addresses as noted from the records of the Company. The format of the P.O. issued by the Identified Customers and the description of goods mentioned in the P.O. for each of the Identified Customer is identical. The Identified Customers did not pay the amounts due as on the applicable due date(s). Baba Iron, an NBFC, with whom a Debt Servicing Agreement was signed, did not appear to exist at the address provided by the Company. The purchases and sales appear dubious and seemed to have been made with the objective of reducing the outstanding loan availed by PSOL from the Company. Further, the PSOL Loan Agreement (Loan agreement between CG Power and PSOL) was executed without the authorizations by the respective board of directors of the Company or PSOL. PSOL, a wholly owned subsidiary of CG Power, was involved in the transaction.

c. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Madhav Acharya – Had executed PSOL Loan Agreement without Board approval. Further, procurement and sale transactions by the Company were executed at his behest.
- B. Hariharan – Had executed PSOL Loan Agreement without Board approval.
- V. R. Venkatesh – Had approved payments to be made to the Commercial Agent (who brought in the identified customers) and had signed the Journal Voucher whereby the Company made a provision to the extent of ₹155.67 Crore towards slow moving and non–moving inventory, which was not in accordance with the Rules of Procedure of CG Power.

I. *₹229 Crore paid to CG Power Solutions Limited ("CG Power Solutions")*

a. Avantha Holdings and CG Power had entered into a Brand License and Brand Support Agreement dated January 25, 2010 for granting CG Power the right to use 'Avantha' brand owned by Avantha Holdings for the consideration mentioned therein. Thereafter, Avantha Holdings and CG Power entered into various amendment agreements to record the revised terms and conditions for the use of 'Avantha' brand (collectively, "Old Royalty Agreement"). The last royalty payment made by CG Power to Avantha Holdings for using the 'Avantha' brand was on August 31, 2018.

b. Thereafter, Avantha Holdings and CG Power entered into Avantha Brand Usage Agreement dated February 13, 2019 ("New Royalty Agreement") which superseded and replaced the earlier Old Royalty Agreement and monetized 50% of the royalty payable by CG Power to Avantha Holdings of ₹411.20 Crore from October 1, 2018 in perpetuity and the balance 50% of the annual royalty payments would be payable by CG Power on its annual consolidated net operating revenue to Avantha Holdings. While the New Royalty Agreement was executed between Avantha Holdings and CG Power, it is understood that Avantha Holdings and CG Power were still in talks to revise the terms pertaining to consideration payable by CG Power to Avantha Holdings.

c. PSOL had taken loans from CG Power and had in turn had made certain advances to Avantha Holdings, which stood at ₹778 Crore as on November 13, 2018. The amounts were however, not repaid by Avantha Holdings to PSOL.

Towards repayment of these advances, Avantha Holdings addressed a letter dated September 28, 2018 to CG Power ("Avantha Holdings Letter") wherein Avantha Holdings proposed to make a deposit of ₹229 Crore ("Deposit Amount") with CG Power subject to the following:

- CG Power placing the Deposit Amount in a fixed deposit;
- Royalty being paid by CG Power to Avantha Holdings on or before March 20, 2019;
- The amount of royalty to be paid by CG Power to Avantha Holdings shall be appropriated out of the Deposit Amount towards part repayment of earlier advances by CG Power/ PSOL to Avantha Holdings;
- Royalty being paid to a specific bank account of Solaris maintained with IndusInd Bank, Barakhamba Road Branch, New Delhi;
- If royalty is not paid on or before March 20, 2019, the Deposit Amount to be refunded by CG Power.

d. PSOL received a payment of ₹294 Crore from Avantha Holdings on September 29, 2018 and transferred the entire sum to CG Power on the same day. Subsequently, CG Power created 5 fixed deposits with IndusInd Bank aggregating to ₹229 Crore and the balance ₹65 Crore out of ₹294 Crore was utilized by CG Power. As stated above, Avantha Holdings and CG Power entered into New Royalty Agreement on February 13, 2019. However, Avantha Holdings and CG Power were still in talks to revise the terms pertaining to consideration payable by CG Power to Avantha Holdings. Since, Avantha Holdings and CG Power could not reach a consensus on

the payment terms prior to March 20, 2019, CG Power did not pay royalty to Avantha Holdings as contemplated under the Avantha Holdings Letter.

e. On account of non–compliance of the agreed terms of the Avantha Holdings Letter, CG Power transferred ₹235.83 Crore (Deposit Amount + interest) to PSOL on March 28, 2019 which in turn was transferred by PSOL to AHL the same day.

f. The Board of CG Power was not aware of Avantha Holdings' letter or the terms and conditions proposed therein. The instant transaction appeared to have been carried out in order to reduce Avantha Holdings' liability with respect to the CG Power and CG Power Group. Avantha Holdings and PSOL were involved in the transaction.

g. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- V. R. Venkatesh – Had purportedly informed the Board of CG Power of Avantha Holdings' letter along with the understanding to reduce the debts between the companies. However, the same was not recorded in the minutes of the Board Meeting.

From the above it was clear that the Chairman along with certain directors, employees of CG power and related entities, had perpetrated certain irregularities, which inter alia included:

i. The use of certain assets of the Company as collateral including being Co–Borrower and/or Guarantor for enabling third parties to obtain loans without due authorisation from the Board of CG Power.

ii. Routing transactions through subsidiaries, Promoter–affiliated Companies and other connected parties for the ultimate benefit of companies related to Promoter Group.

iii. Inappropriate netting–off the liabilities with the receivables from different entities.

iv. The use of different accounting heads for concealing payments made by CG Power.

v. Interest free advances to Promoter–affiliated Companies.

vi. Entering into dubious transactions for reducing the liability of the Promoter–affiliated Companies towards CG Power/Group Companies.

In addition to the above, the following is also noted from the Audit Report of the Company for the Financial Year ended March 31, 2019.

i. Certain unauthorized/unapproved banking transactions in the nature of loans (unauthorized transactions/ loans) taken from banks / financial institutions (lenders)/a connected party aggregating to ₹635 Crore were not disclosed in the Standalone Financial Results of prior years/periods by off-setting against certain related and unrelated party balances. Further, as explained by the management, interest expenses of ₹90.93 Crore which

were serviced by the Company in relation to these unauthorized loans were accounted under different heads in the Standalone Statement of Profit and Loss and were mis–represented in the financial statements/ results of prior years/periods.

ii. The nature of certain transactions entered into by the Company with the related and unrelated parties aggregating to ₹635 Crore and which were not disclosed in the financial statements of prior years, by off–setting such transactions against certain undisclosed borrowings and have now been recorded and reinstated in the respective prior years / periods. The Company also has loans including interest receivables and advances recoverable from related and unrelated parties, as reinstated on March 31, 2019, aggregating to ₹2,439.94 Crore for which further interest income aggregating to ₹337.61 is currently not recorded as at March 31, 2019.

iii. The bank balances were overstated and advances receivable from related parties were understated by ₹400 Crore and ₹300 Crore as at March 31, 2018 and April 1, 2017 respectively, which have now been restated by the Company.

iv. The Company has written back in the Standalone Financial Results certain amounts which were previously expensed off. These amounts were presented as amounts charged off in relation to inventories/trade advances/unbilled dues from customers/ loans given to related, unrelated parties and connected parties aggregating to ₹634.40 Crore. As informed by the management, these amounts were written off in the prior years/periods were misrepresented to the Board of Directors and were wrongly grouped in the financial statements / results of prior years/ periods under various heads, instead of related and unrelated party balances being written off.

v. Certain trade receivables balances amounting to ₹120 Crore against which provision for doubtful trade receivable of ₹108 Crore was made in the current year and ₹12 Crore was made in the prior years/periods. The underlying sale transactions and recording of provisions were found to be suspicious in nature and not in the normal course of business of the company.

vi. Based on the interim response received from the Board of Directors of the Company, SEBI filed its preliminary response to the Central Government reporting the suspected fraudulent transactions and balances. On further independent investigation by the Board of Directors, SEBI are informed, that these transactions appear to be fraudulently accounted as trade receivables instead of being accounted as advances to related parties. The Board of Directors have reinstated opening balances in prior years/periods.

vii. The management has not accounted contractual royalty expense amounting to ₹27.88 Crore for the six months period ended March 31, 2019.

viii. The Company has entered into various transactions with certain identified group companies (termed as connected parties) wherein some of the Company's employees own beneficial ownership in such connected parties and further certain senior management personnel of the Company are directors of these connected parties. The Company has not identified these connected parties as related parties and has not yet completed its assessment to determine the nature of its relationship with these connected parties.

ix. SEBI had sent independent balance confirmations to banks/financial institutions for borrowings, bank balance and certain trade receivables selected on sample basis. SEBI have not received responses to request for such balance confirmations towards borrowings of ₹263.09 Crore, bank balances of ₹3.13 Crore and trade receivables of ₹1,035.43 Crore and confirmation from banks/financial institutions in respect of the details of securities, lien, collaterals, guarantees, etc.

x. Note 10 in the Standalone Financial Results indicates that (a) the Company has incurred net losses during the current and previous years; (b) the Company's current liabilities exceeded its current assets as at the balance sheet date; (c) the Company has the short term outstanding borrowings repayable over next 12 months aggregating to ₹1,411.55 Crore; and (d) pending outcome of investigation initiated, the management has not concluded on the recoverability of loans and advances from related and unrelated parties.

Receivables for CG Power and its Subsidiaries

A. The Company in its filing made to the Stock Exchanges on August 20, 2019, has inter alia stated in its Notes to consolidated management compiled financial information that an amount of ₹2,935.84 Crore is receivable balance for the CG Power Group from various Promoter Affiliate Companies and connected parties and ₹326.30 Crore is the advances/loan payable by the CG Power Group to its related/connected parties.

B. The Company vide an e–mail dated September 16, 2019, has provided to SEBI the break–up of receivables and advances to related and connected parties. Thus from the disclosures made by the Company, an amount of ₹2185.93 Crore is receivable balances for the CG Power Group from various Promoter Affiliate Companies and connected parties and ₹326.30 Crore is the advances/loan payable by the CG Power Group to its related/connected parties.

A3 : Management Action

On August 29, 2019 Mr. Gautam Thapar were removed as the chairman of the board by the company. On August 30, 2019 Mr. V. R. Venkatesh were removed as the chief financial officer of the company by the board. Mr. Ashish Kumar Guha was appointed as the chairman of the board of directors of the company on September 25, 2019. BSE Limited appointed MSA Probe Consulting Private Limited for conducting a detailed forensic audit of the accounts of the company from the financial year 2015-16 onwards. Ms. Sikha Kapadia, company secretary and compliance officer resigned from the services of the company on 2 November, 2019 and her

resignation became effective from 31 December, 2019. The company appointed Mr. Nimesh Shah as the company secretary and compliance officer with effect from 1 January, 2020 who also resigned and ceased to be company secretary and compliance officer of the company w.e.f. 31January, 2020. The company appointed Mr. Ravi Rajagopal, EVP & Global Head – Legal, Governance & Risk as compliance officer of the company w.e.f. February 1, 2020. The company moved an application on 24 January, 2020 to the central government for removal of M/s K K Maheshwar & Co. one of the Joint Statutory Auditors of the company since the company has come across certain unexplained payments made to the firm, M/s KKM resigned as Joint Statutory Auditors of the company on 25 January, 2020. The company appointed Mr. Alen Ferns as the company secretary w.e.f. March 18, 2020.

A4 : SEBI passed an Interim Order on September 17, 2019

(https://www.sebi.gov.in/enforcement/orders/sep-2019/order-in-the-matter-of-cg-power-and-industrial-solutions-limited_44269.html)

SEBI noted that an examination of the Preliminary Investigation Report along with a consideration of the Audit Report prima facie indicate a serious misstatement of accounts and diversion of funds from a listed Company and/or its subsidiaries/associates, which are in violation of the provisions of the SEBI Act____, PFUTP Regulations 2003 and the LODR Regulations. Accordingly, SEBI find that:

I. Gautam Thapar, V. R. Venkatesh, Madhav Acharya, B. Hariharan along with the Promoter Company and entities related/connected with the Company, viz. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited have prima facie violated Sections 12A(a), (b) and (c) of the SEBI Act_____ and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) and (r) of the PFUTP Regulations, 2003.

II. Gautam Thapar, Madhav Acharya and B. Hariharan have prima facie violated Regulations 4(2)(f)(i)–(ii), 4(2)(f)(iii)(3) and (6) of the LODR Regulations 2015.

III. Gautam Thapar, Madhav Acharya and B. Hariharan have prima facie violated Regulation 26(3) of the LODR Regulations 2015 on account of having violated the provisions of the Code of Conduct for employees of CG Power.

IV. V. R. Venkatesh has *prima facie* violated Regulation 4(2)(f)(i)(2) and Regulation 26(3) of the LODR Regulations 2015.

V. V. R. Venkatesh and Madhav Acharya have prima facie violated Regulation 33(2)(a) of the LODR Regulations 2015.

Decision

SEBI passed the following interim order:

(i) Notices no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders.

(ii) Notices no. 2–5 are restrained from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders.

(iii) The concerned stock exchanges are permitted to allow the aforementioned persons/entities at paragraph 6.1(i) to square off their existing open positions in the

Futures and Options segment, if any, immediately. The aforementioned persons/entities shall not be allowed to take fresh positions or increase their open positions or execute trades. Further, the concerned stock exchanges shall ensure that no fresh positions are created for the aforementioned persons/entities.

(iv) Notices no. 6–8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG Power and Industrial Solutions Limited, as per Table X at paragraph 4.4. B. To the extent of their liability, the aforesaid Notices are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders.

(v) Notice no. 1 i.e. CG Power and Industrial Solutions Limited is directed to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Notices/entities mentioned at paragraph 5.5 A. along with due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.

(vi) BSE shall appoint an independent Auditor/Audit Firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015–16 onwards till date. The expenses for the aforementioned forensic audit shall be borne by the Company. The independent Auditor/Audit Firm so appointed shall verify inter alia the following –

a. Manipulation of Books of Accounts;

b. Misrepresentation including of financials and/or business operations;

c. Wrongful diversion/siphoning of company funds;

d. Any other related matter.

(vii) Notices no. 1–8 shall extend necessary co–operation to the independent Auditor/Audit Firms appointed as per this Order and shall furnish all information/documents sought from them from time to time.

(viii) The independent Auditor/Audit Firm so appointed as per this Order shall submit a Report to SEBI within six months from the date of this Order.

In his defence, Thapar has alleged that Vaish Associates did not contact either him or the company's senior management. Thapar has said that he was not given any opportunity to present his version of the facts. Deposing before regulators, Thapar is understood to have also alleged CG Power has cut off all access to vital documents that could help prepare his defence. The Securities Appellate Tribunal has since ordered CG Power to provide all necessary documents to Thapar to present his side of things.

The corporate affairs ministry on Monday i.e. 25.11.2019 moved the National Company Law Tribunal (NCLT) seeking to reopen and restate the financial statements of CG Power & Industrial Solutions Ltd. under Section 130 of the Companies Act_____ for financial years 2015 to 2019. Alleging financial irregularities, the CG Power board had on August 30 in a mid-night drama removed the company promoter Gautam Thapar as the non-executive chairman and Ashish Kumar Guha was appointed as the new non-executive chairman. According to the annual report

of the company the company declassify Gautam Thapar as the promoter as any association with him will be prejudicial to the interest of the company.

The NCLT directed the ministry to issue notices to market regulator Securities and Exchange Board of India, the income tax department and Gautam Thapar to file reply within a week and also asked the ministry to file the rejoinder a week later. The tribunal has posted the matter for more hearing to Dec. 16.

As per the news published in several national newspaper on 16.12.2019 The National Company Law Tribunal (NCLT) has rubbished the findings made by law firm Vaish Associates and said that the books of fraud hit CG Power should not be opened as the case is under investigation.

In the hearing, the Mumbai Bench of the tribunal ruled that the Vaish report cannot be trusted as the company was appointed by CG Power and therefore not independent. Further, the accounts cannot be opened as per Vaish report due to the fact that SEBI has already appointed an agency which should be allowed to conclude its work.

As per the news published in several national news paper on 10.01.2020, The Mumbai bench of NCLT has thrown out the findings made by law firm Vaish Associates on former CG Power Chairman Gautam Thapar, citing them as "bogus".

Justice Rajesh Sharma and B P Mohan ruled that the tribunal will not rely upon any report but only an independent audit. There is no question of Vaish report being termed as independent as it was commissioned by the company Board, the bench noted. What this means is that the investigation has to be independent and not on the behest of the company.

Thapar and others have claimed that SEBI's order was based on the findings of the Vaish Associates report, which was commissioned by the company Board and is biased, heavily disclaimed and designed to manipulate the CG share price and oust (Thapar) as Chairman.

The Mumbai NCLT on Thursday i.e. 23.01.2019 reserved its order on a plea from the corporate affairs ministry to appoint an independent auditor to restate the accounts of CG Power & Industrial Solution.

A5: SEBI Confirmatory Order dated March 11, 2020

(https://www.sebi.gov.in/enforcement/orders/mar-2020/confirmatory-order-in-the-matter-of-cg-power-and-industrial-solutions-limited_46281.html)

Subsequent to the Interim Order, Notices no. 2–6 (Gautam Thapar, V. R. Venkatesh, Madhav Acharya, B. Hariharan, Avantha Holdings Limited) had filed an Appeal before the Hon'ble Securities Appellate Tribunal ("SAT") (Gautam Thapar and Others vs. SEBI and CG Power and Industrial Solutions Limited, Appeal No. 413 of 2019), challenging the Interim Order. The Hon'ble SAT vide an Order dated October 1, 2019, had inter alia observed:

SEBI after considering the Preliminary Investigation Report given by the Company and further considering the Audit Report, prima facie found that there was a serious misstatement of accounts and diversion of funds from the Company and its subsidiaries in violation of the SEBI Act, SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience) and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations, 2015" for convenience). SEBI upon examining the evidence, prima facie found that the appellants had perpetrated certain irregularities which included:

(i) The use of certain assets of the Company as collateral including being Co–Borrower and/or Guarantor for enabling third parties to obtain loans without due authorisation from the Board of CG Power.

(ii) Routing transactions through subsidiaries, Promoter–affiliated Companies and other connected parties for the ultimate benefit of companies related to Promoter Group.

(iii) Inappropriate netting–off the liabilities with the receivables from different entities

(iv) The use of different accounting heads for concealing payments made by CG Power.

(v) Interest free advances to Promoter–affiliated Companies.

(vi) Entering into dubious transactions for reducing the liability of the Promoter affiliated Companies towards CG Power / Group Companies.

We therefore, find no merit in the appeal and is dismissed with the following directions:

a) The appellants shall file a reply before the WTM of SEBI on or before October 15, 2019. In the event the appellants want further time then appropriate application will be filed before the WTM of SEBI which will be considered and appropriate orders would be passed.

b) In the event any document is required by the appellants either from Company or from SEBI, a formal request to that effect shall be made by the appellants which document(s) shall be supplied in accordance with law within three working days.

c) Upon receipt of the reply, SEBI will grant an opportunity of hearing to the appellants and after considering their submissions pass a Confirmatory Order within a period of four weeks from the date when the hearing is concluded.

Accordingly the SEBI provided the notices reasonable opportunities of submitting replies/informations and opportunity for personal hearing were also provided.

Directions

G. Mahalingam, Whole Time Member of SEBI passed the following directions:

I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, hereby dispose of the replies/submissions made by the Notices no. 1–6 and 8 in accordance with the following directions:

(i) Notices no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders. The aforementioned Notices shall however, be permitted to liquidate upto 25% of the value of the securities held by them as on the date of the Interim Order.

(ii) Notices no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, in any manner whatsoever, till further orders.

(iii) Notices no. 2–5i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan shall not be allowed to take fresh positions or increase their open positions or execute trades in the F&O segment, till further orders.

(iv) Notices no. 6–8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited, are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG Power and Industrial Solutions Limited, as mentioned at Table XII of paragraph 30Ai.e₹2185.93 Crore. To the extent of their liability, the aforesaid Notices are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders. Notice 8 shall however, be permitted (a) to make payments towards dues to statutory authorities; (b) incur expenses towards provident fund, pension and gratuity, insurance and similar other expenses; (c) to make payments/wages to employees/retainer/staff/ security guards, etc. and (d) to make payments towards legal expenses. Further, Notice 6 shall continue to abide by the directions issued vide SEBI letter dated October 16, 2019. Additionally, Notice 6 shall be permitted to make payments towards legal expenses.

(v) Notice no. 1 i.e. CG Power and Industrial Solutions Limited, shall continue to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Notices/entities mentioned at Table XII of paragraph 30A along with due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.

Corporate Governance Issues Identified

1. Usage of funds and land assets from the company by promoter-connected entities-Related Party Transactions
2. Failure of vital governance machinery of Key Managerial Personnel, Independent Directors, Whistle Blowers, Auditors, NBFC Lenders
3. Questionable role of Promoters and Board of Directors.

References

1. The Hindu Business Line, Newspaper. Accessed from https://www.thehindu.com/business/cg-power-reports-huge-financial-fraud/article29184623.ece
2. The Economic Times, Newspaper. Accessed from https://economictimes.indiatimes.com/industry/energy/power/cg-power-fraud-ex-cfo-says-nashik-property-not-sold-yet/articleshow/72082190.cms?from=mdr
3. "SEBI passed an Interim Order on September17, 2019", Accessed from https://www.sebi.gov.in/enforcement/orders/sep-2019/order-in-the-matter-of-cg-power-and-industrial-solutions-limited_44269.html)
4. "SEBI Confirmatory Order dated March 11, 2020". Accessed from https://www.sebi.gov.in/enforcement/orders/mar-2020/confirmatory-order-in-the-matter-of-cg-power-and-industrial-solutions-limited_46281.html
5. Website of CG Power and Industrial Solution Limited. Accessed from http://www.cgglobal.com/

***

PACL COLLECTIVE INVESTMENT SCHEME - CASE STUDY*

Introduction

During the early nineties, several entities had started mushrooming across the country for operating financial schemes in the market. Such entities apparently undertook plantation activities on commercial scale through various plans/ schemes and mobilized huge money by issuing various instruments and offering plans with lucrative rates of return (inconsistent with the normal rate of return) in such schemes. The funds so mobilized were mis-utilized by such entities for the purposes not disclosed at the time of inviting the investments.

During the mid-nineties, such entities started defaulting in making payments to their customers/ investors. This not only caused huge losses to the investors who lost their life savings to such unscrupulous entities, but also eroded the confidence of the general public in financial savings. It was noticed that the promoters of such entities had themselves invested a minimal amount in such ventures and raised a majority of the funds for the plans/ schemes from ordinary small investors.

Considering the huge risk associated with such schemes, the Government of India felt that it was necessary to regulate such financial schemes and set up an appropriate regulatory framework and therefore government amended various laws such as SEBI Act and also framed SEBI (Collective Investment Schemes) Regulations 1999 ("CIS Regulations") for regulating such entities.

PACL Limited ("PACL" or "the company"), was a company

- carrying business related to buying and selling of agricultural land including development of such land into cultivable land and providing other infrastructure on it. The transactions of PACL are similar to that of a builder or a developer of property. PACL was purchasing lands from its own funds prior to inviting allotments for individual plots of land and is adding value to the land through its development activities. Based on such land banks customers approach PACL through its agents for the purchase of lands. PACL had prepared different plans under which these lands were sold wherein the prospective purchaser would pay the price of the land in one or multiple installments.
- wherein the funds of the investors were pooled and utilized towards the cost of land, registration expenses, developmental charges and other incidental expenses.

Allegations on PACL

- It had been alleged that PACL was running Collective Investment Scheme (CIS) and was one of the companies which had failed refund money to investors and to submit the information/ details with SEBI.

---

* *Case Study written by Puneeta Ahuja, Consultant and reviewed by Mahesh Airan, Assistant Director, The ICSI.*

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

PACL collects the money from customers/ investors against the purported sale of a plot/land. The application form and the agreement with its customers contain the clause that the customer is applying for plot of agricultural land and for development and maintenance of the same by PACL Customer of PACL makes contribution/ payment with a view to receive the profits, income and returns on their initial investments.

- PACL and its promoters & directors had mobilized funds from general public by sponsoring/causing to be sponsored, carrying/causing to be carried, collective investment schemes, without obtaining registration from SEBI as required under the provisions of SEBI Act and SEBI (Collective Investment Schemes) Regulations, 1992.

In view of such defaults of PACL as mentioned above, SEBI in its letter dated 4th March, 1998 had intimated PACL that it was not eligible to take the benefit under the proviso to Section 12(1B) of the SEBI Act and therefore could neither launch any new schemes nor continue raising funds under its existing schemes.

Regulatory provisions related to Collective Investment Schemes and its registration

"Collective Investment Scheme" means any scheme or arrangement which satisfies the following conditions as specified in Section 11 AA of the SEBI Act:

(i) *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*

(ii) *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*

(iii) *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*

(iv) *the investors do not have day to day control over the management and operation of the scheme or arrangement.*

Section 12 (1B) of the SEBI Act states that-

"*No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the SEBI in accordance with the regulations*"

With this provision, a ban was imposed on a person carrying on any CIS, unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

Proviso to Section 12 (1B) of the SEBI Act states that-

"Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made by SEBI."

Whereas, above proviso provides benefit to the CIS operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required may continue to operate till such time the SEBI made regulations for the conditions to which certificate of registration is to be issued and the fees to be paid for certificate of registration.

Communication between SEBI and PACL : A brief

1. PACL in its letter dated 23rd March, 1998 submitted its reply to the SEBI and challenged the jurisdiction of SEBI by stating that its transactions are in the nature of sale and purchase of agricultural land and thus, not fall under the purview of the securities market.
2. SEBI vide its letter dated November 30, 1999 to PACL, alleged that PACL was operating CIS, wherein the funds of the investors were pooled and utilized towards the cost of land, registration expenses, developmental charges and other incidental expenses. Through the above said letter SEBI advised PACL to comply with and abide by the provisions of the SEBI CIS Regulations.
3. PACL vide its letter dated December 13, 1999, replied to the letter of SEBI wherein it was stated that SEBI has no jurisdiction to scrutinize its transactions. According to PACL, it mainly deals in the sale and purchase of agricultural land and development of the land.

Challenging of SEBI Letters by PACL before the Hon'ble High Court of Judicature for Rajasthan at Jaipur

PACL then challenged these SEBI letters before the Hon'ble High Court of Judicature for Rajasthan at Jaipur by filing a Writ Petition, in December 1999, claiming that its scheme does not fall under the definition of CIS as defined under the SEBI CIS Regulation and SEBI Act.

While the Writ Petition filed before the Hon'ble High Court of Judicature for Rajasthan was pending, SEBI vide order dated June 24, 2002, held that the schemes floated by PACL fall squarely within the definition of CIS as defined under Section 11AA of the SEBI Act and required PACL to comply with the provisions of the SEBI CIS Regulations subject to the directions of the Hon'ble High Court of Judicature for Rajasthan at Jaipur.

Subsequently, the Hon'ble High Court of Judicature for Rajasthan at Jaipur vide its order dated November 28, 2003 allowed the Writ Petition filed by PACL. The Hon'ble High Court held that the schemes of PACL were not CIS as they did not possess the characteristics of a CIS as defined under Section 11AA of the SEBI Act.

SEBI appeal to Hon’ble Supreme Court

SEBI preferred an appeal before the Hon'ble Supreme Court of India against the said order of Hon'ble High Court. The Hon'ble Supreme Court of India vide order dated February 26, 2013, set aside the order of Hon’ble High Court and ordered that:-

- the appellant (SEBI) shall pass fresh orders as regards the business activity of the respondent Company (PACL) as to whether it falls under the category of CIS or not and depending upon the ultimate order to be passed it may proceed further in accordance with law.
- Further, Appellant (SEBI) shall before taking any future action give prior notice to the respondent Company (PACL).

In compliance with the above order/directions of the Hon'ble Supreme Court, SEBI vide its order dated 22nd August, 2014, finds that the:-

- *business/activities/schemes/plans offered and operated by PACL are Collective Investment Schemes, satisfying all the ingredients specified under Section 11AA of the Securities and Exchange Board of India Act, 1992.*
- *PACL and its directors and promoters to refund the monies, which have been collected in an unauthorized manner, with promised returns to investors.*

Further as per the above order, SEBI has passed the following directions

SEBI's direction to PACL

- PACL Limited its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall abstain from collecting any money from investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
- PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall wind up all the existing Collective Investment Schemes of PACL Limited and refund the monies collected by the said company under its schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
- PACL Limited and its directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya are also directed to immediately submit the complete and detailed inventory of the assets owned by PACL Limited.
- PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall not alienate or dispose off or sell any of the assets of PACL Limited except for the purpose of making refunds to its investors as directed above.

SEBI's action in case of non-compliance of above directions

- PACL Limited and its directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, Mr. Anand Gurwant Singh, Mr. Nirmal Singh Bhangoo, Mr. Uppal Devinder Kumar, Mr. Tyger Joginder and Mr. Gurnam Singh shall immediately (*on expiry of the three months period available for making refunds*) be restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities market till all the Collective Investment Schemes of PACL Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against PACL Limited, its promoters, directors and its managers/

persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

- SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, PACL Limited.
- SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

Non-compliance by PACL and its repercussions

Subsequently, PACL Ltd. and its promoters & directors failed to refund the money as directed by above said order of SEBI dated 22nd August, 2014. In addition to this, PACL Ltd. filed an appeal to SAT against the said SEBI order. However, SAT dismissed the appeal filed by PACL Ltd. and directed to refund the money and submit WRR.

As the company had not taken any step towards the refund of the money and filed an appeal against the above mentioned SAT order before Supreme Court of India. However, Supreme Court had not granted stay either on SAT or SEBI's order which implied that PACL Ltd. to refund the money to the investors collected under its schemes.

The principle amount involved is Rs. 49,100 Crores along with the promised returns, further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum. Hence, prima facie the due amount seems to be more than Rs. 55,000 Crores.

Recovery Proceedings

Inspite of the directions, PACL Ltd. had not taken any steps to refund money to the investors. Therefore SEBI had initiated recovery proceedings against PACL Ltd. and its promoters/ all directors and also against group/associate entities of PACL Ltd.

SEBI during its recovery proceedings attached all bank accounts including lockers and Demat Accounts/ mutual fund folios, either singly or jointly with any other person or persons and communicated the same to all the banks, depositories and mutual fund houses.

Hon'ble Supreme Court orders

Further, the **Hon'ble Supreme Court vide its order dated 2nd February, 2016, directed SEBI to constitute a committee for disposing of the land purchased by PACL Ltd. so that the sale proceeds can be paid to the investors**, who have invested their funds in the company for purchase of land and Hon'ble Mr. Justice R. M. Lodha, the former Chief Justice of India, would be the Chairman of the said Committee.

The Hon'ble Supreme Court also directed that a nodal officer shall be appointed who shall be in-charge of the funds so collected and shall have liaison with the committee and shall also work as a secretary to the committee.

Further the Hon'ble Supreme Court vide its order dated 25th July, 2016 also directed that;-

"PACL Ltd. and/or its Directors/Promoters/agents/employees/Group and/or associate companies be restrained from in any manner selling/transferring/alienating any of the properties wherein PACL has, in any manner, a right/interest situated either within or outside India."

Constitution of Committee

In compliance of the above said order dated 2nd February, 2016, of the Hon'ble Supreme Court, a committee was constituted by SEBI on 17th February, 2016 for disposing of the land purchased by PACL Ltd. so that the sale proceeds can be paid to the investors, who have invested their funds in the company.

The committee constituted by SEBI had got an advertisement published in newspaper inviting public at large to submit Expression of Interest (EOI) for sale of PACL Ltd. properties and vehicles.

In furtherance thereof, the Committee had started remitting refunds to investors after verification of the claim applications as received from investors. Pursuant to the same, refunds to investors have been credited to the bank accounts in respect of 1,89,103 applications under "1st refund process" and 2,77, 544 applications under "2nd refund process" .

The committee recently vide its press release stated that it had initiated the process of payment to investors and aggregating to Rs 204.85 crores has been effected to 8,31,018 investors, with claims upto Rs. 7,000/- as on 15th April, 2020.

Conclusion

The natural consequences of operating an unauthorised CIS activity would be to immediately prevent the entity from continuing with such activity and to direct that entity to refund monies collected under its unauthorised CIS activity with promised returns to its customers. The same shall be followed in this case also. The entire exercise undertaken by SEBI is for protecting the customers by ordering that their monies be returned with returns that are promised by PACL Limited and due to them. Appropriately, penal and coercive action would ensue if the entity fails to comply with such remedial measures directed by SEBI.

***

MOTTO

सत्यं वद। धर्मं चर।

speak the truth. abide by the law.

VISION

"To be a global leader in promoting good Corporate Governance"

MISSION

"To develop high calibre professionals facilitating good Corporate Governance"

THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi -110 003

tel 011-45341000 **fax** +91-11-24626727

email info@icsi.edu **Website** www.icsi.edu