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LEGAL WORLD

- Oriental Metal Pressing Works (P.) Ltd. v. Bhaskar Kashinath Thakoor & Anr [SC]
- Employees Provident Fund Organisation v. Subhlaxmi Investment Advisory Pvt. Ltd. & Anr [NCLAT]
- Refex Industries Ltd. v. Regional Director, Northern Region, Ministry of Corporate Affairs & Anr [Del]
- Super Medicos & Anr v. Northern Railways Central Hospital [CCI]
- Preeti Kodwani v. Sundar Pichai & Ors [CCI]
- Jindal Equipment Leasing Consultancy Services Ltd. v. Commissioner of Income Tax [SC]
- Kadirkhan Ahmedkhan Pathan v. The Maharashtra State Warehousing Corporation & Ors [SC]
- Motilal Oswal Financial Services Ltd. v. Santosh Cordeiro & Anr [SC]
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Corporate Laws

Landmark Judgement

LMJ 02:02:2026

ORIENTAL METAL PRESSING WORKS (P.) LTD. v. BHASKAR KASHINATH THAKOOR & ANR [SC]

Civil Appeal No. 10 of 1960

A.K. Sarkar, SJ Imam & Raghubar Dayal, JJ. [Decided on 16/12/1960]

Equivalent citations: 1961 AIR 573; 1961 SCR (3) 329; (1961) 31 Comp Cas 143; 1962 SCJ 1; 1961 63 BOM LR 505.

Companies Act, 1956 - Sections 312, 317 and 255- appointment of director under will - whether tenable- Held, Yes.

Brief facts:

Dadoba Tukaram Thakoor carried on a business under the name and style of Oriental Metal Pressing Works and later he converted it into a private company. On the same date, an agreement was made between him and the Company by which he was appointed the managing director of the Company for life and was given the power to appoint his successor by deed inter-vivos or by will or codicil to appoint any person to be a managing director in his place and stead. Regulation 109 of the articles of the Company reproduced these provisions. Dadoba had died leaving a will whereby he purported to appoint the appellant Govind the managing director of the Company in his place from the date of his death.

Shortly after Dadoba's death, disputes arose between the appellant Govind and the respondent Bhaskar with respect to the appointment. The trial court rendered the appointment to be void and on appeal by the Company and Govind, the High Court affirmed it. Hence the present appeal before the Supreme Court.

Decision: Allowed.

Reason:

Now, s. 312 makes the assignment of his office by a director void. It does not on the face of it, say that an appointment by a director of another person as the director in his place, would be void. The High Court, however, took the view that the word "assignment" in the section included "appointment", and so, such an appointment would also be void under the section. What we have to decide is whether the High Court was right in this view.

We have given the views of the High Court a most respectful and anxious consideration but we do not find ourselves able to agree with them. We will presently state our reasons for this conclusion, but now we wish to point out that in the view that we have taken of the matter it will not be necessary for us to deal with the argument advanced in the High Court that the section only forbade a director from appointing his successor, assuming assignment included appointment, but it did not prevent a managing director from assigning his office, or appointing his successor which was what Dadoba had done. If the section did not prevent a director from appointing his successor, which we do not think it did, then, clearly, there is nothing in it which can justify the view that a managing director cannot appoint his successor.

The section says that a director shall not be able to assign his office. It may be, as the High Court pointed out, that apart from "transfer" another meaning of the word "assignment" is, "appointment". But on a plain reading of the language used in the section, it does not seem to us possible to hold that the word "assignment" in it, can mean "appointment".

First, the section talks of "assignment of his office" by a director. The word "his" would indicate that the office contemplated was one held by the director at the time of assignment. An appointment to an office can be made only if the office is vacant. It is legitimate, therefore, to infer that by using the word "his" the Legislature indicated that an appointment by a director to the office which he previously held but did not hold at the date of the appointment, was not to be included within the word "assignment". Again, there can be no doubt that the section was intended to render void a transfer of his office by a director for, if the section had intended only to avoid an appointment by a director of his successor, it would have clearly said so and would not have used the word "assignment". Therefore, even if it is possible for the word "assignment" to have the meaning of "appointment", then it would have to be given both the meanings of "transfer" and "appointment" in the section. This is what the High Court did. That would produce a curious result.

Transfer and appointment are clearly entirely different things. Even apart from considerations arising from the law of conveyance, which the High Court was unable to entertain in connection with the transfer of an office, a transfer from its very nature inevitably imports the passing of a thing from one to another; a transfer without the passing of the thing transferred, even when that thing is an office, cannot be conceived. An "appointment", on the other hand, has nothing to do with anything passing from one to another; it connotes the putting in of someone in a vacancy. The acts constituting a transfer and an appointment are therefore wholly dissimilar. It would be an unusual statute which by the use of a single word intended to prohibit at the same time, two wholly different acts. We do not think that a construction leading to such a result is permissible.

Secondly, s. 255 of the Act permits one-third of the total number of directors of a public company and all the directors of a private company to be appointed otherwise

than by the company at a general meeting, if the articles make provision in this regard. The Act therefore expressly permits directors to be appointed otherwise than by the company. It follows that within the limit as to the number prescribed by the section, a power of appointment of directors can be legitimately conferred by the articles on any person including one who holds the office of a director. The Act expressly permits such power being conferred.

In order, however, that a director may exercise this power of appointment, there must be a vacant office of a director. He may himself bring about that vacancy by resignation of his office. The vacancy would again be caused by his death or by the expiry of the term of his office. It would follow that the Act contemplates an appointment by a director of another person as director to take his office, when made vacant by his resignation or death or the expiry of the term of his office. There will be nothing illegal, if the power is exercised in the case of the death of the director, by an appointment made by his will. It will not be right so to interpret s. 312, when its language does not compel it, as to bring in conflict with the provisions of s. 255. This would happen, if the word " assignment" in s. 312 was interpreted as including "appointment" and thereby making it prevent a director from appointing his successor when s. 255 permits him to do that. Therefore again we think that in s. 312 the word "assignment" does not mean "appointment".

In view of the clear provisions of s. 255 we do not think that it can be said, as was done in the High Court, that ss. 254 and 317 of the Act, impliedly indicate that there should be no perpetual management. Section 254 says that a corporation or an association of persons shall not be eligible as a director. But this is not because, otherwise, there would be perpetual management. The persons comprising the corporation or the association must change from time to time and so, even if they were appointed directors, there would be no perpetual management. We rather think that the idea behind s. 254 is that as the office of a director is to some extent an office of trust, there should be somebody readily available who can be held responsible for the failure to carry out the trust and it might be difficult to fix that responsibility if the director was a corporation or an association of persons.

Turning to s. 317, we find that it provides that a managing director cannot be appointed for a term exceeding five years at a time. Section 315 however makes s. 317 inapplicable to a private company. Therefore, s. 317 is not available to support an argument that the Act does not want a private company - and we are concerned with that type of a company - to be under perpetual management. But indeed s. 317 does not support that argument in the case of a public company either. It forbids an appointment of a managing director for more than five years "at a time". It permits the managing director to be reappointed after a term is over. If he is so reappointed, then there would be "perpetual management" by him. The Act does not, therefore, intend by s. 317, to prevent that. Lastly, s. 317 is not concerned with the directors, which s. 312 is.

Another argument that has to be dealt with is that if s. 312 does not prohibit an appointment by a director of his successor, that section can easily be rendered infructuous by a director adopting the simple device of appointing a person as his successor in office instead of transferring the office to him. It seems to us that the question does not really arise. A director can legally and effectively appoint his successor only to the extent the articles permit this subject, of course, to the limit prescribed in s. 255 in the case of a public company. An appointment so legally made does not result in an evasion of s. 312 for, as we have earlier said, the section could not have intended to prevent what another section in the same Act made legal. An appointment made outside the powers legally conferred by the articles is wholly ineffective and therefore is not an appointment at all and hence again, does not result in an evasion of s. 312.

We think we ought to say something about what strikes us to be the policy behind s. 312 of the new Act. We have earlier said that under s. 255 of that Act a certain number of directors in a public company has to be appointed by the company in a general meeting. In the case of a private company likewise, the directors have to be appointed similarly except to the extent the articles otherwise provide. It would therefore appear to be the policy of the Act that to a certain extent the appointments of the directors have to be made by the shareholders. It is intended that a certain number of directors would be the chosen representatives of the shareholders.

If a director appointed by the company was permitted to assign his office, then the new incumbent would not be the chosen representative of the shareholders, and the intention of the Act would be defeated. It seems to us that it is to prevent this result that the Act forbids a director by s. 312 from assigning his office. Where however a director has been appointed otherwise than by the company in a general meeting, the shareholders have nothing to do with his appointment. Such a director is not the chosen representative of the shareholders and the shareholders cannot claim to have a say in the appointment of his successor. We can discern no policy in the Act which can be said to be liable to be defeated by the appointment of the successor of such a director by him. Therefore s. 312 was not concerned with such an appointment.

In the present case Dadoba had power under the articles to appoint a person to be the managing director in succession to him, and in exercise of that power he had appointed the appellant Govind as the managing director to hold the office after his death. Such power was clearly recognised by, and legal under s. 255 of the new Act. For the reasons earlier stated, the exercise of such power does not offend s. 312. It follows that the appellant Govind had been lawfully and validly appointed the managing director of the Company. We, therefore, declare that the appellant Govind had been validly appointed the managing director of the Company, and set aside the decisions of the Courts below that he had not been so appointed. We have not been asked to interfere with the rest of the judgment under appeal and we do not do so. Appeal allowed.

LW 09:02:2026

EMPLOYEES PROVIDENT FUND ORGANISATION v. SUBHLAXMI INVESTMENT ADVISORY PVT. LTD. & ANR [NCLAT]

Company Appeal (AT) (Insolvency) No. 794 of 2025

N. Seshasayee & Arun Baroka. [Decided on 09/012026]

Insolvency and Bankruptcy Code, 2016 - claim of PF dues - Resolution Plan provided for lesser amount- NCLT rejected the objection raised by EPFO to the RP- whether rejection tenable- Held, Yes.

Brief facts:

Appellant - EPFO has sought relief to set aside the Resolution Plan approved by National Company Law Tribunal (NCLT). The main reason for appeal is that while approving the Resolution Plan against the claim of ₹18,35,528/- towards FP dues, provisions of only ₹5,000/- mainly on the grounds that no claim was submitted by EPFO.

Decision: **Dismissed.**

Reason:

The arguments presented herein by the Appellant are against the scheme of the Code. We note that in this case assessment and claim by EPFO was made after initiation of CIRP and during the period of moratorium. Thus, it not mandatory for the RP to consider the same. RP also gets support from the judgment of this Appellate Tribunal in the matter of *EPFO vs Jaykumar Pesumal Arlani* in Company Appeal (AT) (Insolvency) No. 1062 of 2024 wherein it is held that after initiation of CIRP and imposition of moratorium under Section 14 of IBC, no assessment proceedings can be initiated or continued by EPFO under Section 7A, 7Q, 14B of EPF & MP Act and no claim based on such assessment can be admitted in CIRP. The said ratio is further affirmed in *CA Pankaj Shah vs EPFO* in Company Appeal (AT) (Insolvency) No. 77 of 2025 that demands made by EPFO on the basis of inspection and assessment orders passed during moratorium are unenforceable.

We find that in this case it is not the case that the RP had not taken note of the claim of the EPFO. But RP included the claim in the Information Memorandum and also the SRA had made necessary provisions.

Another issue which has been raised by EPFO is whether a lower pay out towards Provident Fund dues can be approved in the resolution plan. Perusal of the facts, show that on the basis of the analysis of books of accounts, no amount is shown to be payable as Provident Fund dues. RP had requested the EPFO to file the claims. EPFO initially filed a small amount and then did its own inquiry and reassessment and filed a higher amount, which is being disputed by the RP and ex-suspended director. On the date of initiation of CIRP, there is nothing which is due to EPFO as per books of accounts and at the maximum it could be ₹50,626/- which is also not basis the books of accounts. But ₹5000/- has been provided in the resolution plan. Without books of accounts on record, it is just a nominal amount and approved as per the commercial wisdom of the CoC and which is non-justiciable. In case details of employees were available on record, situation would have been different. But herein only assessment are being made without EPF deductions being in Books of accounts. Without exact details of employees, it cannot be said that the resolution plan provides for a very low pay out towards Provident Fund dues. Moreover, it could not be done during the moratorium.

In this case, we find that there is no record to suggest that the Provident Fund was deducted contemporaneously by the CD and as no such record existed with the CD. An assessment was made later on by the EPFO basis which a demand has been made and such an assessment is not allowed under the moratorium existing. We have clearly noted the legal position that when the claim on the basis of assessment, which has been made subsequent to initiation of moratorium, is hit by Section 14, sub-section (1) of the IBC, we are of the view that no such claim can be admitted in the CIRP. Therefore, in the facts and circumstances of the case, we find that the Appeal filed by the Appellant does not merit intervention for setting aside the impugned order dated 28.03.2025. We uphold the orders of the Adjudicating Authority and accordingly, the Appeal is hereby dismissed.

LW 10:02:2026

REFEX INDUSTRIES LTD. v. REGIONAL DIRECTOR, NORTHERN REGION, MINISTRY OF CORPORATE AFFAIRS & ANR [Del]

W.P.(C)-IPD 27/2022

Manmeet Pritam Singh Arora, J. [Decided on 28/01/2026]

Companies Act, 2013 - Section 16- companies registered with similar name – rectification thereof - regional director respondent No.1 refused to rectify the name of respondent No.2 - Whether correct-Held, No.

Brief facts:

The present writ petition has been filed by the Petitioner seeking quashing and setting aside of the order dated 23.08.2018 passed by Respondent No. 1, whereby the application filed under Section 16(1)(b) of the Companies Act, 2013 for issuing directions to Respondent No. 2 M/s. Refex Hotels Pvt. Ltd. to rectify its similar name, has been dismissed. The Petitioner further sought a direction to Respondent No. 2 to change its name.

Decision: **Allowed**

Reason:

In view of the law settled by this Court in *CGMP Pharmaplan P. Ltd.* (supra) and *Everstone Capital Advisors Pvt. Ltd. (*supra), this Court is of the opinion that the dissimilarity in the businesses of the Petitioner and Respondent No. 2 was not a relevant criterion for the Regional Director to consider for declining to exercise the jurisdiction conferred upon him under Section 16 of the Act of 2013.

The word 'REFEX' as noted above is the prominent part of the name of the Petitioner, which was incorporated in 2002. Subsequently, in the years 2008, 2010 and 2015 its promoter incorporated six [6] other companies, which similarly had 'REFEX' as a prominent part of its corporate name. Thus, as on 27.01.2017, when Respondent No. 2 applied for incorporation with the word 'REFEX' in its corporate name, there already existed seven [7] companies all forming part of the same group, on the register.

In view of the identity of the prominent and distinctive part of the corporate names of the parties, the name of Respondent No. 2 would be undesirable as stipulated under Section 4(2)(a) of the Act of 2013.

The Respondent No. 2's submission that the word 'REFEX' is descriptive of the hospitality services rendered by the company is contradicted by its submissions that the word 'REFEX' is a coined word. In addition, Respondent No. 2's submission that 'REFEX' is descriptive of hospitality service is also unpersuasive and unsubstantiated. The documents on record show that the Petitioner is the prior adopter of this coined word 'REFEX' and, therefore, Respondent No. 2 had no reasonable grounds for adopting this word as a part of its corporate name. The adoption of this name is undesirable within the scope of Section 4(2)(a) of the Act of 2013 as it is identical with the name of the Petitioner.

Learned counsel for Respondent No. 2 had averred that there are several other companies on the register with the word 'REFEX' as a part of the corporate name; however, no details of these other companies have been placed on record. This ground raised by Respondent No. 2 is, therefore, unsubstantiated. The Petitioner, on the other hand, has contended that it is only the Petitioner's group companies, which use the word 'REFEX' as a part of the corporate name.

In these facts, the present petition is allowed, the impugned order dated 23.08.2018 passed by Respondent No. 1 is set aside and Respondent No. 2 is directed to change its name to any other name, which is not identical to or resembles the name of the Petitioner or any other existing company within four (4) weeks from today. Respondent No. 2 and its directors are also directed to ensure that Respondent No. 2 changes its name. Respondent No. 1 is directed to issue appropriate directions to Respondent No. 2 for due compliance of these directions.

Competition Laws

LW 11:02:2026

SUPER MEDICOS & ANR v. NORTHERN RAILWAYS CENTRAL HOSPITAL [CCI]

Case No. 08 of 2025

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag

[Decided on 07/01/2026]

Competition Act, 2002 - Sections 3 & 4- tender for supply of medicines increase of turnover criteria in bid condition- whether violates Sections 3 and 4- Held, No.

Brief facts:

The present Information was filed by M/s. Super Medicos ("Informant No. 1") and M/s. Chemicura ("Informant No. 2") (collectively referred to as the "Informants") against Northern Railways Central Hospital ["OP") under Section 19(1)(a) of the Competition Act, 2002 ("Act"), alleging contravention of the provisions of Sections 3 and 4 of the Act.

The primary grievance of the Informants was that in the Impugned Tender, the criteria for participation in the bidding process in terms of average annual turnover has been exorbitantly enhanced from Rs.7.5 crores to Rs.19 crores, which is unfair, discriminatory and contrary to guidelines issued by the Ministry of Commerce and Industry and the Ministry of Railways in terms of PPP-MII Order 2017 and GFR, 2017. As stated by the Informants, the alleged conduct of the OP is limiting fair competition of vendors in order to favour a single vendor viz. M/s. Kaushik Medical Store, in contravention of Sections 3 and 4 of the Act.

Decision: Dismissed.

Reason:

The Informants have alleged that increasing the annual average turnover from Rs. 7.5 crores to Rs. 19 crores in an unfair manner violates Rule IV of the GFR, 2017. As per the Informants, Rule IV states that turnover criteria should be 30% of the estimated tender value. Notwithstanding the fact that ordinarily tender conditions are not per se violative of the provisions of the Act, the Commission has also perused the GFR, 2017 in view of the allegation raised by the Informants. Rule IV of GFR, 2017 relates to the departmental regulations of financial character, and is reproduced as under:

"All Departmental regulations, insofar as they embody orders or instructions of a financial character or have important financial bearing, must invariably be made by, or with the approval of the Ministry of Finance."

The Commission notes that the averment made by the Informants with regard to Rule IV of GFR, 2017 is not correct as it contains nothing pertaining to annual average turnover. Even otherwise, violation of any rule or guideline/ policy by an enterprise cannot be examined under the Act unless there is any contravention of its provisions.

The Commission has also perused the relevant clause of the Letter No. 2017/H/4/1/Local Purchase (E-3236402) dated 31.07.2023 issued by the Railway Board as furnished by the OP in its response to the Information and notes that the modification by the OP in one of the conditions related to annual average turnover is in compliance with the revised guidelines issued by Railway Board vide the aforesaid letter.

The Commission notes that the Informants are aggrieved with the tender conditions which have been designed and issued by the OP acting on behalf of the President of India. The Commission, in the past has dealt with the competition issues arising from tender conditions prescribed by the procurer and has been of the view that the procurer is at liberty to set its terms and conditions for procurement in free market. The Commission, in *Shri Prem Prakash Vs. Power Grid Corporation of India Ltd.*, had observed *"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 cannot be held as anti-competitive."*

In view of the facts of the case and analysis carried out supra, the Commission is of the view that there is no requirement of delineating the relevant market, as per the provisions of Section 4 of the Act. With regard to the allegation of the Informants regarding favouring one bidder, in violation of Section 3 of the Act, the Commission notes that there is no evidence on record to indicate contravention in terms of Section 3(3) of the Act.

In view of the Information provided and analysis carried out in preceding paragraphs, the Commission is of the opinion that no prima facie case of contravention of Sections 3 and 4 of the Act is made out against the OP. Accordingly, the Information is directed to be closed forthwith under Section 26(2) of the Act.

LW 12:02:2026

PREETI KODWANI v. SUNDAR PICHAI & ORS [CCI]

Case No. 36 of 2025

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag

[Decided on 05/01/2026]

Competition Act, 2002 - Sections 3 & 4- abuse of dominance- no evidence materials to prove the allegations- case was dismissed.

Brief facts:

The present Information has been filed by Preeti Kodwani ('Informant') under Section 19(1)(a) of the Competition Act, 2002 ('Act'), against Sundar Pichai and 22 other persons / entities *inter alia* alleging contravention of the provisions of Sections 3 and 4 of the Act.

It was stated that the Informant is engaged in legitimate business activities and invests considerable resources in marketing and client acquisition through online platforms such as Google and other digital intermediaries. As per the Information, certain dominant players in the digital ecosystems including major technology companies and their associated Artificial Intelligence or ad serving systems are allegedly engaging in practices that unfairly restrict the Informant's market access and divert its commercial opportunities to competitors.

It was stated that the cumulative and persistent behaviour has already resulted in severe and fundamental commercial distress for the Informant, specifically by undermining professional roles and effectively cutting off access to funding and investment opportunities.

Decision: Dismissed

Reason:

It is alleged that the Informant's digital identifiers (such as email IDs, website accounts, or ad campaign data) are being manipulated or interfered with. Further, leads and customers who search for or interact with the Informant's brand are diverted to competitors, despite paid marketing efforts by the Informant and such diversion constitutes "market allocation" and denial of market access under Section 3(3) and Section 4(2)(c) of the Act, respectively.

It is further alleged that platforms with a dominant position in online advertising and search services are using their control to bias search results and ad placements, intentionally suppressing visibility of the Informant's business which amounts to imposing unfair or discriminatory conditions in the sale of services, in contravention of Section 4(2)(a)(i) of the Act.

As per the Information, there are attempts to influence international customers (including those in the USA) to boycott the Informant's brand. It is stated that if this involves collusion among competitors or coordinated platform behavior, it represents a concerted refusal to deal.

It is stated that the Informant is deprived of access to customers/clients and markets despite legitimate advertising expenditure, compounding the pre-existing harm to its funding and business stability. The Informant further states that competitors gain an unfair advantage through manipulated visibility, therefore harming not only the Informant but also consumer choice and market transparency, leading to appreciable adverse effect on competition ('AAEC') in India's digital services market.

The Commission, in its ordinary meeting held on 10.12.2025, considered the Information and decided to pass an appropriate order in due course. The Commission notes that the allegations levelled in the Information are vague, broad, and devoid of the requisite particulars, and the nature of the alleged contraventions have not been clearly articulated. Furthermore, there are 23 OPs arrayed in the present matter; however, the specific role, conduct, and contribution of each OP have not been mentioned in the Information.

The Commission further notes that the evidence furnished in the Information in the form of screenshots is largely illegible and incapable of proper scrutiny. Even otherwise, the Informant fails to specify the manner in which provisions of the Act are allegedly violated. Therefore, in these circumstances, the allegations remain indeterminate and legally unsustainable.

Upon consideration of the facts and circumstances of the present case, the Commission is of the view that there is no prima facie contravention of provisions of Sections 3 and 4 of the Act warranting an investigation into the matter. Therefore, the matter is directed to be closed forthwith under Section 26(2) of the Act.

Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the said request is rejected.

Tax Laws

LW 13:02:2026

JINDAL EQUIPMENT LEASING CONSULTANCY SERVICES LTD. v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No. 152 of 2026 with connected appeals

J.B. Pardiwala & R. Mahadevan, JJ. [Decided on 09/01/2026]

Income tax Act, 1961- Sections 28 and 47- share swap- shares issued by amalgamated company to amalgamating company- what is the treatment if the shares were held as investment or as stock-in-trade by the shareholders of the amalgamating company - Supreme Court clarifies the legal position.

Brief facts:

The present appeals arose out of a common judgment and final order passed by the High Court of Delhi in ITA Nos. 935, 822, 853, and 961 of 2005, pertaining to the Assessment Year 1997-98. By the impugned judgment, the High Court remanded the matters to the Income Tax Appellate Tribunal for fresh adjudication on the question of whether the shares held in the amalgamating company constituted stock-in-trade or capital assets, upon observing that, if the shares were, in fact, held as stock-in-trade, the transaction would fall outside the purview of Section 47(vii) of the Income Tax Act, 1961, and its taxability would consequently be governed by Section 28 under the head "profits and gains of business or profession".

Decision: Disposed.

Reason:

In the present case, the Tribunal, relying on *Rasiklal Maneklal*, held that no "transfer" occurs in a scheme of amalgamation. The High Court, however, found this view unsustainable, observing that under the 1961 Act, as clarified in Grace Collis, the extinguishment of rights in the shares of the amalgamating company constitutes a "transfer" within the meaning of Section 2(47). Since such transfer is exempt under Section 47(vii) only in respect of capital assets, the High Court proceeded to examine whether shares held as stock-in-trade would nonetheless give rise to taxable business income under Section 28.

The High Court reasoned that once the shares of the amalgamating company ceased to exist and were substituted by shares of the amalgamated company, there was a cession of the old trading stock and its replacement by a new commodity of ascertainable market value. On this footing, it held that a realisation of business profit had occurred, taxable under Section 28. Relying upon Orient Trading and Hindustan Lever, the Court observed that shares received on amalgamation are fundamentally new assets, and the process results in realisation of value irrespective of shareholder status. The taxable event, therefore, depends on the substance of the transaction and not merely accounting entries. On this reasoning, the Tribunal's findings were set aside, the question of law was answered in favour of the Revenue, and the matter was remitted to the Tribunal.

As already noticed, the correctness of this reasoning constitutes the core issue in the present appeals. In view of the foregoing discussions, we reiterate that Section 28 of the I.T. Act is of wide import and encompasses all profits and gains arising in the course of business, even when such profit is realised in kind. The statutory substitution of shares of the amalgamating company by shares of the amalgamated company is not a mere neutral replacement; where the new shares are freely marketable and possess a definite commercial value, the event constitutes a commercial realisation giving rise to taxable business income. The principle laid down in Orient Trading and similar authorities makes it clear that such profit need not await actual sale if the benefit received is real and presently realisable.

We thus hold that where the shares of an amalgamating company, held as stock-in-trade, are substituted by shares of the amalgamated company pursuant to a scheme of amalgamation, and such shares are realisable in money and capable of definite valuation, the substitution gives rise to taxable business income within the meaning of Section 28 of the I.T. Act. The charge under Section 28 is, however, attracted only upon the allotment of new shares. At earlier stages namely, the appointed date or the date of court sanction, no such benefit accrues or is received.

In fine, the judgment of the High Court is affirmed, and all these appeals stand disposed of in the aforesaid terms. There is no order as to costs.

Labour Laws

LW 14:02:2026

KADIRKHAN AHMEDKHAN PATHAN v. THE MAHARASHTRA STATE WAREHOUSING CORPORATION & ORS [SC]

Civil Appeal No. of 2026 (@ SLP(C) No. 10869 of 2021)

J K Maheshwari & Vijay Bishnoi, JJ. [Decided on 06/01/2026]

Labour law – institution of domestic inquiry after employee attaining superannuation- whether valid- Held, No.

Brief facts:

The issue in the present list revolves around the institution of the departmental enquiry by the respondent – Maharashtra

State Warehousing Corporation (for brevity, 'Corporation') against the appellant after his superannuation in absence of any provision in the governing service rules and regulations, i.e., 'Maharashtra Civil Services (Pension) Rules, 1982 (in short '1982 Pension Rules')' and 'Maharashtra State Warehousing Corporation (Staff) Service Regulations, 1992 (in short '1992 Regulations')'.

Decision: **Allowed.**

Reason:

The question that falls for our consideration is 'whether in absence of any provision in the 1992 Regulations for institution of departmental proceedings against a superannuated employee, the Corporation could have proceeded against the appellant applying Rule 27(I)(2)(b)(i) of the 1982 Pension Rules? In case enquiry is instituted after retirement of appellant, whether the Corporation had the jurisdiction to continue such enquiry and impose punishment, withholding the retiral benefits and direct recovery?

After analysing Rule 110 of 1992 Regulations and Rule 27 of 1982 Pension Rules and also considering the averments made in additional affidavit filed as directed on 11.11.2025, the Corporation was unable to produce a conscious decision of the Board regarding adoption of Pension Rules and the circumstances explaining the situation to apply the same rules as applicable to the employees of the Government of Maharashtra to the employees of the Corporation in the matter of institution and continuance of the disciplinary proceedings post-retirement. In light of the above discussions and in view of the judgments referred hereinabove, the irresistible conclusion can be drawn that the Corporation had no jurisdiction to institute the departmental proceedings against the appellant for the alleged misconduct and to direct recovery against him applying 1982 Pension Rules. As such the questions as posed hereinabove are answered in favour of the appellant against the Corporation.

Accordingly, the present appeal is allowed and the impugned order passed by the High Court is set aside. The impugned departmental proceedings against the appellant are also hereby quashed, and the Corporation is directed to release all the retiral benefits to the appellant within a period of eight weeks. The recovery, if any, made from the appellant in the interregnum, shall also be refunded within the period as specified.

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MOTILAL OSWAL FINANCIAL SERVICES LTD. v. SANTOSH CORDEIRO & ANR [SC]

Civil Appeal No. 36 of 2026

J. B. Pardiwala & K. V. Viswanathan, JJ. [Decided on 05/01/2026]

Section 11 of the Arbitration and Conciliation Act, 1996 read with Section 41 of the Presidency Small Cause Courts Act, 1882 - appointment of arbitrator by court- dispute as to property given under leave and licence agreement- whether the dispute is to be dealt with by Smal Causes Court only- Held, No. Whether disputes are arbitrable- Held, Yes.

Brief facts:

The present appeal calls in question the correctness of the order dated 02.05.2024 passed by the Single Judge of the High Court of Judicature at Bombay in Commercial Arbitration Application No. 9 of 2024. By the said order, the learned Single Judge allowed the Section 11 Application filed by the respondent under the Arbitration & Conciliation Act, 1996 (for short "the A&C Act") and appointed an arbitrator to adjudicate the dispute between the parties. The only objection taken by the appellant herein was that the dispute is non-arbitrable in view of Section 41 of the Presidency Small Cause Courts Act, 1882 (for short "the 1882 Act"). The learned Single Judge made a short shrift of the said objection by holding that the place where the property in question, which was the subject matter of the dispute, was situated, i.e. Malad, was outside the jurisdiction of the Small Causes Court. This finding has now turned out to be a damp squib, since parties before us are ad idem that Malad area is covered under the jurisdiction of the Small Causes Court. We could have rest content by remanding the matter to the High Court for fresh consideration. However, that will only prolong the dispute and, hence, we have decided to answer the issues arising in the case ourselves.

Decision: **Dismissed.**

Reason:

Considerable arguments were advanced both in the oral submissions and in the written note about whether the nature of the claim is in the form of debt or whether it pertains to a matter covered by the ambit of Section 41(1). Arguments were also advanced on the issue as to how the dispute between the parties is a dispute in personam (as contended by the respondent) pertaining only to the recovery of a debt as opposed to the appellant contending that it is a dispute relating to the recovery of the license fee or charges or rent, covered under Section 41(1) of the 1882 Act. Reliance was placed on *Natraj Studios* (supra) and Booz Allen (supra) by the appellant and *Globsport* (supra) by the respondents.

In exercise of our jurisdiction under Section 11, we are not concerned with the said dispute. That will be for the arbitrator to decide. We have been told that the Arbitrator has taken a decision on the Section 16 application. If that be so, parties have to work out their remedies in accordance with law. As and when such remedies are resorted to, they will be decided uninfluenced by any of the observations made herein. All questions between the parties other than the one answered herein based on Section 11(6-A) of the A&C Act are left open.

For the reasons set out hereinabove, paragraph 40 of Central Warehousing (Supra) cannot be understood on the facts of the present case to mean that Clause 33 of the Leave and License Agreement has ceased to exist.

We have been constrained to deal with the judgement in Central Warehousing (supra) only to decipher whether on account of the said judgement, Clause 33 of the Leave and License Agreement dated 06.10.2017, in the present case, containing the arbitration clause is non-existent. We hold that it is not and that an examination under Section 11(6-A) indicates that there exists an arbitration agreement between the parties. We are conscious that an appeal is pending in this Court against the judgement in Central Warehousing (supra). That appeal may be decided on its own merits and we are not to be taken to have pronounced on the correctness of Central Warehousing (supra) one way or the other. The appeal is dismissed for the reasons stated above. No order as to costs.

LW 16:02:2026

SAISUDHIR ENERGY LTD. v. NTPC VIDYUT VYAPAR NIGAM LTD. [SC]

Civil Appeal Nos. 12892-12893 of 2024 with Civil Appeal Nos. 12894-12895 of 2024

P S Narasimha & Atul S. Chandurkar, JJ [Decided on 30/01/2026]

Arbitration and Conciliation Act, 1996 - Section 37- grant of liquidated damages- delay in commissioning the power plant - arbitrator allowed liquidated damages of Rs.1.2 crore - High Court enhanced the quantum u/s. 34 to Rs.27.06 crore– Division Bench reduced the quantum to Rs.20.70 crore – whether correct-Held, No.

Brief facts:

These cross appeals arose out of the common judgment passed by the Division Bench of the Delhi High Court in proceedings filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the Act of 1996"). Broadly, the dispute between the parties relates to the claim for liquidated damages raised by the employer [NVVNL] against the Solar Power Developer [SEL] on account of delay caused in commissioning a power plant. A three-member Arbitral Tribunal while holding that there was a delay in commissioning the power plant, by majority, awarded an amount of ₹1.2 crores towards the claim made by the employer. Both parties raised objections under Section 34 of the Act of 1996. A learned Single Judge of the Delhi High Court proceeded to grant an amount of ₹27.06 crores to the employer on account of delay on the part of the Solar Power Developer in commissioning the power plant. Both parties further took recourse to Section 37 of the Act of 1996. By the impugned judgment, the Division Bench modified the order passed under Section 34 of the Act of 1996 in the matter of grant of liquidated damages and reduced the amount to ₹20.70 crores.

Decision: Civil Appeal Nos. 12894-12895 of 2024 by NVVNL allowed and Civil Appeal Nos. 12892-12893 of 2024 by SEL dismissed.

Reason:

Coming to the aspect of determination of the amount of reasonable compensation, the learned Single Judge after referring to Clause 4.6 of the PPA determined the claim as made by NVVNL in terms of Clause 4.6 of the PPA at an amount of ₹54,12,32,000/-. He found that granting 50% of the aforesaid amount by adjusting ₹25,00,000/- per month from the revenue to be received by SEL would amount to reasonable compensation in favour of NVVNL. The Division Bench in appeal, however, proceeded to modify the amount of reasonable compensation by reading Clause 4.6 of the PPA on the premise that a higher rate of damages was payable in the initial three months period of delay and that amount was reduced after three months. On that basis damages at the rate of ₹1,00,000/- per MW per day came to be worked out. The amount of compensation was, thus, reduced to ₹20.70 crores.

In our view, the Division Bench exceeded its jurisdiction under Section 37 of the Act of 1996 when it proceeded to re-work and re-calculate the amount of reasonable compensation to which NVVNL was entitled. The learned Single Judge having determined the amount of reasonable compensation by relying upon Clause 4.6 of the PPA and thereafter awarding 50% of the amount so determined, in the absence of this determination being shown to be beyond the terms of Clause 4.6 of the PPA or arbitrary or perverse, no interference with such determination was called for in exercise of jurisdiction under Section 37 of the Act of 1996. In fact, the Division Bench has not recorded any finding that such determination of reasonable compensation by the learned Single Judge suffered from arbitrariness or that it travelled beyond what was provided by Clause 4.6 of the PPA. Having held in paragraph 28 of the impugned judgment that it was in agreement with the view of the learned Single Judge of the need to balance equities and compute a fair and reasonable amount of compensation coupled with the fact that the majority award granting a paltry amount of ₹1.2 crores was held to be contrary to the fundamental policy of Indian law thus requiring interference, the further exercise undertaken by it in modifying the amount of reasonable compensation was not justified in the facts of the case. The modification in the amount of reasonable compensation by the Division Bench is merely a substitution of its view in place of the plausible view taken by the learned Single Judge. Such course of taking a different view of the same matter from the one taken under Section 34 of the Act of 1996 would be beyond the scope of Section 37 of the Act of 1996. As held in *AC Chokshi Share Broker Private Limited vs. Jatin Pratap Desai & Anr* to which one of us (P.S. Narasimha J) was a party, the Court under Section 37 must only determine whether the Section 34 Court had exercised its jurisdiction properly and rightly, without exceeding its scope. To that extent, we find that the Division Bench of the High Court erred in interfering with the judgment of the learned Single Judge.

For the aforesaid reasons, we are of the view that the determination of the amount of reasonable compensation by the learned Single Judge having been undertaken in terms of Clause 4.6 of the PPA and further discretion having been exercised by awarding 50% of such amount as liquidated damages, the Division Bench was not justified in modifying the said decision.

Accordingly, the judgment of the Division Bench dated 18.01.2018 to that extent stands set aside. The judgment of the learned Single Judge in OMP No. 410 of 2015 and 446 of 2015 stands restored.