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# LEGAL WORLD

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# Corporate Laws

## Landmark Judgement

**LMJ 07:07:2026**

**DARIUS RUTTON KAVASMANECK v. GHARDA CHEMICALS LTD. & ORS [SC]**

**Civil Appeal No. 2481 of 2014**

**A.K. Sikri & J. Chelameswar, JJ. [ Decided on 28/10/2014]**

**Equivalent citations: 2014 AIR SCW 6441; 2015 (14) SCC 277; AIR 2015 SC (SUPP) 1566; (2014) 12 SCALE 403.**

**Companies Act, 1956- Section 43A- whether a deemed public company retain the restriction of share transfer in its articles of association- Held, Yes.**

**Brief facts :**

The respondent company was incorporated as a private company and Art. 57 of the AOA of the company contained restrictions on the rights of all the shareholders to transfer their shares. Any shareholder desiring to sell his shares must offer his shares to the other shareholders of the company pro rata to the holding of each of such other members respectively at a fair value. Subsequently the respondent company became a Section 43A company i.e. deemed public company or hybrid company. Respondent No. 2 intended to sell his shares to third party and appellants, the other shareholders, sought to refrain from doing so by filing a petition in CLB claiming their pre-emptive rights under Art. 57. CLB dismissed the petition and on appeal High Court upheld the decision. Hence the present appeal before the supreme Court.

**Decision: Allowed.**

**Reason:**

The case of the appellants all through has been that notwithstanding the amendment of the Act by the Amendment Act 53 of 2000, Article 57 of the Articles of Association still governs the rights of the members of the first respondent Company. On the other hand, the case of the respondents has always been and is that the first respondent company is a public company having had become so by the operation of law i.e., Section 3A(1) and it cannot now become a private company.

The other conclusion of the High Court that the failure of the first respondent company to amend its Articles of Association to give effect to clause (d) of Section 3(1)(iii) rendered the first respondent company to cease to be a private company, in our opinion, is irrelevant for the decision on the REAL question in this case.

The REAL question is not whether the failure to amend the Articles of Association by the first respondent company rendered the first respondent company (which is otherwise a private company) a public company, but whether such a failure destroyed the collective right of the members of the first respondent company to have shares whose transferability is subject to limitations and restrictions contained in Article 57 of its Articles of Association.

Originally, Section 3(1)(iii) stipulated to be a private company, a company's Articles of Association are required to contain certain stipulations with regard to the matters specified in clause (a), (b) and (c). By virtue of the Act 53 of 2000 w.e.f. 13.12.2000 a private company's Articles of Association are required to contain additional stipulations relating to the matter contained in clause (d) also. The question is whether the newly-introduced requirement is applicable to existing private companies also or only to those which come into existence subsequent to the commencement of the Act 53 of 2000?

Section 27(3) mandates that the articles of a private company having share capital (such as the one on hand) shall only contain provisions relating to matters specified in clauses (a), (b) and (c) of Section 3(1)(iii) but not matters relating to clause (d). In other words, though the Parliament chose to introduce clause (d) in Section 3(1)(iii) (by an amendment in the year 2000), did not think it necessary to make a corresponding amendment to Section 27(3).

Then came, in 1988, Section 43A(1C), which only declared that a private company either accepting deposits from or renewing existing deposits (made either after or prior to 15.6.1988 respectively) collected from "persons other than its members, directors or their relatives" (hereinafter for the sake of convenience referred to as "PUBLIC") shall become a public company. But under the proviso to sub-section (1C), even after becoming a public company, such a Company can retain either restrictions or limitations contemplated under Section 3(1)(iii).

The insertion of clause (d) in Section 3(1)(iii) is admittedly only prospective. Therefore, on and after 13.12.2000, if anybody proposes to create a private company, the Articles of Association of such company must contain a clause prohibiting the invitation and acceptance of deposits from PUBLIC.

For all the abovementioned reasons, we are unable to agree with the submission of the respondents that by the Amendment Act 53 of 2000 and more particularly sub-section (11) of Section 43A, the Parliament intended to curtail or destroy the collective right of the shareholders of a HYBRID company to impose restrictions on the rights of the individual shareholders to have unfettered right of transfer of their shares. Such a restriction which, in our view, constitutes a restriction on the fundamental rights under Article 19(1)(c), requires a more express legal authority and cannot be brought in by inference.

Therefore, in our opinion, the failure of the first respondent company to amend its Articles of Association to give effect to clause (d) of Section 3(1)(iii) does not affect the operation of its Article 57.

**LW 49:07:2026**

## RELIANCE INDUSTRIES LIMITED v. THE SECURITIES AND EXCHANGE BOARD OF INDIA [SC]

**Civil Appeal No. 4015 of 2020 with connected appeal**

**J.B. Pardiwala & R. Mahadevan [Decided on 29/05/2026]**

**Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 – futures segment- appellants sold shares through 12 entities- manipulation of share price to gain profit alleged- WTM found appellants guilty- SAT confirmed the same- whether appellants manipulated the price and indulged in fraud-Held, No.**

**Brief facts:**

The two statutory appeals arose from the judgment and order dated 05.11.2020 and 04.12.2023 respectively passed by the Securities Appellate Tribunal, Mumbai ("SAT"), wherein by a 2:1 majority, the Tribunal dismissed the appeal filed by the appellant no. 1 herein against the order of the Whole-Time Member ("WTM") of the Securities and Exchange Board of India ("SEBI"), essentially on the ground that the appellant no. 1 made an illegal and undue gain of Rs. 447.27 crore while trading in the shares of Reliance Petroleum Ltd. ("RPL") by manipulating the prices thereof to profit in the futures segment, in violation of the Securities Contracts (Regulation) Act, 1956 (the "SCRA") and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 (the "PFUTP Regulations") respectively.

**Decision:** **Partly allowed.**

**Reason:**

The SC framed four issues and answered the same as follows:

a. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were fraudulent and manipulative device under the PFUTP Regulations?

In our considered opinion, the agreements entered into by and between the appellant no. 1 and the twelve entities were not a device used for fraud and manipulation. The 2001 SEBI Circular did not place a ban on the breach of position limits, rather it only required disclosure when positions were taken in excess, and penalized only the non-disclosure of the same. We have held in the aforesaid parts of this judgment that the appellant no. 1 is liable only to be penalized in terms of the 2001 SEBI Circular and the 2001 NSE Circular.

210. However, to make out a case for fraud, it was incumbent upon the respondent to show how the usage of agency relationships could be said to be manipulative when the 2001 SEBI Circular itself left a loophole in respect of prescribing position limits for persons acting in concert. A literal interpretation of the Circular would not even allow us to penalize their conduct. The only reason for upholding of penalty levied by the SAT and the WTM is that the respondent attempted to do something indirectly, what it could not do directly.

In our view, the PFUTP Regulations cannot be attracted on the sole circumstance of the appellant no. 1 using 12 agency agreements to take excess position limits and it was necessary for the respondent to prove whether the manner in which these agency agreements were utilised was fraudulent or not.

b. Whether the 9.92 crore open positions in the November 2007 futures segment of the RPL stock, were valid hedges?

In the context of the facts and circumstances presented to us by the parties and the materials placed on record, we find that the 9.92 crore positions taken by the appellant no. 1 in the RPL futures segment were valid hedges. We have said so because the underlying 22.5 crore RPL shares that were supposed to be sold in the cash segment were more than half of the futures positions taken in the November 2007 series.

Further, we have found that there is no legal requirement to ensure a perfect hedge with 1:1 ratio of underlying risk to number of hedge positions. Therefore, we find no force in the argument of the respondent that the appellant no. 1's futures positions from 23.11.2007 onwards were 'naked hedges'.

c. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were used by the appellant no. 1 to corner open positions in the November 2007 futures segment of the RPL stock for the purpose of manipulating the futures market?

On the basis of the discussion in the aforesaid, the answer to this question must be a firm 'No'. We say so because the basis to calculate the percentage of the appellants' positions out of all the open positions in the derivatives market, was flawed. The respondent should have calculated the open interest of the appellants out of the total open positions across all derivatives and not just one series.

In our opinion, cornering that includes within itself the intent to manipulate prices must be patently clear from the conduct and transactions of the allegedly fraudulent party, which in the present matter, is not the case. This is because the 40.10% of open interest constituted genuine and valid hedges. In situations like the one in the instant matter, one may be able to say that cornering provides the ability to manipulate, however, it cannot be said with absolute surety that cornering by itself is manipulation.

In the present case, since no inducement pursuant to cornering has been proved, there was a higher burden of proof to establish a separate act of price manipulation. Therefore, it cannot be said that the 40.10% of the open interest was cornering such that the large share of the appellant no. 1 in the futures market itself indicated towards its fraudulent intent.

d. Whether the sale of 1.95 crore RPL shares in the cash segment during the last 10 minutes of the trading day on 29.11.2007 was an attempt to depress RPL share prices to make unlawful profits in the November 2007 futures segment?

It was only in the last 10 minutes of the settlement date, 29.11.2007 that there was a significant increase in prices due to unknown circumstances and the appellant no. 1 sought to take advantage of the same. Had it been the intention of the appellant no. 1 to depress the price, it would have sold far more shares than 1.95 crore and with prices below Rs. 210/- per share. Merely because the appellant no. 1 did not place sell orders on the LTP cannot prove that the appellant no. 1's intention was to manipulate the price of the RPL stock.

Another reason for us to conclude that it is not likely that the appellant no. 1 would intentionally manipulate prices is because of its majority shareholding in RPL. Even though 5% out of the shareholding was being offered for sale in the cash segment, the appellant no. 1 continued to retain 70% of the stake in the company. Any decrease in price would depreciate the entire 70% holding and adversely impact the valuation of RPL. The trade-off that the appellant no. 1 would make as regards its 70% shareholding to gain profits in the futures segment for 7.97 positions, seems highly unlikely to us.

In such view of the matter, there is no manner of doubt in our minds that the respondent was unable to discharge the higher burden of proof to establish manipulation. Hence, fraud under the PFUTP Regulations is not made out against the appellant no. 1 in the present matter.

For all the foregoing reasons, we have reached the conclusion that the SAT in its majority judgment, committed an egregious error in passing the impugned judgment insofar as the question of fraud under Regulations 3 and 4 of the PFUTP Regulations respectively, is concerned. However, we concur with the observations of the SAT in its majority judgment as regards the penalty to be levied on the appellant no. 1 for violating the disclosure requirements under 2001 SEBI Circular in respect of position limits.

# Competition Laws

**LW 50:07:2026**

## INDIAN STEEL ASSOCIATION v. BHADRASAHI/ GUALI TRUCK ASSOCIATION & ORS [CCI]

**Case No. 21 of 2022**

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

**[Decided on 09/06/2026]**

**Competition Act, 2002- Sections 3 & 4- cartelisation of truck operators- cease and desist order passed.**

**Brief facts:**

The present case involved a complaint against the OPs who are truck operators. The Commission initially ordered investigation into the allegations. The DG investigation concluded that the OPs were engaged in anti-competitive practices, including cartelization with affiliated transporters and truck owners. They were found to have arbitrarily fixed freight rates at variance with those prescribed by the STA, Government of Odisha, and restricted market access by preventing non-member transporters from operating in the mines, thus violating the provisions of Sections 3(3) (a) and 3(3)(b) of the Act during the specified periods for each OP between the years 2017 and 2023. The OPs have refuted the findings of the investigation and stated that there exists no cogent or concrete evidence against them to be held liable for contravention of the provisions of the Act.

**Decision:** **Allowed. Cease and desist order passed.**

**Reason:**

The commission framed 3 issues and decided as under:

(i). Whether the OPs, by way of fixing freight rates for transporting mineral-carrying goods carriages, even beyond the maximum freight fixed by the State Government, have entered into an agreement which directly or indirectly determines purchase or sale prices and violated the provisions of Section 3(3) (a) read with Section 3(1) of the Act.

The Commission observes that the existence of an "agreement" under the Act need not be formal or written and may be inferred from the conduct of the parties and surrounding circumstances. In the present case, the evidence placed on record, including freight rate charts, circulars, resolutions, and admissions of the OPs, indicates that the associations were engaged in fixing and revising freight rates for transportation of mineral-carrying goods carriages. The Commission notes that such rate determination was not isolated but was undertaken through meetings, joint deliberations, and coordinated decisions among the associations. Such agreement to fix freight rates was enforced through member constituents of the OPs, which are competing enterprises falling under the definition of "enterprise" u/s 2(h) of the Act. These member constituents have agreed with each other to fix prices for supply of services of freight transport under the aegis of the OPs and had the effect of causing AAEC by raising the cost for steel manufacturers and the end consumer. Further, the fact that such diktats of similar nature were issued by multiple associations, establishes the market wide practice of rate determination being followed instead of allowing individual transporters to determine their freight rates. This also negates the contention of the OPs that they are not a price setting enterprise. The Commission observes that in practice, the OPs took upon the role of setting freight rates on behalf of individual transporters.

As regards the contention of the OPs that there is no explicit agreement or uniformity across the market, the Commission is of the view that the absence of a formal agreement or strict uniformity does not preclude a finding of contravention under Section 3(3) of the Act. The material on record sufficiently establishes a concerted practice by the OPs aimed at determining freight rates. Further, the justification advanced by the OPs regarding operational costs and inefficiencies does not negate the fact of coordinated price fixation, particularly in light of the presumption of AAEC applicable to agreements falling under Section 3(3) read with Section 3(1) of the Act.

In view of the foregoing, the Commission holds that the conduct of the OPs of fixing and revising freight rates for transportation of mineral-carrying goods carriages amounts to an agreement which determines prices, and is therefore in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

(ii). Whether the OPs, by not allowing any independent transporter to transport raw materials from the mines, have limited or controlled market or provision of services and violated the provisions of Section 3(3)(b) of the Act.

The Commission further notes that the consistent practice of mandating registration, coupled with denial of operational freedom to independent transporters, reflects a concerted approach adopted by the OPs to control the supply of transportation services. The evidence, including statements of association representatives and communications issued by the OPs, indicates that such restrictions were systematically enforced, resulting in foreclosure of market access to non-member transporters.

The Commission also finds no merit in the submission that dispatch control rests with mine operators or authorities, as the evidence on record demonstrates that the OPs exercised significant control over which transporters could participate in the transportation process. The role of other stakeholders does not dilute the fact that the associations, through collective decisions, imposed restrictions that had the effect of limiting the provision of services in the relevant market.

In view of the foregoing, the Commission holds that the conduct of the OPs of not allowing any independent transporter to transport raw materials from the mines amounts to limiting and controlling the market for provision of transportation services. Accordingly, such conduct is found to be in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

(iii). Whether the OPs, by using only smaller trucks (6 and 10-wheeler trucks) for transportation, have limited or controlled production, supply, markets or provision of services and violated the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

In the present case, the allegation of the Informant is that the OPs deliberately restricted the deployment of higher-capacity vehicles so as to create artificial scarcity and inflate freight rates. In support of this allegation, the Informant has submitted certain letters from JSPL to the local authorities citing this issue. However, upon perusal of the DG's investigation, the Commission finds that such allegation has not been substantiated by credible evidence.

The Commission observes that the DG has categorically recorded that there is no consistent or systemic restriction on the use of higher-capacity vehicles across routes. Further, there is no documentary evidence, such as resolutions, circulars, or meeting records, indicating any agreement or decision among the OPs to restrict vehicle capacity. The absence of corroboration from third parties and the lack of clarity in defining "smaller vehicles" further weakens the Informant's case.

In such circumstances, the Commission is of the view that mere allegations, unsupported by evidence demonstrating concerted action or coordinated conduct, cannot form the basis of a finding of contravention under Section 3(3)(b) read with Section 3(1) of the Act. The essential element of an «agreement» leading to limitation or control of services remains unestablished in the present case. Accordingly, the Commission holds that no contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act is made out against the OPs on this issue.

In view of the foregoing analysis, the Commission finds contravention against OP-1 to OP-4 in terms of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act. Accordingly, the Commission in terms of Section 27(a) of the Act, directs the OPs to cease and desist in future from indulging in any practice/conduct/activity that has been found in the present order to be in contravention of the provisions of Section 3 of the Act.

**LW 51:07:2026**

### HARMEET SINGH v. NANUAN'S (NANUAN TRAVELS) & ANR [CCI]

**Case No. 45 of 2025**

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

**[Decided on 08/06/2026]**

**Competition Act, 2002 - Section 4 - abuse of dominance-licensed ride aggregators - airport gates-preventing solo taxi/cab drivers from accessing – whether abuse of dominance - Held, No.**

**Brief facts:**

The informant is a cab driver and the OPs are ride aggregators. The primary grievance of the Informant is that OP-1, having been granted a license to provide taxi/cab services by OP-2, has misused its alleged dominant position by preventing solo taxi/cab drivers from accessing areas in proximity to arrival gate no. 1 of OP-2. The Informant is also aggrieved that all the exiting passengers are captured by OP-1 which results in absolute monopolistic control with zero competition, in contravention of Sections 3 and 4 of the Act.

**Decision:** **Dismissed.**

**Reason:**

The Commission notes that awarding tender to OP-1 does not, per se, confer any statutory or de-facto exclusive right to operate in the said premises. The license merely enables OP-1 to operate within the designated space subject to terms and conditions imposed by CHIAL. Such grant of license through a competitive bidding process, is a standard commercial arrangement and cannot be construed as creating barrier to entry or foreclosing competition in the relevant market.

The Commission further notes that as per the Information, there are solo cab/taxi operators like the Informant as well as those registered with online taxi/cab applications (OLA, Uber etc.) who are also allowed to provide their services at OP-2. Thus, the allegations that all exiting passengers are captured by OP-1 doesn't hold good as the passengers retain the choice to use app-based taxi/cab service providers or pre-arranged transport (either from company, hotel or self-booked).

In view of the allegations levelled by the Informant, the Commission is of the view that the grievances raised by the Informant regarding restriction on solo taxi/cab drivers appear to relate to operational arrangements rather than any anti-competitive conduct attributed to OP-1 flowing from an exclusive right. Therefore, in the absence of exclusivity and given that CHIAL retains the discretion to introduce competing service providers, the Commission finds no material indicating existence of any anti-competitive conduct which necessitates further inquiry by the Commission with regard to contravention of Section 4 of the Act.

With regard to violation of Section 3 of the Act, the Commission notes that there is no evidence on record which indicates any anti-competitive agreement including cartel or bid-rigging, necessitating further inquiry by the Commission.

Further, as regards the allegation regarding enforcing monopoly through coercion by OP-1, the Commission observes that the same is related to alleged criminal conduct on the part of OP-1 and does not fall within the purview of competition law.

The Commission notes that the Informant has not made specific allegations against OP-2, therefore the conduct of OP-2 doesn't merit scrutiny.

In view of the allegations raised in the Information and the 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 OP-1 and OP-2. Accordingly, the Information is directed to be closed forthwith under Section 26(2) of the Act

## General Laws

**LW 52:07:2026**

### NATIONAL HIGHWAY AUTHORITY OF INDIA v. T. YOUNIS & ANR [SC]

**Civil Appeal No._____ of 2026 [@ SLP (C) No. 7570 OF 2024)]**

**P.S. Narasimha & Aradhe, JJ. [Decided on 02/06/2026]**

**Arbitration & Conciliation Act, 1996 - Sections 33 & 34-challenge to award - limitation to file challenge application-clarification application filed before the arbitrator- what is the relevant date to calculate limitation period - High Court clarified the position.**

**Brief facts:**

Pursuant to the remand order passed by the High Court, the Arbitrator conducted fresh proceedings and passed an Award on 03.2.2022. On 08.03.2022, the Appellant filed application under Section 33(1)(a) of the Act before Arbitrator seeking correction of Arbitral Award. On 10.03.2022, the Respondent No. 1 filed an application under Section 33(4) of the Act seeking an additional award of 50% over and above the market value. The Arbitrator by a common order dated 04.07.2022, dismissed the applications filed under Section 33 of the Act by the Appellant as well as Respondent No. 1. The certified copy of the said order was received by the Appellant on 15.09.2022.

On 29.10.2022, the Appellant filed applications under Section 34 of the Act along with applications seeking condonation of delay. The Principal District & Sessions Judge, Bellary by an order dated 05.08.2023 condoned the delay in filing the applications under Section 34 of the Act and allowed the same. The Respondent No.1 challenged the aforesaid order dated 05.08.2023 in a Writ Petition.

The High Court concluded that the benefit of limitation under Section 34(3) of the Act was not available and, therefore, the limitation could not be computed from the date of disposal of such applications. Aggrieved by the judgment of the High Court, the Appellant has filed the present appeal.

**Decision:** **Allowed.**

**Reason:**

Having heard the rival contentions and perusing the material on record, the issue that arises is whether the limitation under Section 34(3) would commence from the date of the original award or from the date on which the application under Section 33 came to be disposed of.

Section 33 of the Act deals with the request made to the Arbitral Tribunal for correction and interpretation of the award as well as for rendering additional award. An application under Section 33 of the Act is required to be made within a period of 30 days from the date of the receipt of the award. From careful scrutiny of Section 34(3) of the Act, it is evident that where a request under Section 33 of the Act has been made, the limitation for filing an application under Section 34 of the Act shall be reckoned from the date on which such request is disposed of by the Arbitral Tribunal. The said provision does not distinguish between the applications which are ultimately allowed or dismissed. The said provision also does not indicate that only an application which is maintainable under Section 33 of the Act would defer the commencement of litigation under Section 34(3) of the Act. Had the legislature intended to restrict the benefit only to the applications which were ultimately allowed or which were held to be maintainable, it would have expressly provided so. The Court cannot read into the provision a restriction which the legislature itself has not consciously incorporated.

Once proceedings under Section 33 are initiated and entertained by the Arbitral Tribunal, the award remains subject to the limited jurisdiction of the tribunal for correction, interpretation, or supplementation as contemplated under the provision. So long as such proceedings remain pending, the parties cannot be compelled to institute proceedings under Section 34 merely as a matter of abundant caution. The parties can effectively pursue their remedy under Section 34 only upon conclusion of the proceedings under Section 33. Consequently, the limitation prescribed under Section 34(3) can start only from the date on which the proceedings under Section 33 are disposed of.

In our view, the contention of the Respondent that only an application which is "maintainable" under Section 33 can defer the commencement of limitation under Section 34(3), cannot be accepted. Whether the application under Section 33 ultimately succeeds or fails, or whether the Arbitral Tribunal eventually finds that no correction or modification of the award is warranted, is not determinative for the purpose of Section 34(3). What is relevant is that whether the jurisdiction of the Arbitral Tribunal under Section 33 had been formally invoked and that such proceedings remained pending consideration before the tribunal.

We are also of the view that the interpretation adopted by the High Court would defeat the scheme and object of the Act. If parties are compelled to institute proceedings under Section 34 during the pendency of proceedings, under Section 33 merely as a matter of abundant caution, it would result in multiplicity of proceedings and procedural uncertainty. At the same time, it is clarified that where applications under Section 33 are found to be sham, frivolous, or mala fide or solely filed for the purpose of defeating limitation under Section 34(3) of the Act, the courts would be justified in imposing exemplary and punitive costs, as maintaining the balance between preserving legitimate remedies and preventing abuse of process is fundamental to effective administration of justice.

A plain reading of Section 34(3), read in the light of the law laid down in *Geojit (supra)*, makes it clear that once jurisdiction under Section 33 is formally invoked and such proceedings are entertained by the Arbitral Tribunal, the limitation for filing an application under Section 34 would commence only from the date on which such request is disposed of by the Arbitral Tribunal. The appeal is accordingly allowed.

**LW 53:07:2026**

### SHIJOSH v. THE STATE OF KERALA & ANR [KER]

**Criminal Appeal No. 1403 of 2008**

**A. Badharudeen , J. [Decided on 09/06/2026]**

**Negotiable Instruments Act, 1881- Section 139- dishonour of cheque- statutory presumption- when applicable- witness could not prove the giving of loan and issuance of cheque- drawer acquitted- whether correct - Held, Yes.**

**Brief facts:**

The appellant is the payee complainant and the 2nd Respondent is the drawer of the cheque for Rs.4,50,000/- which was dishonoured. Consequent to dishonour of a cheque alleged to be issued by the accused to the complainant in discharge of an amount of Rs.4,50,000/-

alleged to be borrowed by the accused from the complainant, the complainant lodged prosecution alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act ('NI Act' for short). After securing the presence of the accused for trial, the learned Magistrate tried the matter and finally acquitted the accused.

**Decision:** **Dismissed.**

**Reason:**

The complainant got examined as PW1 after filing proof affidavit. During cross examination, his evidence is that Rs.4,50,000/- was given to the accused by his father on 5 instalments and whether the accused agreed for a particular period to repay the same was not known to him. His further version is that his father maintained a notebook and in the said notebook each instalments with date thereof were endorsed and the notebook would be available in his house. Despite this evidence, the said notebook was not tendered in evidence. Further he deposed that he was unaware of the fact that when his father had given the first instalment to the accused and stamp paper and a cheque were obtained. Then he added that the stamp paper was available, but when a question was asked as to what was written in the agreement, he answered that he did not read the same.

It is the well-settled law that in a prosecution alleging commission of offence punishable under Section 138 of the NI Act, the complainant would get the benefit of twin presumptions under Sections 118 and 139 of the NI Act and the pre-condition for the same is proof of the transaction and execution of the cheque in a convincing manner. The same would definitely include passing of consideration covered by the cheque. Indubitably such evidence shall be given by the person, who had direct knowledge regarding the transaction and execution of the cheque and the evidence of a person, who does not know the same is insufficient to prove the transaction and the execution of the cheque. In the instant case, as per the evidence given by PW1, money was given to the accused by 5 instalments by the father of the complainant and details of the same were noted by his father in a notebook. This evidence would show that, in fact, the transaction and passing of consideration are in between the father and the accused, and the complainant did not know the transaction or execution of the cheque, including passing of consideration. Thus in the instant case the competent person to depose about the transaction and execution of Ext. P1 cheque is none other than the father of PW1. It is relevant to note that, despite this fact, the father of the complainant was not examined. According to the learned counsel for the 2nd respondent/complainant, the father was engaged in money lending business even though he had been working as a police officer and thereby he could not do the business of money lending as against the prohibition contained in the Conduct Rules applicable to Government servants. That is why, he did not opt to give evidence.

On scrutiny of the evidence of PW1 and the discussion as aforesaid, it is emphatically clear that the transaction which led to execution of Ext. P1 cheque failed to be proved by the evidence of PW1 and the complainant had miserably failed to discharge the initial burden cast upon him, to prove the transaction which led to the execution of the cheque, which would disentitle him the benefit of presumptions under Sections 118 and 139 of the NI Act in favour of him. In such view of the matter, the learned Magistrate is right in holding that the complainant failed to prove the case beyond reasonable doubts and therefore the impugned verdict is only to be confirmed.

In the result, the appeal fails and is accordingly dismissed confirming the verdict of the learned Magistrate.

**LW 54:07:2026**

## PURUSHOTHAMAN THITTA v. POTHAN RAJAN & ORS [KER]

**OP(C) NO. 2308 OF 2025**

**S. Easwaran, J. [Decided on 01/06/ 2026]**

**Article 226 of the Constitution of India read with Section 16 of the Arbitration and Conciliation Act, 1996 - jurisdiction of arbitrator- sole arbitrator upholding her jurisdiction- whether challengeable under writ - Held, Yes.**

**Brief facts:**

Can the High Court exercise its Jurisdiction under Article 227 of the Constitution of India against an order of the Arbitrator upholding his Jurisdiction in an application under Section 16(2) of the Arbitration and Reconciliation Act, 1996, (for short 'the Act')?. The petitioner contended that the order is not appealable under Section 37 of the Act and that he has no other remedy except to invoke the Jurisdiction of this Court. Respondents also did not dispute the same, but contended that the petitioner must wait till the final award is passed by the arbitrator and thereafter invoke the remedy under Section 34 of the Act, if so advised.

The relief sought for in the claim petition, before the court appointed sole arbitrator, was basically to record the division of assets and liabilities of the company as per Memorandum of Understanding (MoU) dated 17.09.2021. The MoU pertained to certain division of assets and liabilities in respect of three companies namely Pioneer Cars India Private Limited, Pioneer Motors (Kannur) Private Limited and Wayanad Vehicles Private Limited, which are companies registered under the provisions of the Companies Act, 2013. The petitioner, who was the 2nd respondent in the arbitration case, filed an application under Section 16 of the Arbitration and Conciliation Act, 1996, seeking to drop the arbitration proceedings in respect of the companies in question on the ground that the Arbitrator lacks jurisdiction to decide the claim. According to him, the jurisdiction exclusively vest with National Company Law Tribunal. The said application was dismissed holding that nowhere the company is sought to be wound up nor dissolved and that the arbitrator can make decisions about the ownership and shareholding of the companies including dividing shares among the owners. The said order is impugned in this original petition.

**Decision:** **Partly allowed.**

**Reason:**

In a given case where the arbitral tribunal or the arbitrator acts beyond its Jurisdiction or for that matter a claimant initiates an arbitration on a dispute which is not arbitrable or governed by a separate mechanism provided under a statute, the opposite party is certainly entitled to raise the question of Jurisdiction and if it is rejected, can certainly approach this Court under Article 226 and 227 of the Constitution of India as the case may be. In such cases, this Court can examine the case to find out whether the dispute is arbitrable or a separate mechanism to resolve the dispute is provided under a statute. Hence this Court is inclined to hold that the present original petition under Article 227 of the Constitution of India is maintainable.

Next, it is to be decided whether the dispute now raised by the 1st respondent is arbitrable or not. This in turn will decide whether this court must exercise its jurisdiction and interfere with the order impugned. A reading of the claim petition shows that essentially what is sought for is for restructuring of the company. The entire basis for initiation of the arbitration proceedings is the arbitration clause in the MoU signed by the respondents between themselves. Pertinently, a glance at the MoU, a copy of which is placed for perusal of this court shows that the company is not a party to the MoU. It is between the respondents 1 and 2 in their individual capacity. One of the most crucial points to be noted is that there is a clause for selling the assets to the third party on a price mutually agreed upon. This is where the question of arbitrability arises.

Moreover, from the claim petition filed before the Arbitrator it is evident that the matter pertains to the division of the assets of the three companies in question of which the petitioner is a minority shareholder. If in a given case, a case of total lack of Jurisdiction of the arbitrator is made out, it will be wholly impermissible for this court to hold that, the petitioner must still wait till the final award is passed by the arbitrator.

The next question to be decided is whether the dispute regarding restructuring of a company is arbitrable. This question assumes importance in view of the specific plea raised by the petitioner that the subject matter of arbitration is not arbitrable.

Yet another aspect to be considered is whether the dispute now raised before the arbitrator falls withing the ambit of the powers of National Company Law Tribunal. This will in turn enable this Court to decide whether the finding of the arbitrator that he has the power to decide the allotment of shares is correct or not.

The reading of Section 242 of the Companies Act, 2013 shows that the powers of the tribunal are extensive in nature. As stated afore, the 1st respondent has basically claimed restructuring of the company including change of Managing Director and division of assets of the company including the sale to the third parties. The arbitrator on the other hand proceeds to hold that she has the power to entertain the claim and decide on the division of shares. It is at this point; the conflict of Jurisdiction arises especially since a specialized forum is created under the Companies Act, 2013. Unfortunately, the arbitrator could not properly comprehend the issue and erroneously rejected the objection. Therefore, when it is evident from records that, the claim before the Arbitrator touches upon functioning and restructuring of the companies, which falls under the exclusive jurisdiction of the National Company Law Tribunal under Section 241 read with Section 242 of the Companies Act, 2013, it is inevitable that this Court must hold that process of restructuring and re-division of the assets of the companies is of statutory in nature and cannot be a subject matter of a personal contract.

Albeit, this Courts finds that the dispute before the arbitrator qua the companies is essentially an intra-company dispute. Pertinently, the company is not a signatory to the MoU, whereas it is between two brothers. Moreover, the presences of a specialized statutory form like National Company Law Tribunal which is given exclusive power to adjudicate on the dispute touching upon the structure of the company and the rights of a minority shareholder, is a clear indication that the subject matter of the dispute is non- arbitrable. Further, it is undeniable that the disputes raised in the claim petition constitutes an action in rem and not in personum.

Accordingly, this Court finds that the petitioner is entitled to succeed in part and this original petition is consequently allowed. Ext. P7 order, insofar as it proceeds to reject, non-suit, the jurisdictional objection raised by the petitioner under Section 16 of the Act in relation to the three companies specifically enumerated in Relief No. 1 of Ext. P1 claim petition, is found to be legally unsustainable and is therefore hereby interfered with.

As an sequitur flowing from the aforesaid declaration, the arbitral proceedings presently pending shall, insofar as they relate to or are sought to be continued against the said three companies, stand terminated forthwith, there being no surviving arbitral jurisdiction exercisable against them within the contours of the present proceedings. Such termination, however, shall be confined strictly to the said entities and shall not, by implication or otherwise, affect the maintainability or continuance of the arbitral proceedings against any other contesting parties who are otherwise amenable to the arbitral process in accordance with law. Further, in order to obviate any ambiguity on the legal consequences arising from this adjudication, it is clarified that the findings rendered herein shall not be construed as a pronouncement on the merits of the inter se disputes, rights, obligations, shareholding claims, or any other corporate and statutory issues that may arise between the parties under the framework of the Companies Act, 2013. All such rights and remedies, available to the petitioner as well as the respondents are left expressly open and reserved, including the liberty to invoke such statutory remedies as may be available before the National Company Law Tribunal by instituting appropriate proceedings in accordance with law.