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LEGAL WORLD

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Corporate Laws

Landmark Judgement

LMJ 12:12:2025

RAJASTHAN FINANCIAL CORPORATION & ANR v. THE OFFICIAL LIQUIDATOR & ANR [SC]

Appeal (Civil) 4055 of 1998

S. N. Variava, Tarun Chatterjee & P. K. Balasubramanyan, JJ. [Decided on 05/10/2005]

Equivalent citations: AIR 2006 SC755; 2005 (8) SCALE 255; 2005 (8) SCC 190; 2005 (6) COM LJ 129 SC; (2005) 128 Comp Cas 387.

Sections 529 and 529A of the Companies Act, 1956 read with Sections 29 and 31 of the Financial Corporations Act, 1951- company under liquidation-SFC secured creditor wanted to stay out of liquidation and to realise its debt through civil proceedings-High Court rejected the request- whether correct-Held, Yes.

Brief facts:

Appellants are state financial corporations and secured debtors of the company Vikas Woolen Mills Ltd. which was in liquidation for which the Respondent is the OL. Appellants wanted to remain outside the liquidation and to realise their secured interest through other court processes and agreed to deposit the share of the workmen's dues with the Ol. The winding up court rejected the request and directed the appellants to deposit the entire amount with the OL. On appeal the division bench affirmed the single bench's order. Hence the present appeal before the Supreme Court.

Decision: Disposed of. Impugned order upheld with modification.

Reason:

Thus, on the authorities what emerges is that once a winding up proceeding has commenced and the liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the Official Liquidator and under the supervision of the company court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the Court which has been approached under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the company court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place.

In the case on hand, admittedly, the appellants have not set in motion, any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the company court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The company court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We clarify that there is no inconsistency between the decisions in *Allahabad Bank Versus Canara Bank and Anr (supra) and in International Coach Builders Limited Vs. Karnataka State Financial Corporation (supra)* in respect of the applicability of Sections 529 and 529A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security and the distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution *pari passu* with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the company court. In other words, the distribution of the sale proceeds under the direction of the company court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the company court, that a proper price is fetched for the assets of the company in liquidation. It was in that context that the rights of the Official Liquidator were discussed in International Coach Builders Limited (supra). The Debt Recovery Tribunal and the District court entertaining an application under Section 31 of the SFC Act should issue notice to the liquidator and hear him before ordering a sale, as the representative of the creditors in general.

In the light of the discussion as above, we think it proper to sum up the legal position thus:-

- A Debt Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.
- A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in-liquidation, but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.
- If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the company court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529A and Section 529 of the Companies Act.
- In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the concerned creditor is to approach the company court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation.

Now reverting back to the case on hand, we find that the directions issued by the company court are in the interest of all the creditors and are well within its jurisdiction. But we find merit in the submission that the company court was not justified in not ordering a fresh valuation of the properties. Having regard to the lapse of time, we are satisfied that a fresh valuation is necessary. We direct the company court to get a fresh valuation done by a valuer from the panel of valuers of the High Court. The other directions issued by the company court are affirmed.

The appeal is thus disposed of affirming the directions issued by the company court, but with a modified direction for getting a fresh valuation of the properties as indicated in the earlier paragraph.

LW 88:12:2025

ROOP ULTRASONIX LTD. & ORS v. TELSONIC HOLDING AG [NCLAT]

Company Appeal (AT) No. 187 of 2023

Yogesh Khanna & Ajai Das Mehrotra. [Decided on 20/11/2025]

Companies Act, 2013- appellant is an unlisted public company-rights issue-Respondent reclassified non-promoter/public shareholder-shares not in dematerialised form-Respondent's application to issue was rejected by the appellant-on appeal by respondent NCLT set aside the entire issue and directed to refund the proceeds- whether correct-Held, No.

Brief facts:

The main Appellant Roop Ultrasonix Ltd. is an unlisted company. The Respondent, Telsonic Holding AG, a foreign body corporate holds shares in the Appellant company. The Respondent has been identified as a "promoter" in the annual returns up to 31.03.2022. Through a board resolution dated 09.11.2022, the Respondents were reclassified as "public shareholder/other than promoter". The rights issue was launched by the Appellant in the month of March, 2023 wherein the Respondents have applied but their application was rejected as their shares were not held in the dematerialised form. Aggrieved by the said actions, Telsonic Holding AG (Respondent herein) had filed CA No. 102 of 2023 on which the impugned order was passed wherein the Ld. NCLT held that the entire process of issuance of equity shares in rights issue stands vitiated and was set aside and directions were issued to Roop Ultrasonix Ltd. to refund the amount received in the rights issue.

Decision: Allowed.

Reason:

We are of the view that the following questions need to be answered in this appeal (i) Whether Telsonic Holding AG was a promoter on the date when the rights issue was launched by the appellant; (ii) What were the responsibilities of the Appellant Company while making the rights issue and whether these were complied with; and (iii) Whether the Ld. NCLT has erred in cancelling the rights issue and directing refund of share application money.

Regarding applicability of sub-section (a) of Section 2(69), it can be seen that the Respondent (Telsonic) was identified as a promoter in the annual return as on 31.03.2022 and in the PAS-6 form for the period ending 30.09.2022. However, considering the termination of various agreements and withdrawal of their nominee from board of directors, the board of directors in their meeting dated 09.11.2022 resolved to reclassify Telsonic Holding AG from "promoter to public shareholder/other than promoter". In the PAS-6 form and annual return of the subsequent period i.e. as on 31.03.2023, the Respondent (Telsonic) is not shown as a promoter of the Company. It is apparent that when the rights issue was undertaken by the Appellant Company in March, 2023, Respondent (Telsonic) was not a 'promoter' of the company.

From the above discussion it is clear that a 'promoter' can be reclassified as 'non-promoter/public shareholder' and the Respondent (Telsonic) was correctly re-classified as "public shareholder/other than promoter" on 09.11.2022, much before the launch of rights issue of equity shares.

On the second issue, we note that the relevant provisions are contained in Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Appellant Company is an unlisted public company, a fact which is accepted by both the sides. As per Rule 9A(2) every unlisted public company before issuing fresh shares is required to ensure that entire holding of securities of its promoters, directors, and Key Managerial Personnel has been dematerialised in accordance with provisions of the Depositaries Act, 1996. As we have noted earlier, the Respondent (Telsonic) was no longer classified as 'promoter' of the Appellant Company on the date when rights issue was announced. Thus, a plain reading of the said Rule clearly shows that the company was not required to ensure, on its own, that shares of the Respondent (Telsonic) are dematerialised.

We also note that as per Rule 9A(1)(a) every unlisted public company is required to issue the securities only in dematerialised form. Since the shares of Telsonic were not in dematerialized form, the act of Appellant Company in rejecting the application of the Respondent is fully in consonance with Rule 9A(1)(a) of the Rules cited supra.

On the third issue, in the conspectus of facts and circumstances of this case, we hold on the basis of above noted facts and law that the impugned order of Ld. NCLT cannot be sustained and the Ld. NCLT has erred in cancelling the rights issue and directing refund of share application money. The impugned order is thus set aside.

LW 89:12:2025

JULABO SISKIN (ASEA) PVT. LTD. & ORS v. MARKUS JUCHCHEIM& ANR [NCLAT]

Company Appeal (AT) (CH) No.156/2025

Sharad Kumar Sharma & Indevar Pandey. [Decided on 20/11/2025]

Companies Act, 2013- Sections 271 & 272- direction to wind up the company-whether correct-Held, Yes.

Brief facts:

The instant proceedings in the company appeal, under Section 421 of the Companies Act, 2013, emanated from an order that has been passed by the NCLT, Bengaluru Bench, in proceedings under Section 271-272 of the Companies Act, 2013. The consequential effect of the impugned order was that the direction was issued for winding up of the company, after taking necessary action as prescribed under law.

Decision: Dismissed.

Reason:

But so far as the present controversy which is being agitated in an appeal before this Appellate Tribunal, the question, which falls for our consideration is that, as to whether at all under the given set of circumstances, particularly, when the Ld. Tribunal in its hearing, which was held on 27.06.2024, has recorded that the Respondents themselves have accorded their consent by giving their willingness, that in case the Ld. Tribunal proceeds to direct the paper publication for the initiation of the winding up process, there would not be any objection as such.

The aforesaid "no objection" has been recorded by the Ld. Tribunal in the proceedings which was held on 27.06.2024, which is reflected in the impugned order itself. In subsequent proceedings, which were carried out during the hearing, held on 19.12.2024, a request for appointment of the provisional Liquidator was also made and that was too directed, which shows that the impugned order happens to be a consenting order.

When the Appellant himself in proceedings before the Ld. Tribunal, had assured by giving "no objection" for carrying out the publication for advertisement regarding the winding up, clearly shows the inclination of the Appellant that he had no principal objections for the inception of the proceedings of winding up. It has been observed that owing to, said no objection given by the Appellant, the Ld. Tribunal felt it necessary to direct the issuance of a paper publication, and thereafter the same was to be taken on record, to proceed further in the process by appointing of the liquidator. Even at the stage of appointment of the liquidator, which was the proceedings carried by the Ld. Tribunal on 19.12.2024 after carrying out the publication on 29.08.2024 in compliance of the earlier order dated 27.06.2024, it was again the request of the Appellant herein, who was the Respondent to the proceedings, who consented for appointing the provisional liquidator, and in that regard, he has filed a specific memorandum before the Ld. Tribunal.

In these eventualities, if the Ld. Tribunal has bonafidely acted on the undertaking given by way of no objection, by the Appellant, subsequently passing of the impugned order of directing the winding up of Respondent No. 1. This cannot now be questioned by the Appellant, before this Appellant Tribunal by filing of an appeal. It is not the case of the Appellant at any point of time, that the so-called no objection as observed in para (e) and (f) of the impugned order was obtained under duress. Hence, it was a free and fair consent, which was actually extended by the Appellant in writing for giving no objection for publication for winding up, and rather requesting for appointment of the provisional liquidator. Hence, at this stage now the Appellant cannot make a somersault, contending that the order directing for winding up of the Respondent No. 1, is bad in the eyes of law, because it will amount to be a solicited order by the Appellant himself, who was the Respondent to the proceedings.

In that eventuality, the direction given by the Ld. Tribunal for winding up the companies doesn't suffer from any procedural or legal error when the Appellant himself has expressed his no objection. Hence, this company appeal stands dismissed.

Industrial & Labour Laws

LW 90:12:2025

SPICE JET LTD. v. UNION OF INDIA & ANR [DEL]

W.P.(C) 2941/2012 along with W.P.(C) 6330/2021

D. K. Upadhyaya & T. R. Gedela, JJ. [Decided on 04/11/2025]

Employees Provident Fund and Miscellaneous Provisions Act, 1952- Para 83 in EPF scheme- coverage of international workers without any wage threshold limit- whether suffers the vice of reasonable classification and discriminatory- Held, No.

Brief facts:

The main issue in these writ petitions are the challenge to the coverage of international workers under the EPF Act. The government of India vide Notification GSR 706(E) dated 1st October 2008 and GSR 148(E) dated 3rd September 2010 under which international workers were covered under the EPF scheme by inserting paragraph 83 in the EPF Scheme whereby distinction was made between foreign employees working in Indian establishments and domestic employees, inasmuch as that the foreign employees have been mandated to contribute under the Scheme irrespective of the amount of pay per month they draw whereas only those domestic employees are mandated to contribute to the scheme who are drawing pay up to Rs.15,000/- per month. This classification was challenged as discriminatory.

Decision: Dismissed.

Reason:

We, thus, now need to examine as to whether the classification between the foreign employee and Indian employee on the basis of capping in the pay drawn for the purpose of applicability of the scheme has some intelligible differentia and/or the same is reasonable so as to satisfy the test of any State action being in conformity or infringement of Article 14 of the Constitution of India.

The submission in this regard made by learned counsel representing the respondents is that such classification is based on the fact that foreign employees do not face economic duress, if they are made to become member of the fund/scheme, for the reason that they come to India for employment for shorter period of two to five years, whereas the Indian employees generally serve till they retire on attainment of age of superannuation and therefore, such long duration of employment of Indian employees causes economic duress in case they are mandated to contribute to the scheme.

As a matter of fact, mandating the foreign employees to become member of the scheme/fund irrespective of the monthly pay they draw and requiring only those Indian employees to become member of the fund/scheme who are drawing pay below Rs.15,000/- a month, has a rationale based on the economic duress which is caused to the Indian employees, if they are mandated to contribute to the fund/scheme irrespective of quantum of salary they draw, which is absent in case of the foreign employees for the reason that they come to India for employment for shorter period of 2 to 5 years.

For the said reason, in our considered opinion, the classification made by inserting and later on substituting Para 83 in the principal scheme, is reasonable, and it also has an object sought to be achieved in the sense that the purpose of mandating an employee to be a member of a fund/scheme under the Act is to provide social security. In case all the Indian employees irrespective of the amount of pay they draw per month, are mandated to become the member of the Scheme/Fund, they will be subjected to harsh economic duress for the reason they will be required to contribute to the Scheme/Fund throughout their period of employment which generally will be much large as compared to the length of employment of foreign employees in an Indian establishment, which normally is 2 to 5 years.

For the aforesaid reason, we find that the classification, which has resulted on account of introduction of Para 83 in the principal Scheme, satisfies the test of permissible classification, and therefore, it in our considered opinion that the same cannot be said to be violative of Article 14 of the Constitution of India.

It is true that Constitutional protection as enshrined in Article 14 of the Constitution of India is applicable to the foreign nationals as well for the reason that the phrase occurring in Article 14 is not "the citizen"; rather it is "any person". Thus, even the foreign nationals enjoy under Article 14 of the Constitution of India the equality before law and equal protection of laws within the territory of India.

Having said that, we may observe that right of equality as enunciated by Article 14 of the Constitution of India, is subject to reasonable classification, which is permissible provided such classification has an intelligible differentia and is based on some rationale. We have already held above that the classification which results on account of introduction of paragraph 83 in the principal Scheme has a reasonable basis, and therefore, the submission on behalf of the petitioner that Article 14 of the Constitution of India applies to foreign nationals as well, does not serve the cause of the petitioner in this petition.

LW 91:12:2025

AUCKLAND HOUSE SCHOOL & ORS v. STATE OF HIMACHAL PRADESH & OERS [HP]

CWP No. 4221 of 2022

Ajay Mohan Goel, J. [Decided on 14/10/2025]

Industrial Disputes Act, 1947- Section 10- reference of disputes to labour court- conciliation proceedings failed- during the conciliation proceedings some employees were terminated- reference of this termination was also included in the reference by way of a corrigendum- whether tenable-Held, No.

Brief facts:

Workers of the appellant had raised a demand notice upon which conciliation proceedings commended and failed. The Respondent referred the dispute to the labour court under a section 10 notification. During the pendency of the conciliation proceedings certain employees were terminated. The Respondent vide a subsequent corrigendum referred the issue of termination also to the labour court. The appellant challenged the corrigendum in this petition.

Decision: Allowed.

Reason:

Few facts which are not in dispute and which are material for the adjudication of the present petition are that the industrial dispute, which was raised by the respondents, failure of conciliation wherein resulted in the issuance of earlier Notification dated 06.04.2017, was not related to the termination of the services of the employees concerned. The Demand Notice was raised qua other grievances of the employees and as the conciliation before the Conciliation Officer failed, the appropriate Government made References in terms of Notification dated 06.04.2017, to the learned Labour Court to be answered. The termination of the employees was an event which took place during the pendency of the conciliation proceedings, but it was independent of the Demand Notice as well as the conciliation proceedings.

That being the case, this Court is of the considered view that the Appropriate Government in the absence of being seized with the issue of termination of the services of the employees by way of a Demand Notice or an industrial dispute raised in this regard by the aggrieved employees, had no authority to make a reference of this issue to the learned Labour Court. This extremely important aspect of the matter was ignored by the Appropriate Government when it issued Corrigendum dated 26.06.2019. The appropriate Government erred in not appreciating that as the termination of the services of the employees was a fresh cause of action, the aggrieved person could either have agitated the same by raising an industrial dispute or file a claim petition under Section 2A of the Industrial Dispute Act before the learned Labour Court. The appropriate Government *suo motu* had no authority to amend the Reference earlier made or otherwise make a Reference of this particular issue to the learned Labour Court.

Chapter III of the Industrial Disputes Act, 1947 deals with Reference of disputes to Boards, Courts or Tribunal. Section 10(1), which is a part of this Chapter, provides that where the appropriate Government is of the opinion that any industrial disputes exists or is apprehended, it may, at any time, by order in writing, either refers the dispute to a Board for promoting a settlement thereof; or refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication etc. This power is subject to the provisos which are provided under Section 10 (1) of the Act.

Section 2A of the Industrial Disputes Act provides that dismissal, etc., of an individual workman to be deemed to be an industrial dispute. This Section further provides that a person aggrieved by his discharge, dismissal, retrenchment or termination, may notwithstanding anything contained in Section 10 of the Act, make an application directly to the Labour Court or Tribunal for adjudication of the dispute.

Therefore, a harmonious reading of these two Sections only leads to one conclusion that the Appropriate Government can refer the dispute to the learned Labour Court only when it is of the opinion that any industrial dispute exists or is admitted. This opinion can only be formulated by the Appropriate Government if any demand is raised by the aggrieved person before the Appropriate Government.

In the present case, in the absence of any demand having been raised by the aggrieved persons with the Appropriate Government qua their alleged illegal termination, no Reference either by way of amendment or otherwise could have been made by the Government on this count. This does not mean that the aggrieved persons were remedy-less. They either could have independently raised a fresh demand or could have invoked the provisions of Section 2A of the Industrial Disputes Act. However, the Appropriate Government *per se*, *suo motu*, independently did not have any jurisdiction to amend the Reference in the peculiar facts of this case in the mode and manner in which it has been done vide Annexure-F, dated 26.06.2019. In light of above observation, this petition is allowed. Corrigendum dated 26.06.2019 (Annexure-F) is quashed and set aside.

LW 92:12:2025

ALEMBIC PHARMACEUTICALS LTD. v. JAY PRAKASH SINGH [JHR]

W.P. (L) No. 2457 of 2025

Deepak Roshan, J. [Decided on 04/11/2025]

Industrial Disputes Act, 1947- Section 33- proceedings before labour court- management appeared through a legal practitioner-legal representation rejected- whether correct-Held, No.

Brief facts:

The instant writ application has been preferred by the Petitioner assailing the impugned order passed by the Ld. Presiding Officer, Labour Court, Jamshedpur, in I.D. Case No. 4 of 2024, which allowed the application preferred by the Respondent-workman under Section 36(3) and (4) of the Industrial Disputes Act, 1947, debarring the Petitioner's advocate from representing it in the Reference Case .

Decision: Allowed.

Reason:

As stated hereinabove, in this case, the workman had filed an objection petition even before the Management was given notice for appearance. He appeared through an advocate himself on 04.10.2024. The Advocate representing the Management appeared immediately thereafter on the next date which was 12.11.2024, and his application for adjournment was also considered and allowed, as recorded in the order sheet of the Labour Court. On the first date of appearance, there was no objection from the workman. His failure to object is obvious, as on the immediately preceding date i.e. on 04.10.2024, he himself appeared through counsel.

Further, the Presiding Officer, Labour Court not only permitted the legal practitioner to file Vakalatnama but also allowed his adjournment application on 12.11.2024. It is obvious that there was implied consent and implied leave of the Court. The subsequent withdrawal or allegation of wrong order is unsustainable. The Labour Court's order-sheet reflects the factual developments which suggest implied consent as well as waiver of the objection by the workman who himself appeared through a legal practitioner on 04.10.2024.

Therefore, both the issues are decided in favour of the Petitioner-Management, inasmuch as, there is no absolute prohibition on representation of any party before the Labour Court. The restriction is confined to Conciliation proceedings only. The second issue relating to implied consent and leave of the Court is also decided in favour of the Petitioner.

In the above facts and circumstances of the case and on close examination of the applicable law, there was no justification in debarring the Advocate/legal practitioner representing the Management. The order dated 27.02.2025 is unsustainable on facts and the law and, is hereby, set aside.

Before parting, it is necessary to indicate that the framework of legal services has been strengthened and effective legal representation is readily available to any person in need. The Respondent-workman can also be offered legal assistance through the District Legal Services Authority, Jamshedpur (East Singhbhum).

The Presiding Officer, Labour Court, Jamshedpur, should apprise the workman of his right to take legal assistance before proceeding any further in the case. It goes without saying that the Labour Court shall also decide the dispute expeditiously. As a result, the instant writ application stands allowed.

Competition Laws

LW 93:12:2025

COMPETITION COMMISSION OF INDIA v. GEEP INDUSTRIES & ORS [DEL]

LPA 727/2024

Anil Kshetarpal & Harish Vaidyanathan, JJ. [Decided on 01/11/2025]

Section 27 of the Competition Act, 2002 read with Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 - CCI imposed interest on penalty- whether tenable-Held, No.

Brief facts:

The present Appeal has been preferred under Clause 10 of the Letters Patent assailing the Impugned Judgment which set aside the order dated 18.07.2023 passed by the Competition Commission of India, insofar as it confirmed the demand of interest on the penalty amounts imposed upon the Respondents.

By the said Order dated 18.07.2023, the CCI, *inter alia,* upheld the demand of interest on the penalty amounts with retrospective effect, i.e., from 10.12.2018 till the date of payment, as conveyed through demand notices dated 09.05.2023 issued to the Respondents under the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011. The underlying penalties had earlier been imposed under Section 27 of the Competition Act, 20024, vide the CCI's Order dated 30.08.2018.

Decision: Dismissed.

Reason:

We have heard the learned counsel for both parties at considerable length and have given our thoughtful consideration to the submissions advanced. We have also carefully examined the Impugned Judgment, as well as the pleadings, materials, and documents placed on record in the present Appeal and responses thereto.

From the foregoing discussion and the analysis undertaken by the learned Single Judge, it is evident that the conclusions reached therein rest primarily on an interpretation of the

relevant provisions of the 2011 Regulations, and on the application of principles laid down by the Hon'ble Supreme Court in various judgments interpreting provisions analogous to those contained in the 2011 Regulations. Upon a careful and independent consideration of the reasoning and findings recorded therein, we find ourselves in complete agreement with the views expressed by the learned Single Judge in the Impugned Judgment.

A plain reading of Regulation 3 reveals that whenever the CCI imposes a monetary penalty on an enterprise, a formal demand notice is required to be issued through the Recovery Officer in Form I, after the expiry of the period specified in the penalty order. The Regulation further provides that the enterprise shall ordinarily be granted a period of 30 days from the date of service of the demand notice to deposit the penalty amount in the prescribed manner. Notably, Regulation 3(2) unambiguously stipulates that the 30-day period commences from the date of service of the demand notice to the enterprise II, which emphasizes that computation of time begins only upon such service.

Regulation 5 of the 2011 Regulations, on the other hand, provides the framework for the levy of interest on delayed payment of penalty. It mandates that if the amount specified in the demand notice is not paid within the period stipulated by the CCI, the concerned enterprise becomes liable to pay simple interest at the rate of 1.5% per month, or for any part of a month, for the entire duration commencing from the day immediately after the expiry of the payment period mentioned in the demand notice and continuing until the penalty is actually paid.

Now turning to the facts of the present case, it is an admitted fact that the CCI never issued a notice to the Respondents in Form I, as mandated under Regulation 3 of the 2011 Regulations, before imposing the interest upon the penalty. As noted earlier, Regulation 3(2) categorically provides that the 30-day period for payment shall begin "from the date of service of the demand notice to the enterprise."

Once it stands established that no demand notice was ever issued to the Respondents, the question of any default in payment does not arise. Regulation 5 of the 2011 Regulations, which provides for the imposition of interest "if the amount specified in the demand notice is not paid within the period specified by the Commission", can operate only when a valid and duly served demand notice, as required under Regulation 3, exists in respect of a recoverable penalty.

We are, therefore, of the considered opinion that where a demand notice itself has not been served, the statutory precondition for invoking Regulation 5 is not fulfilled. To hold otherwise would not only violate the principle of legality but would also unjustly penalize the Respondent for no fault of its own, which would be contrary to the statutory mandate and the settled principles of law.

The issuance of a demand notice under Regulation 3 and the consequent imposition of interest for default under Regulation 5 form part of a sequential and mandatory statutory process. These provisions nowhere empower the CCI to impose interest retrospectively or from a date preceding the valid service of a demand notice. Since these procedural requirements are both mandatory and chronological, they must be followed in that precise manner alone, and any deviation therefrom renders the levy of interest legally unsustainable.

For the reasons stated hereinabove, we find no infirmity, legal or factual, in the Impugned Judgment dated 26.04.2024 passed by the learned Single Judge in W.P.(C) No. 10332/2023. The learned Single Judge has rightly held that in the absence of a valid demand notice under Regulation 3, the levy of interest by the CCI is without jurisdiction and contrary to the mandatory procedural scheme of the 2011 Regulations. Accordingly, the Impugned Judgment merits affirmation, and the present Appeal stands dismissed.

LW 94:12:2025

NAGRIK CHETNA MANCH & ORS v. FORTIFIED SECURITY SOLUTIONS & ORS [CCI]

Case No. 50 of 2015 with Suo Motu Case No. 03 of 2016

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag. [Decided on 10/11/2025]

Competition Act, 2002 - Section 3- bid rigging- various tenders issued by Pune Municipal Corporation- whether OPs involved in bid rigging- Held, Yes.

Brief facts:

Information in Case No. 50 of 2015 was filed by Nagarik Chetna Manch, a public charitable trust, against Fortified Security Solutions, Ecoman Enviro Solutions Pvt. Ltd. and Pune Municipal Corporation, alleging bid- rigging/ collusive-bidding by Fortified Security Solutions and Ecoman Enviro Solutions Pvt. Ltd. in various tenders issued by Pune Municipal Corporation for 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)', during December 2014 to March 2015, in contravention of the provisions of Section 3 of the Act.

In the initial proceedings the OPs were found guilty of bid rigging and orders of cease and desist were passed against them along with penalties. After several rounds of litigation up to Supreme Court, the mater remanded to CCI to decide the quantum of the penalty.

Decision: Penalty imposed.

Reason:

It is seen that several entities which participated in the bid-rigging arrangement were cover bidders and were not even present in the impugned relevant market of Solid Waste Management business. As such, their 'relevant turnover' in terms of the Penalty Guidelines would be

nil. However, as noted by the Commission in its final orders dated 01.05.2018 and 31.05.2018, in the facts of the present cases, where such parties have admittedly submitted cover bids but are not engaged in solid waste management i.e. the activity relating to which bid-rigging has taken place, interpretation of 'turnover' as 'relevant turnover' in terms of the Excel Crop Care Case would not be appropriate as this would imply that either no penalty would be leviable on certain parties who had indulged in cover bidding, or they would be penalised more harshly on their global turnover than their counterparts who may have comparatively less relevant turnover but have in fact abetted as well as participated in the bid-rigging arrangement. Either way, determination of the penalty amounts on the basis of 'relevant turnover' would lead to an inequitable result creating an anomalous situation that would render the objectives of the Act infructuous. As such, the Commission, in terms of the Penalty Guidelines, decided to consider the 'global turnover' of the erring entities, for the purpose of determination of the amount of penalty to be imposed upon them, in the present matters.

It is noted that the entire bid-rigging arrangement in the present matters has been proven to be at the behest of Shri Bipin Vijay Salunke, Sole Proprietor of Fortified Security Solutions and Managing Director of Ecoman Enviro Solutions Pvt. Ltd. assisted by his father Shri Vijay Raghunath Salunke, Director of Raghunath Industry Pvt. Ltd. Together, these persons and entities rigged not only one or two, but rather at least seven tenders issued by the Pune Municipal Corporation over a period of two years. Further, they also got other entities, viz. M/s Sanjay Agencies, Mahalaxmi Steels and Saara Traders Pvt. Ltd., who were not even involved in the business of Solid Waste Processing, to be a part of their bid-rigging arrangement, with the sole intent of manipulating the impugned tenders and ensure failure of competitive bidding process therein. All these entities have also categorically admitted their respective roles in the bid-rigging arrangement, by way of filing lesser penalty applications, and have received due reduction in the penalty amounts imposed upon them, in this regard.

The Commission notes that Fortified Security Solutions participated in Tender Nos. 21 and 28 of 2013 as well as Tender Nos. 34, 35 and 44 of 2014, while Ecoman Enviro Solutions Pvt. Ltd. participated in all of the aforesaid five tenders as well as Tender Nos. 62 and 63 of 2014. Though Raghunath Industry Pvt. Ltd. was not a direct participant in any of the rigged tenders, it, *inter alia,* provided authorisation letters to Fortified Security Solutions and Mahalaxmi Steels to fulfil the eligibility criteria, enabling them to participate in the rigged tenders.

Evidently, all acts done by the aforesaid three parties were with the intent of getting the impugned tenders awarded to Ecoman Enviro Solutions Pvt. Ltd. thereby manipulating the entire bidding process and enabling illegal gains. It is a well settled principle of law that *ignorantia juris non excusat,* and as such, expressing regret at a later stage when caught does not help the case of these erring parties. As far as their plea of being first time offender is concerned, the Commission notes that they could be a first-time offender when they indulged in bid-rigging/ collusive bidding in the first impugned tender, but when they indulged into such illegal acts in a repeated fashion in multiple tenders, it is inappropriate to plead mitigation on this ground, at the stage of computation of penalty.

As far as the other three entities who were cover bidders i.e. M/s Sanjay Agencies, Mahalaxmi Steels and Saara Traders Pvt. Ltd. are concerned, these entities, through their individuals, willingly provided their documentation to Shri Bipin Vijay Salunke for the purpose of submission of cover bids on their behalf, in one or more of the impugned tenders. M/s Sanjay Agencies and Mahalaxmi Steels were cover bidders in Tender Nos. 62 and 63 of 2014 while Saara Traders Pvt. Ltd. was a proxy bidder in Tender Nos. 21 and 28 of 2013. All these three entities are not small entities but rather M/s Sanjay Agencies is engaged in the pharmaceutical business, Mahalaxmi Steels is a dealer of steel, cement etc., and Saara Traders Pvt. Ltd. is engaged in trading business of laptops, computers, LCDs, medical instruments and some electronic spares and accessories. These entities, despite not being present in the relevant market of Solid Waste Processing, engaged in the egregious conduct of cover bidding resulting in loss to exchequer, and have categorically admitted their roles in their respective lesser penalty applications, for which they have received due reduction in the penalty amounts imposed upon them.

In their case also, *ignorantia juris non excusat,* and after getting caught for their illegal misdemeanours, these entities cannot be allowed to plead that they indulged in illegal conduct simply to oblige their friends and family.

Thus, the Commission notes that the OPs namely M/s Sanjay Agencies, Mahalaxmi Steels and Saara Traders Pvt. Ltd. had no presence in the market concerned and were therefore not in a position to make relevant quotations in terms of the tender specifications. However, at the behest of family and friends in a market about which they had little or no idea, and to manipulate the public procurement process, they indulged in bid rigging/ collusive bidding not only in the first impugned tender but also repeatedly participated in such egregious conduct.

After considering the egregious nature of conduct and their repeated participation in illegal practices, the Commission, in terms of the Penalty Guidelines, decides to compute for all the six entities maximum penalty in terms of Section 27(b) of the Act i.e. @ 10% of their average global turnover, for the preceding three FYs.

General Laws

LW 95:12:2025

MANMOHAN GAIND v. NEGOLICE INDIA PVT. LTD. [DEL]

CRL. M.C. 1379/2021, CRL. M. A. 8542/2021 & CRL. M.A.

Neena Bansal Krishna, J. [Decided on 11/11/2025]

Section 482 of the Criminal Procedure Code, 1975- summoning order issued in cheque bouncing complaint- security cheque against mobilisation advance - at the time of presentation liability crystalised-whether issuing of summoning order is correct-Held, Yes.

Brief facts:

Present Petition has been filed by the Petitioner/Mr. Manmohan Gaind, Director of M/s Mahesh Prefab Pvt. Ltd. under Section 482 of the Cr. P.C. for the quashing of the Criminal Complaint bearing No. 1982/2017 and for setting aside the summoning Order dated 18.12.2018 of the Learned Metropolitan Magistrate, filed by the Respondent/M/s Negolice India Ltd., under Section 138 read with Section 141 Negotiable Instruments Act, 1881 (NI Act).

Decision: Dismissed.

Reason:

Admittedly, the Petitioner's Company was given a mobilization advance of Rs. 6,82,416/-, against which it gave the impugned cheque as security. A dispute subsequently arose regarding the quantum of work completed, upon the termination of the contract.

The first issue is whether the said cheque was a security cheque and thus, could not have been presented unless there was an occasion for its presentment. Before assessing the merits of the issue, we may refer to the law in this regard.

PDCs (Post-Dated Cheques) issued as security for financial liability mature into an actual outstanding liability, the legal position is nuanced. The determining factor is whether a legally enforceable debt or liability exists on the date the cheque is presented for encashment, and not on the date it was drawn or handed over.

Where a cheque is given as security for a contract or a loan and the liability arising from that contract or loan, crystallizes into a legally enforceable debt at a later date, the cheque, even if originally a "security" one, assumes the character of a cheque issued in discharge of that debt for the purpose of Section 138. In this regard reference may be made to the judgement of the Apex Court in *Indus Airways Private Limited versus Magnum Aviation Private Limited, (2014) 12 SCC 539*. This proposition was reiterated by the Apex Court in *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458*.

Thus, this contention of the Petitioner that the impugned Cheque was merely a security cheque and could not have been presented, is untenable. The Complainant has specifically alleged about their being existing debt/ liability on 09.12.2015, when the cheque was presented to the Bank. Thus, the next logical question that needs to be answered pertains to existence of a "legally enforceable debt".

The second issue is that whether a legally enforceable debt of Rs.6,82,416/- existed on 08.12.2015, the date the cheque was presented. It is not in dispute that a Mobilization advance of Rs.6,82,416/- had been given by the Complainant to the Respondent and that he had issued this impugned cheque for the same amount. In term of Clause 5 of the Indemnity Agreement, this Cheque could be presented by the Complainant for any loss, damages or harm suffered by him in execution of the Work Order.

What emerges from the rival pleadings is that only part of the work got done while the Complainant was claiming vide emails dated 18.04.2014 that outstanding amount of Rs.3,61,847/- is due from the mobilization advance that was given by the Complainant. On the other hand, the Accused Company was asserting that there was in fact only a sum of Rs.69,647/- which was liable to be returned to the Complainant. There was thus, a dispute amongst the parties *inter se* about the work which was done and the amount which was due and payable by one to the other.

For an offence under Section 138 of the NI Act to be attracted, the cheque must be for the discharge of a debt or liability, and the debt must be equal to or greater than the amount of the cheque presented. Whether the cheque amount was for the existing liability or an excess amount, is a matter of trial and cannot be considered at the stage of summoning.

From the above narrative, it is evident that firstly this cheque was given to secure any loss that may be suffered by the Complainant. Furthermore, the Complainant has crystallized the outstanding liability under the Contract of Rs. 7,20,641/- and has consequently presented the Cheque of Rs. 6,82,416/-. It cannot be at this stage, said that there is no legally enforceable liability. What exactly is the amount due and payable to the Complainant is a disputed fact which can be proved only during the trial. The Petition is hereby dismissed.