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LEGAL WORLD

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Corporate Laws

Landmark Judgement

LMJ 04:04:2025

DHYAN INVESTMENTS & TRADING CO. LTD v. CENTRAL BUREAU OF INVESTIGATION & ORS [SC]

Appeal (Crl) No(s). 757-758 of 2001

K.T. Thomas & S.N. Variava, JJ. [Decided on 31 /07/2001]

Equivalent citations: AIR 2001 SC 2456; 2001 (6) SCC 607; 2001 (4) 2001 (4) SCALE 606; (2001) 6 JT 27 (SC); (2001) 107 Comp Cas 1.

Special Court(Trial of Offences Relating to Transactions in Securities) Act, 1992 read with section 407 of Criminal Procedure Code - transfer of case from one special judge to another- whether High Court has power to transfer- Held, No.

Brief facts:

Facts are immaterial as the question of law raised in this appeal was whether the High Court has power to transfer a case from one Special Judge to another under the Special Court(Trial of Offences Relating to Transactions in Securities) Act, 1992.

Decision: Disposed of.

Reason:

In this Appeal we have not permitted parties to argue on merits. We have confined parties to the question whether the High Court would have power to transfer the case from one Judge of the Special Court to another.

These observations show that the Special Courts were not a High Court. At the same time they are not District Courts within the meaning of Article 235. This shows that the control over Special Courts does not vest in the High Court. This judgment notes therefore, that Special Court not being a District Court, High Court would have no control over it. But the majority accepts that the creation of such a Court does not destroy the constitutional safeguards of judicial independence.

That the Special Court is not subordinate to the High Court is also very clear from the case of *T. Sudhakar Prasad (supra)*, referred to by Mr. Chidambaram. In this case this Court has held as follows :

"18. Subordination of Tribunals and courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is judicial superintendence and not administrative superintendence, such as one which vests in the High Court under Article 235 of the Constitution over subordinate courts. Vide para 96 of L. Chandra Kumar case (supra) the Constitution Bench did not agree with the suggestion that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as our constitutional scheme does not require that all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction. Obviously, the supervisory jurisdiction referred to by the Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the Tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.

19. Jurisdiction should not be confused with status and subordination. Parliament was motivated to create new adjudicatory fora to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing off the conventional shackles of the strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews - creating hurdles in the fast flow of the stream of justice." (emphasis supplied)

Thus from this judgment it is clear that only judicial superintendence is envisaged under Articles 226 and 227. There is no administrative control or superintendence. The High Court does not have administrative control over the Special Court under Article 235 of the Constitution of India.

Also to be noted that the Special Court is manned by a sitting Judge of the High Court. On occasions the same Judge also takes up matters of the High Court. Also Section 5 provides that if the Judge manning the Special Court is absent or on leave the duties could be performed by another Judge of the High Court nominated by the Chief Justice of the High Court in consultation with the Chief Justice of India. It would therefore not be in the fitness of things that for purposes of Section 407 Criminal Procedure Code, a sitting Judge of the High Court, performing simultaneous duties be deemed subordinate to the High Court merely because he is trying cases of the Special Court.

In this view of the matter we hold that the Special Court is not subordinate to the High Court and that the High Court would have no power under Section 407 of the Criminal Procedure Code to transfer a case from one Judge of the Special Court to another.

There is a further and greater difficulty in the Appellants' way. In the present case there is only one Special Court. There may be two Judges presiding over the Special Court but that there still is only one Special Court. As already stated above that Special Court is not subordinate to the High Court. What the Appellants are desirous of is transfer from one Judge of the Special Court to another

Judge of the Special Court. On a question from Court, as to whether there is any provision in law which empowered any Court to transfer a case from one Judge of the Supreme Court to another Judge of the Supreme Court or from one Judge of the High Court to another Judge of the High Court, Mr. Chidambaram fairly conceded that there was no such power and that the only approach would be either to make an application before the concerned Judge to recuse himself or to administratively apply either to the Chief Justice of India (in the case of Supreme Court) or to the Chief Justice of the concerned High Court. He added that there have been cases where this Court whilst disposing of an SLP or an Appeal has, whilst remanding the matter, directed that the same be placed before some other Judge. He however fairly conceded that such directions were not pursuant to any power to transfer. In our view this is an identical situation. It is for that reason that Section 10, which had been incorporated in the 1979 Act was advisedly not incorporated in the Special Courts Act.

In this view of the matter, we hold that Section 407 Cr.P.C. does not apply. We see no reason to interfere with the impugned Orders. The Appeals stands disposed of accordingly. There shall be no Order as to costs.

LW 25:04:2025

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA v. SHRIRAM LIFE INSURANCE COMPANY LTD [NCLAT]

TA (AT) No.04/2024 (Company Appeal (AT) No.278/2024) with 3 connected appeals.

Sharad Kumar Sharma & Jatindranath Swain. [Decided on 10/03/2025]

Sections 230-232 of the Companies Act,2013 read with Section 35 of the Insurance Act- transferor companies engaged in non-insurance business- transferee company engaged in insurance business- amalgamation- whether prior approval from IRADI required- Held, No.

Brief facts:

Transferor companies engaged in noninsurance business merged with transferee company which is engaged in the business of insurance. The merger scheme was approved and sanctioned by the NCLT rejecting the objection raised by the Appellant herein, that the prior approval of the Insurance authority is required for the sanction of the scheme under the Insurance Act.

Decision: **Dismissed.**

Reason:

It is borne out from record and the findings, which has been recorded in the respective Impugned Orders, that various steps and compliances as prescribed in the procedure have been strictly followed by the Transferor Companies and the Transferee Companies in accordance with the provisions contained under Section 230 to 232 of the Companies Act and the aforesaid Rules. First Motion applications were filed for convening / dispensing with the Meeting of the Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner's Company, before the respective Tribunals. The said First Motion applications were disposed of by the respective Tribunals dispensing with the holding of a Meeting with the Equity Shareholders and Secured and Unsecured Creditors of the Petitioner's Companies. No objection of any kind since was ever raised at the stage of dispensation of carrying the First Motion and hence, no plea under Section 6A of Insurance Act would be attracted.

Except for the Appellant herein who had filed their objection against the Scheme of Amalgamation owing to the non-compliance of the provisions contained under Section 35 of the Insurance Act, all other Authorities i.e. the Regional Director, Official Liquidator- Chennai, Income Tax Department, Competition Commission of India, Reserve Bank of India and Valuers Report had supported the Scheme of Amalgamation and conveyed their no objection to the Scheme.

The objections as preferred by the Appellant were considered by the respective Tribunals observing thereof that, owing to the fact of no objection having been given by the Income Tax Department, and no objection having been given by the Regional Director, the Official Liquidator, the Competition Commission of India and with obtaining of the Valuers Report and since the Scheme of Amalgamation being not in violation of Section 35 of the Insurance Act, based on the reasons given in detail in the respective Orders, the Scheme of Amalgamation as proposed by the respective Petitioner Companies are fit to be approved.

After having heard the learned counsels for the parties, and having given a thoughtful consideration to the grounds taken by the learned counsels for the parties and particularly owing to the percept of "Amalgamation", which we have dealt with hereinabove, as there happens to be no statutory bar created under the Insurance Act, which could have called for a prior compliance of Section 35 of Insurance Act, for Amalgamation in the instant cases to be carried under Section 230 to 232 of the Companies Act, 2013, the Amalgamation as made by the Impugned Orders do not suffer from any apparent legal error which could call for an interference in the exercise of our Appellate powers under Section 421 of the Companies Act, 2013.

LW 26:04:2025

QUANTUM MUTUAL FUND & ORS v. ICICI SECURITIES LIMITED & ORS [NCLAT]

Company Appeal (AT) No.333 of 2024 & 334 of 2024

Yogesh Khanna & Ajai Das Mehrotra.[Decided on 10/03/2025]

Sections 230-232 of the Companies Act, 2013 read with regulation 37 of SEBI (Delisting of Equity Shares) Regulations, 2021- NCLT sanctioned the scheme of amalgamation- objection of the

appellant rejected- appellant not having requisite shareholding to object- whether rejection is correct-Held, Yes.

Brief facts:

These appeals have been filed against an impugned order passed by the NCLT - Mumbai sanctioning the amalgamation scheme between ICICI Bank Ltd and ICICI Securities Ltd on the following three grounds that (i) NCLT while approving the scheme has toed in favour of Regulation 37 of SEBI (Delisting of Equity Shares) Regulations, 2021, which it ought not to have done; (ii) the share valuation and swap ratio is wrong; and (iii) though the appellants did not have the minimum percentage of shareholding to object the scheme, yet their objections should have been considered by the NCLT in view of *Ankit Mittal v. Ankit Pratisthan Ltd & Ors 2019 SCC Online NCLAT 847* and *Miheer H Mafatlal v. Mafatlal Industries Ltd (1997) 1 SCC 579*;.

Decision: **Dismissed.**

Reason:

We find there is no conflict between Section 230 of the Act and Regulation 37. There is no provision in Section 230 of the Act specifically requiring a separate meeting of public shareholders of a company. Section 230(1) refers to a scheme between a company and its members or class of members. Correspondingly, Section 230(3) refers to power of the Ld. NCLT to convene a meeting of members or a class thereof, as the case may be. At any rate, there is no specific provision in the Act specifically requiring a meeting of public shareholders in listed companies. Indeed, Section 230 only requires a meeting to be held between the members and the company or such classes of members and the company, where the scheme of arrangement is between the company and a specific class of members. In the present case, the scheme is a uniform scheme for all equity shareholders, namely a uniform scheme of delisting; the delisting in the present case being feasible only through the vehicle of a wholly owned subsidiary and not through an amalgamation in view of the extant regulatory regime applicable to ICICI Bank.

To conclude, we are of the view the Ld. NCLT had correctly appreciated the provisions of Section 230 and Regulation 37 of the Delisting Regulations and has applied the said provisions harmoniously to the facts and circumstances at hand. The Ld. NCLT's finding viz no separate meeting of public shareholders is required in the circumstances, is in consonance with the object and purpose of Regulation 37 and in no way conflicting to the provisions of Section 230 of the Act. If the Appellants' submission regarding a separate meeting is accepted, then every scheme under Regulation 37 will need to be approved by meeting of separate class of shareholders (promoters and public) thereby rendering the provisions of Regulation 37(2)(d) completely otiose, as has also been observed by the Ld. NCLT in its impugned order.

Now coming to challenge qua valuation and swap ratio, we find the joint valuation report has been prepared by 2 (two) independent registered valuers who adopted a comprehensive methodology by applying a combination of internationally recognized and commonly used methods. The valuation was supported by fairness opinions issued by two SEBI registered merchant bankers. We find the valuation of ICICI Securities is in accordance with the minimum requirement prescribed under Regulation 37(2)(j) of the Delisting Regulations i.e., per share valuation of the listed subsidiary shall be at least equal to 60-day Volume Weighted Average Price (VWAP)

It is settled law the courts should not enquire into the issue of valuation of shares as the same is a question of fact based on technical and complex considerations and should be left to the experts in the field of accountancy, as has been held in *G.L. Sultania & Anr. v. Securities and Exchange Board of India (2007) 5 SCC 133* and *Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579).* Hence objections to this regard are all rejected.

Lastly after examining the Scheme we also need to find the entitlement of appellants to object the Scheme. The Appellants i.e., Quantum Mutual Fund (Quantum) does not meet the minimum threshold of 10% shareholding required to be entitled to object to a scheme, prescribed under the proviso to Section 230(4) of the Act. As on 20 March 2024 (being the cut-off date under the Scheme), and Quantum held 2,86,992 shares of ICICI Securities shares i.e., 0.08% shareholding. Now, section 230(4) of the Act is a mandatory provision, and the usage of the word 'shall' followed by the word 'only' in the proviso to Section 230(4) reflects the legislative intent to mandatorily exclude all such person who do not meet the threshold prescribed. Notably, the erstwhile Companies Act, 1956 did not provide for a threshold for objecting to a scheme. Subsequently, the Report of the Expert Committee on Company Law dated 31 May 2005 observed that shareholders holding miniscule shareholding raised frivolous objections with the objective of stalling the implementation of a scheme which was otherwise approved by the requisite majority of shareholders. Accordingly, the threshold in proviso to Section 230(4) was introduced to prohibit objectors like the appellants from stalling the Scheme.

Hence, as has been correctly held by Ld. NCLT, the Appellants are not entitled to object to the Scheme and not entitled to maintain an appeal as an 'aggrieved person'. Consequently, in view of proviso to Section 230(4) too, the present appeal is also not maintainable at the instance of the appellants. Notably, the Scheme has been approved by 93.82% of equity shareholders and 71.89% of public shareholders. The Appellants who hold merely 0.08% shareholding are depriving the majority shareholders of the benefits of the Scheme by filing frivolous objections and derailing its implementation. This militates the very principle of shareholder democracy.

In conclusion, we are of the view that, firstly, the application is not maintainable under proviso of Section 230(4) of the Companies Act, 2013 as the Appellants do not have the requisite shareholding, and secondly, even on merits, as discussed above, both the appeals fail.

Competition and Consumer Laws

LW 27:04:2025

XYZ v. NAVODAYA VIDYALAYA SAMITI & ANR [CCI]

Case No. 25 of 2024

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.

[Decided on 03/03/2025]

Competition Act, 2002- Section 4- abuse of dominance- Section 3 - anti competitive agreements- supply of goods/materials to PM Shree scheme through bidding- release of RFP restricting entry of entities- whether allegations tenable-Held, No.

Brief facts:

The Informant primarily appears to be aggrieved by the alleged abuse of dominant position by OP-1 in appointing OP-2 as the PMC for implementation of the PM SHRI scheme in Jawahar Navodaya Vidyalaya (JNVs) across India without providing any reasonable justifications as to why OP-2 was selected to carry out the Work Order dated 24.01.2024. The Informant also appears to be aggrieved, inter alia, by alleged abuse of dominant position by OP-2 in releasing an RFP which restricted entry of entities in the bidding process and also outlined a very broad scope of work that is not capable of being carried out by any one entity in its entirety. In addition to the allegations under Section 4 of the Act, the Informant has alleged violation of the provisions of Section 3 of the Act.

Decision: **Dismissed.**

Reason:

With regard to the violation of Section 3 of the Act, the Commission notes that it prohibits anti-competitive agreements which include but are not limited to cartel and bid-rigging. The Commission notes that the Informant has alleged tacit agreement between OP-1 and OP-2 in awarding tender, however, it has not provided any evidence or material which could indicate bid rigging in violation of Section 3 of the Act. Accordingly, the Commission deems it appropriate not to proceed further on the basis of such unsubstantiated allegations.

As far as allegations under Section 4 is concerned, the Informant has alleged that OP-1 awarded the Work Order to OP-2, despite it having no prior experience or relation whatsoever with the PM SHRI Scheme and abused its dominant position under Section 4 of the Act. Further OP-2 abused its dominant position by issuing an RFP which is faulty, restrictive and defective. The Commission is of the view that the alleged conduct of OP-1 in appointing OP-2 as PMC and further issuance of faulty RFP by OP-2 themselves are not amenable under the province of Section 4 of the Act without any supporting evidence. Simply selection or non-selection of an agency as PMC or issuance or non-issuance of RFP or issuance of defective RFP by an entity cannot be said to be abusive in terms of Section 4 of the Act unless and until there are availability of ingredients of the same as required under the Act. As stated, these issues lie within the precinct of the freedom of the procurer.

The Commission in its various orders have opined that the procurer, which can also be considered a consumer of a tendering process, is at liberty to set its terms and conditions for procurement, based on its requirements. Every consumer/procurer must have freedom to exercise their choice freely in the procurement of goods and services. Such choice is sacrosanct in a market economy as the consumers are in the best position to evaluate what meets their requirements and provides them competitive advantage in provision of their services. While exercising such choice, they may stipulate standards for procurement which meets their requirement and the same as such ipso facto cannot be held as anti-competitive. Accordingly, the Commission, based on the facts and circumstances and analysis carried out supra, does not find it appropriate to examine the conduct of OP-1 and OP-2. Accordingly, the Commission has refrained from delineating relevant market and assessment of dominance, as required under the provisions of the Section 4 of the Act.

In the facts and circumstances of the present case and analysis carried out hereinabove, the Commission is of the view that no prima facie case of contravention of either Section 3 or Section 4 of the Act is made out in the present matter against OP-1 and OP-2. Accordingly, the Information is ordered to be closed forthwith.

LW 28:04:2025

XYZ v. ALPHABET INC. & ORS [CCI]

Case No. 03 of 2024

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.

[Decided on 03/03/2025]

Competition Act, 2002- Section 4- abuse of dominance- bundling of computer software Microsoft Defender- preinstallation thereof in computer systems - whether abuse of dominance-Held, No.

Brief facts:

The Informant has alleged that Microsoft is abusing its dominant position in the aforementioned markets through the following conduct:

- Microsoft has excluded potentially more efficient competing antivirus software vendors in India by

preinstalling and setting Microsoft Defender as the pre activated default antivirus app in Windows OS, thereby violating Section 4(2)(a)(i) of the Act.

- Microsoft has illegally hindered the development and market access of rival security software developers by tying and bundling its own security software, Microsoft Defender with Windows Operating System, thereby violating Section 4(2)(b)(ii) and Section 4(2)(c) of the Act.
- Microsoft has illegally hindered the development and denied market access of rival security software developers by making membership of MVI compulsory in order to get listed in the Microsoft Store and work smoothly in Windows OS, thereby violating Section 4(2)(c) of the Act.
- Microsoft is leveraging its dominance in the market for desktop operating system to protect its position in the market for security software/antivirus software developers in India, thereby violating Section 4(2)(e) of the Act.

Decision: **Dismissed.**

Reason: Issue 1:

Does the inclusion of Microsoft Defender with the Windows operating system constitute an imposition of an unfair condition by Microsoft, thereby violating Section 4(2)(a)(i) of the Act?

The Commission observes that there is no compulsion on users to exclusively use Microsoft Defender as their antivirus solution. Users are free to install any third-party antivirus software of their choice, either through the internet or via the Microsoft Store. They can opt to continue using Microsoft Defender or replace it with a non-Microsoft solution on Windows. The Commission further notes that OEMs are also permitted to pre-install alternative third-party antivirus software on desktops and laptops running Windows OS. Additionally, other OS providers, such as macOS and ChromeOS, also include built-in antivirus functionality in place. Therefore, in the absence of an element of compulsion or imposition, prima facie there appears to be no violation of Section 4(2)(a)(i) of the Act.

Issue 2. Has Microsoft's conduct resulted in an impediment to technical and scientific development in the market for antivirus applications, thereby violating Section 4(2)(b)(ii) of the Act?

The Commission notes that the Informant has not provided any evidence to substantiate that there has been any actual or potential impediment to technical and scientific development on account of Microsoft's practices. Additionally, the Commission observes that there are many developers of antivirus software, and each of these providers routinely introduce new features and enhance their offerings to provide better services to customers. This ongoing innovation in the sector indicates that Microsoft's inclusion of Defender has not stifled technological advancement or deterred competition. Moreover, the submissions made by Microsoft further reinforce this view, as they indicate that other operating system providers are also consistently developing and rolling out new security features, updates, and performance enhancements. This suggests that technological progress in the cybersecurity and OS sectors remains dynamic and is not hindered by alleged Microsoft practices. Furthermore, the Commission also notes from the submissions of Microsoft that it neither extracts nor has access to any technologically privileged information from other antivirus programs, including those participating in the MVI program. Thus, allegations against Microsoft in respect of any actual or potential impediment to technical and scientific development appear to be largely speculative and lack relevant proof of harm, and prima facie there appears to be no violation of Section 4(2)(b)(ii) of the Act.

Issue-3 Does Microsoft's conduct of bundling its own security software, Microsoft Defender, with the Windows Operating System violate Section 4(2)(d) of the Act?

As regards the allegation under Section 4(2)(d) of the Act, the Commission observes that economic literature, as well as the past decision of the Commission (Case No. 15 of 2020:Harshita Chawla vs WhatsApp and Anr), has laid down certain conditions which need to be fulfilled to conclude a case of tying. Such conditions are (i) the tying and tied products are two separate products; (ii) the entity concerned is dominant in the market for the tying product; (iii) the customers or consumer does not have a choice to obtain the tying product only without the tied product; and (iv) the tying is capable of restricting/foreclosing competition in the market.

The Commission does not agree with Microsoft's integrative approach, which suggests that Microsoft Defender is merely a core security feature of Windows OS. Given this, the first two conditions for anti-competitive tying--(i) the existence of two separate products and (ii) dominance in the tying product market (Windows OS) appear to be met in this case.

On the third condition, i.e. whether there is any compulsion/coercion on the users to necessarily purchase/use the tied product to use the tying product, the Commission observes that there has been no anti-competitive tying in the present case as there is no element of 'coercion' for the two products to be purchased or used together.

Lastly, as regards the fourth condition, i.e. the actual or likely impact of installation on competition in the market for tied products, the Commission observes that there is no indication of market foreclosure in the antivirus solutions sector.

For the foregoing reasons, the Commission is of the view that the allegation of the Informant under Section 4(2)(d) of the Act is not made out.

Issue 4: Has Microsoft leveraged its dominant position in the market for operating systems for personal computers in India to safeguard its position in the market for computer security (antivirus) software for Windows OS, thereby violating Section 4(2)(e) of the Act?

Therefore, in the absence of compelling evidence of restrictive practices, the allegation that Microsoft has leveraged its dominance in the operating system market to protect its position in the computer security software market, in violation of Section 4(2)(e) of the Act, does not appear to be substantiated.

Issue 5: Has Microsoft restricted the development and market access of rival security software developers by making MVI membership a mandatory requirement for listing in the Microsoft Store thereby violating Section 4(2)(c) of the Act?

The Commission observed that non-MVI antivirus developers are not restricted from distributing their applications on Windows, as they can do so through the Microsoft Store and direct downloads from their websites. While non-MVI applications cannot automatically disable Microsoft Defender, they can operate concurrently, and the claim that non-MVI members are blocked is inaccurate. Instead, such applications undergo enhanced scrutiny to ensure that only legitimate software interacts with Microsoft Defender while maintaining user protection. Furthermore, non-MVI applications can notify users of updates and offer their services without obstruction. As noted in the OP's submission, the MVI program is designed to support organizations in improving their security solutions on Windows by providing necessary tools, resources, and knowledge to develop effective, reliable, and compatible products. Thus, Microsoft may pursue its legitimate interest by prescribing certain reasonable compatibility requirements and thereby not appear to be in violation of Section 4(2)(c) of the Act.

Based on the aforesaid, the Commission does not find alleged contravention of the provisions of Section 4 of the Act against Microsoft being made out.

LW 29:04:2025

SARANGA ANILKUMAR AGGARWAL v. BHAVESH DHIRAJLAL SHETH [SC]

Civil Appeal No. 4048 of 2024

Vikram Nath & Prasanna B. Varale JJ. [Decided on 04/03/2025]

Consumer Protection Act read with Insolvency and Bankruptcy Code- multiple penalties under CP Act imposed by NCRDC - execution of NCRDC order- whether barred under moratorium issued under the IBC- Held, No.

Brief Facts:

The present appeal was filed against the final judgment and order passed by the National Consumer Disputes Redressal Commission, wherein multiple penalties (27 in total) were imposed on the appellant for failing to deliver possession of residential units to homebuyers as per the agreed timeline. The appellant seeks a stay on the penalty proceedings before the NCDRC, contending that an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 has been filed against them, triggering an interim moratorium under Section 96 of the IBC. The Supreme Court was called upon to adjudicate whether execution proceedings under Section 27 of the Consumer Protection Act, 1986, can also be stayed during an interim moratorium under Section 96 of the IBC.

Decision: **Dismissed.**

Reason:

The primary question of law before this Court is whether the execution of penalty orders passed by the NCDRC can be stayed under the interim moratorium provisions of Section 96 of the IBC.

We find that there is a fundamental distinction between civil and criminal proceedings concerning a debt moratorium. While civil proceedings are generally stayed under IBC provisions, criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory in nature and arise due to non-compliance with consumer protection laws. They are distinct from "debt recovery proceedings" under the IBC.

A moratorium under Section 96 of the IBC is distinct from a corporate moratorium under Section 14 of the IBC. Section 96 of the IBC applies to individuals and personal guarantors and provides that during the interim moratorium period, "any legal action or proceedings relating to any debt shall be deemed to have been stayed." However, it is pertinent to note that this provision applies only to "debt" as defined under the IBC and not to regulatory penalties imposed for non-compliance with consumer protection laws. A careful reading of the statutory scheme of the IBC suggests that penalties arising from regulatory infractions are not covered under the ambit of "debt" as envisioned under the Code.

It is well settled that there exists a distinction between punitive actions and criminal proceedings. While a criminal proceeding is initiated by the State against an accused to determine guilt and impose penal consequences, punitive actions in the regulatory sphere, such as those imposed by the NCDRC, are meant to ensure compliance with the law and to act as a deterrent against future violations. Section 27 of the CP Act empowers consumer fora to impose penalties to ensure adherence to consumer protection norms. These penalties do not arise from any "debt" owed to a creditor but rather from the failure to comply with the remedial mechanisms established under consumer law. Unlike a criminal prosecution, which requires the establishment of mens rea, the penalties imposed by NCDRC are regulatory in nature and aim to protect the public interest rather than to punish criminal behaviour.

In the present case, the damages awarded by the NCDRC arise from a consumer dispute, where the appellant has been held liable for deficiency in service. Such damages are not in the nature of ordinary contractual debts but rather serve to compensate the consumers for loss suffered and to deter unethical business practices. Courts and tribunals, including the NCDRC, exercise their statutory jurisdiction to award such damages, and these are distinct from purely financial debts that may be subject to restructuring under the IBC. Since such damages are covered under "excluded debts" as per Section 79(15) of the IBC, they do not get the benefit of the moratorium under Section 96 of the IBC, and their enforcement remains unaffected by the initiation of insolvency proceedings.

Furthermore, the rationale behind excluding such liabilities from the moratorium is rooted in public policy considerations. If damages arising from legal violations, consumer protection claims, or penalties imposed by courts and tribunals were to be shielded under the moratorium, it would create an unfair advantage for errant entities and

individuals, allowing them to evade their legal obligations under the guise of insolvency. The IBC, being a special law meant to balance the interests of all stakeholders, does not intend to provide relief to those who have been held liable for statutory breaches or misconduct.

The penalties imposed by the NCDRC arise due to non-compliance with consumer protection laws and serve a regulatory function rather than constituting "debt recovery proceedings." This distinction is crucial. The IBC is designed to deal with insolvency resolution and financial distress, whereas consumer protection laws exist to uphold consumer rights and ensure fair business practices. The penalties under Section 27 of the CP Act are aimed at compelling compliance and cannot be equated with recovery of an outstanding debt. The appellant cannot claim that such penalties fall within the scope of a debt moratorium, as they do not constitute financial liabilities owed to a creditor but rather statutory obligations enforced to uphold consumer rights. Allowing the stay of such penalties would effectively enable businesses to flout consumer protection mandates by merely initiating insolvency proceedings, which would be an unintended and dangerous consequence of a misinterpretation of the law.

The present case does not involve a mere financial dispute but concerns the enforcement of consumer rights through regulatory penalties. Given that the legislative intent behind the CP Act is to ensure compliance with consumer welfare measures, staying such penalties would be contrary to public policy. Further, the appellant cannot invoke insolvency proceedings as a shield to evade statutory liabilities. The objective of the IBC is to provide a mechanism for resolving financial distress, not to nullify obligations arising under regulatory statutes. For the foregoing reasons, this Court finds no merit in the appellant's arguments.

Labour Laws

LW 30:04:2025

U.P. POWER CORPORATION LTD v. SATYA RAM & ANR [SC]

Civil Appeal No. of 2025 (@ SLP(C) No. 12310 of 2023)

Sanjay Kumar & Augustine George Masih,JJ. [Decided on 05/03/2025]

Retirement of workers- dispute as to correct age of workers- labour court directed payment of compensation- High Court confirming the order- correct age of workers ignored by High Court- whether the judgement tenable-Held, No.

Brief Facts:

The High Court confirmed the direction issued by the Deputy Labour Commissioner, Devi Patan Division, Gonda, to the appellant to pay each of the two workers, viz., respondents herein, a sum of ₹3,26,651/, aggregating to ₹6,53,302/-, without going into the correctness of their age and accepting that they were 55 years of age and have right to continue the services.

Decision: Allowed.

Reason:

First and foremost, we may note that the two respondents were engaged in service by the appellant in 1971 and 1973. There is no material on record to indicate what their ages were at that time. However, we shall presume that they would have been majors, i.e., at least 18 years old, when they were engaged in the service of the appellant, a State instrumentality. If that be so, they would attain the age of 60 years in 2013 and 2015 respectively. In any event, they would have rendered about 40 years' service by 2013.

This aspect of the matter was completely ignored by the High Court, which seems to have blindly acted upon the claim of the respondents that they were 55 years old in 2018 and were entitled to continue in service till 2023. Accepting their claim would mean that they were aged about 8 years and 10 years respectively when they entered the service of the appellant, which is quite unbelievable.

We, therefore, hold that the Deputy Labour Commissioner, Devi Patan Division, Gonda, erred in directing payment of salary to the respondents for the period 01.01.2015 to 31.05.2018. This erroneous order ought not to have been confirmed by the High Court, ignoring the aforesaid factual aspects. The appeal is accordingly allowed.

General Laws

LW 31:04:2025

K.S. MEHTA v. MORGAN SECURITIES AND CREDITS PVT. LTD [SC]

Criminal Appeal No. of 2025 [@ SLP (Criminal) No. 4774 of 2024]

B. V. Nagarathna & Satish Chandra Sharma & [Decided on 04/03/2025]

Negotiable Instruments Act- section 141- cheque dishonour- vicarious liability of director- complaint did not contain specific averments- trial court issued process- High Court refused to quash the process- whether correct- Held, No.

Brief facts:

The appellants were prosecuted along with the accused company for the offence of dishonour of cheque. The appellants filed a petition us.482 of the CRPC to quash the proceedings against them as they are not vicariously liable for the offence, which petition was dismissed by the High Court. Hence the resent appeal before the Supreme Court.

Decision: Allowed.

Reason:

Upon perusal of the record and submissions of the parties, it is evident that the Appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision- making or operational management.

The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations.

Given the lack of specific allegations and in view of the aforesaid observations, the Appellant(s) cannot be held vicariously liable under Section 141 of the NI Act.

LW 32:04:2025

ENMAS GB POWER SYSTEMS PROJECTS LTD v. MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL & ORS [KANT]

Writ Petition No. 29610 of 2017 (GM-RES)

Suraj Govindaraj, J. [Decided on 19/03/2025]

Micro Small and Medium Enterprises Development Act- Section 18- dispute as to payment- MSFC conducted conciliation proceedings – failure of settlement- MSFC passed the award without referring the parties to arbitration- whether the award tenable-Held, No.

Brief facts:

The Respondent No.2 filed a complaint before the Respondent No.1 Council for the recovery of dues relating to the supplies made by it to the Petitioner herein. The matter was taken up by the Council and several meetings held by the Council and finally an award was passed on 14.03.2017 directing the Petitioner to make payment of sum of Rs.11,88,756/- towards the Principal outstanding dues along with interest at three times of the bank rate notified by the Reserve Bank of India.

Decision: Allowed.

Reason:

The short question that would arise for consideration is whether the Micro and Small Enterprises Facilitation Council could have passed an award on account of conciliation having failed without referring the matter to arbitration?

In the present case, on receiving a reference under Section 17, the Council did not make further reference to any other institution but took up conciliation proceedings by itself and has conducted conciliation between the petitioner and respondent No.2 on several occasions. In the meeting held on 08.02.2017, the council held that the petitioner and the 2nd respondent failed to reconcile the account despite sufficient time having been granted and further held that the fact that the petitioner had made payment of a sum of Rs.12,69,643/- indicated that the 2nd respondent was entitled to receive balance payment from the petitioner herein. On the basis of the affidavit, memorandum, delivery challans etc., came to a conclusion that there is no reason to disbelieve or discard the claim of the 2nd respondent, observing that there was a time limit for the Council to decide the reference passed the aforesaid award. Thus, essentially the Council has passed the award on account of conciliation between the petitioner and 2nd respondent having failed and at the same time concluding that there is no reason to disbelieve the claim of 2nd respondent.

In terms of Sub-Section (3) of Section 18, which is reproduced herein above, it is clear that when the conciliation initiated under sub-section (2) of Section 18 is not successful i.e. there is no settlement arrived at between the parties then the conciliation proceedings would have to be terminated and thereafter the Council shall either take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

In the present case as could be seen upon the conciliation having failed neither the Council terminated the proceedings nor did it take up the matter for arbitration or refer the matter for arbitration to any institution. Once the conciliation had failed, it was the duty and obligation on part of the Council to terminate its proceedings and refer the matter to arbitration or take up the matter for arbitration, which would require the Arbitration and Conciliation Act, 1996 to apply to the Arbitral proceedings. None of them having occurred, the Council could not have on its own come to a conclusion that there is no reason to disbelieve or discard the claim of the petitioner allegedly supported by the documents without providing an opportunity to the petitioner to file its detailed objections to lead evidence and contest the matter.

In that view of the matter, it is clear that award has been passed contrary to sub-section (3) of Section 18 by the Council there being no jurisdiction vested with the Council to pass any such award after the conciliation has failed. The award having been passed suffering from jurisdictional error i.e. to say there being no jurisdiction at all. The decision of Hon'ble Apex Court in the case of *Whirlpool Corporation v. Registrar of Trademarks, Mumbai & Ors (1998) 8 SCC 1* would be applicable for this Court to exercise its jurisdiction under Article 226 to intervene where such injustice has occurred by passing or orders by an authority having no Jurisdiction. Hence, the writ petition is allowed.