4

LEGAL WORLD

- State of NCT of Delhi V. Rajiv Khurana [SC]
- Naman Gurumurthi Joshi V. Reliance Retail Ltd [NCLAT]
- Nalinesh Kumar Paurush V. Shree Vishvamurte Tradinvest Pvt. Ltd [NCLAT]
- Smt Rama Oberoi V. State NCT of Delhi &ANR [DEL]
- GEA Westfalia Separator India Pvt. Ltd V. SVS Aqua Technologies LLP [BOM]
- Intec Capital Ltd V. Shekhar Chand Jain & ANR [DEL]
- Air Works India (Engineering) Private Limited V. GMR Hyderabad International Airport Limited & ORS [CCI]
- XYZ (Confidential) V. Emaar India Limited & ORS [CCI]

Corporate Laws

Landmark Judgement

LMJ 10:10:2025

STATE OF NCT OF DELHI v. RAJIV KHURANA [SC]

Criminal Appeal No. 1380 of 2010

Dalveer Bhandari K. S. Radhakrishnan, JJ. [Decided on 30/07/2010]

Equivalent citations: AIR 2010 SC2986; (2011) 2 MAD LJ(CRI) 375; (2010) 171 DLT 769; 2011 (1) SCC (CRI) 195; (2010) 158 Comp Cas 151;(2010) 98 CLA 160.

Insecticides Act, 1968- offence by company- criminal complaints against directors- vicarious liability - what averments to be made in the complaint-Supreme Court explains and reiterates the law.

Brief facts:

This appeal was filed by the appellant State of National Capital Territory of Delhi against the judgment of the High Court of Delhi whereby the High Court has quashed the summons issued by the trial court. The State instituted a criminal complaint against the company as well as its director who is the respondent here. The trial court issued the summons and the high court quashed it. The state challenged the quashing.

Decision: Dismissed.

Reason:

The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.

In K.K. Ahuja's case (supra) the court summarized the position under section 141 of the Act as under:-

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence.

The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

The court further observed that the trauma, harassment and hardship of the criminal proceedings in such cases may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of Section 138 read with Section 141 of the Act are not fulfilled.

The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial. In view of clear legal position, we do not find any infirmity in the impugned judgment. This appeal being devoid of any merit is accordingly dismissed.

LW 73:10:2025

NAMAN GURUMURTHI JOSHI v. RELIANCE RETAIL LTD [NCLAT]

Company Appeal (AT) No.155 of 2025

Yogesh Khanna & Ajai Das Mehrotra. [Decided on 26/09/2025]

Companies Act, 2013 – Section 66 - capital reduction scheme- shareholder having miniscule shareholding- objecting to the capital reduction- whether tenable-Held, No.

Brief facts:

The appellant is a shareholder of Reliance Retail Ltd. viz the Respondent and held 129 shares, constituting 0.0000014% of the authorized and issued paid-up capital of the Company. He as an intervenor had objected to the reduction of share capital alleging *inter alia* such reduction is against the minority interest and is not permitted under Section 66 of the Companies Act, 2013 since the Respondent company is forcefully removing its shareholders and that the promoters are increasing their stakes by using this process.

Decision: Dismissed.

Reason:

Admittedly the Regional Director and ROC have not objected to the reduction of share capital, though it was remarked by the Regional Director, the proposed reduction is a selective reduction. The Ld. NCLT found the selective capital reduction allowable under Section 66 of the Act and held the shareholders are getting consideration of Rs.1380/- per share i.e. at a premium of 56% of the fair value, hence determined the reduction appears to be fair and reasonable and in the interest of minority shareholders.

The crux of the argument of the appellant is since there is no proof on record that the paid up capital is in excess of the want of the company, hence there cannot be a selective reduction. However, a bare reading of clauses (a) and (b) of sub-section (1) of Section 66, we find there are merely few instances of reduction of shares. Rather the section itself suggests the company may reduce its share capital in any manner though in particular, as suggested by Clauses (a) and (b) of sub-section (1) of Section 66 (Supra).

More so, admittedly the appellant held mere 129 shares, constituting 0.0000014% of the shareholding of the Respondent company. Admittedly no other shareholder has filed any appeal against the impugned order. Admittedly the argument that reduction is against the minority interest, has since been rejected by the Ld. NCLT, in para 13 of its impugned order. Further, admittedly the appellant has raised no grievance to the value given viz an amount of Rs.1380/- per share, being offered is either unfair or unreasonable. The only ground alleged by him is the reduction is against the purpose envisaged under Section 66 of the Companies Act. This argument has been dealt with above by us and we say the list given in clauses (a) and (b) of sub-section 1 of Section 66 of the Companies Act, 2013 is not exhaustive.

Further, it is settled law the question of reduction of share capital is treated as a matter of domestic concern, i.e. it is the decision of the majority which prevails. In considering a petition for reduction of share capital, the Tribunal has to be satisfied the transaction is fair and reasonable. In any case the selective reduction is permissible if objecting shareholders are paid a fair value of their shares, as held in *Reckitt Benckiser (India) Ltd, (2005) 122 DLT 612, Brillio Technologies P Ltd Registrar of Companies & Anr, 2021 SCC OnLine NCLAT 508 and Elpro International Ltd. In Re: 2007 SCC OnLine Bom.*

Thus once it is established that non-promoter shareholders are being paid a fair value of their shares and at no point of time it was suggested the amount paid was less and where an overwhelming majority voted in favour of resolution, we find no reason to upset a reasoned order passed by the Ld. NCLT.

LW 74:10:2025

NALINESH KUMAR PAURUSH v. SHREE VISHVAMURTE TRADINVEST PVT. LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 346 of 2024

Md. Faiz Alam Khan& Arun Baroka. [Decided on 25/09/ 2025]

Insolvency and Bankruptcy Code, 2016- Section 66 - purchase of shares- fraudulent transactions- NCLT penalised the appellant- directed to contribute Rs.28 lakh – whether tenable- Held,No.

Brief facts:

The instant appeal was preferred by the members of the Suspended Board of Directors of the CD against the order passed by the NCLT, Delhi Bench, whereby certain transactions done by the appellants have been designated as fraudulent and they were directed to contribute Rs. 28 lakhs to the liquidation estate of the CD.

Decision: Allowed.

Reason:

Perusal of the impugned Judgment, would reveal that the adjudicating authority after noticing the nature of the transaction with regard to the purchase of the shares with regard to the companies who were not listed at stock exchange and their shares were not been traded at that point of time, at one place of its judgment has opined that may be one can think of giving the benefit of doubt to Respondents regarding the transactions with a view that there could be a thought regarding appreciation of the value of these shares in future but considering the fact that the shares were not actively traded on 02.08.2019 and 06.08.2019 and the petition for admitting CD in insolvency

was filed on 19.02.2020 the transaction in question is taken as fraudulent and consequently directed the appellants to contribute Rs. 28,50,000/- to the assets of the CD in liquidation.

The basis of passing the impugned order appears to be the transaction audit report submitted by the transactional auditor relevant except of the said report which has been made available along with the appeal is being reproduced as under:

It appears to be an admitted situation that the appellants who are suspended director of the CD were involved in the business of financial intermediation and it was their core business and the sole defence of the appellants is that the decision to purchase the shares of these two companies which were admittedly not being traded at that point of time was a commercial decision, taken for the reason that it was expected that in future the shares of these companies may be listed and may be transacted at the stock exchange and thereafter a high value may be fetched by selling them.

As noticed earlier, one of the main ingredients of Section 66 of the Code is that a transaction may only be termed as a fraudulent transaction if it has been carried on with a intention to defraud creditors and before the insolvency commencement date the directors knew that there was no reasonable prospect of avoiding the CIRP process along with the fact that the due diligence has not been exercised by directors for minimizing the losses to the creditors.

At this juncture, the financial position of the CD at the relevant point of time is also required to be seen, when these shares were purchased and a glimpse of the same may be assessed from the reply filed by the Respondent- Shree Vishvamurte whereby the minutes of stakeholder's consultation committee has been placed on record.

Thus, when the total debt owed to unsecured financial creditors was to the tune of Rs. 41,00,000/- (approximately) it may not be presumed that in order to deceive the creditors of this small amount the impugned transactions might have been undertaken. It is also evident that the appellants have categorically stated that the shares purchased by them were fetching a value of Rs. 15,00,000/- during CIRP, even when the CD was in CIRP and this fact has not been denied by the Respondent. To attract Section 66 though the standard of proof would be of preponderance of probability but the same is subjected to the heavy proof to the applicant, as each and every commercial transaction which has resulted in 'loss' may not be labelled as fraudulent. That is why under Section 66 (2) it is provided that the directors of the CD or partner must know or ought to have known that there is no reasonable prospect of avoiding the commencement of corporate insolvency resolution process and simultaneously another condition is added by putting the word "and" that such director or partner did not exercise due diligence in minimizing the potential loss to the creditors. Thus the clause "a" and "b" of Sub-Section 2 of Section 66 are required to be read together and if a comprehensive reading of these provisions is done it would emerge that the director or partner of the CD at the time of making the impugned transactions must know that there is no reasonable prospect of avoiding the CIRP process and they did not exercise due diligence in minimizing the potential loss to the creditors of the CD. Thus non-exercise of due diligence alone may perhaps be not sufficient to label a transaction as fraudulent in order to attract sub-section 2 of section 66 of the Code.

The Ld. Tribunal has given much emphasis on the fact that the CIRP process application has been moved within 7 months of purchase of these equity shares. As we have already stated that having regard to the trade wherein the CD was involved and keeping in view the amount of debt owed by the CD it may be not presumed, in absence of any direct evidence that these transactions of purchasing shares of unlisted companies were made for the purpose of avoiding the CIRP or that these transactions have been done as the appellants knew that there is no reasonable prospect of avoiding the CIRP.

It is also reflected that only Rs. 15,00,000/- has been paid by the directors/appellants in making the impugned transaction and thus the whole amount of shares value has also not been paid. It may be taken that if the intention of the directors was to defraud the creditors they have shown payment of the whole amount of the shares i.e. Rs. 28,50,000/- and making part payment itself shows that they have exercise due diligence and unrebutted fact stated by the appellant is that these shares were fetching Rs.15 lakhs, during CIRP. It is also evident that only Rs. 15 lakhs, out of purchase value of Rs. 28 lakhs were paid by the appellant to Vishvamurte (Respondent) for purchase of these shares and thus Rs. 13 lakhs were further required to be paid to Vishvamurte (newly arrayed Respondent). Thus, when only Rs. 15 lakhs were paid to the Respondent by appellants for purchase of the impugned shares and this amount may be recovered by selling them, in fact no loss could be said to have been caused to the CD, as these shares are still in the possession of the CD and keeping in view the fact that Respondent is seller of these shares, he could not be the beneficiary of its own wrongful act. Therefore, the main ingredients of Section 66 (2) of IBC, i.e. (i)director of the CD knew or ought to have known that there is no reasonable prospect of avoiding insolvency proceedings and

(ii) that they did not take due diligence to minimize the potential loss to the creditors is conspicuously lacking in this case. Thus no case is emerging under Section 66 (2) of the Code against appellants. It is reiterated that every decision mode in business of taking risk, in order to earn more profit cannot be labelled as fraudulent or to have been done to deceive creditors.

Keeping in view all the facts and circumstances, together and the law described herein before we are of the view that the Tribunal has not correctly appreciated the facts of the instant case and only on the basis of the transactional audit report which may not be termed as a conclusive

piece of evidence, has arrived at an erroneous conclusion that impugned transactions made by the appellant at the relevant point of time were fraudulent without adverting to see the impugned transactions in the broad spectrum of commercial wisdom.

Thus, we find merit in the appeal. Resultantly, the appeal is allowed and the impugned order passed by the tribunal is hereby set aside. There is no order as to costs. Pending IA's if any are also closed.

General Laws

LW 75:10:2025

SMT RAMA OBEROI v. STATE NCT OF DELHI &ANR [DEL]

CRL.M.C.No.6228 of 2025, CRL.M.A. 26360/2025 & CRL.M.A. 26359/2025

Girish Kathpalia,J. [Decided on 03/09/2025]

Section 138 of the Negotiable Instruments Act read with Section 528 of BNSS 2023 – cheque dishonour-process issued by trial court- quashing petition filed by the accused- whether the complaint was premature-held No. -whether process to be quashed-Held, No.

Brief facts:

Petitioner seeks quashing of order passed by the learned trial magistrate, whereby the petitioner was summoned to face trial under Section 138 of Negotiable Instruments Act. It was contended on behalf of the petitioner/accused that the complaint under Section 138 of the Act was filed premature since according to the statute, the complaint has to be filed after 45 days of the statutory notice. It was also argued that the cheques in question do not bear signatures of the petitioner/accused. Further, it was contended that since the respondent filed civil suit for recovery of the outstanding amount pertaining to same transaction for which the subject cheques were issued, the complaint case was not maintainable in the eyes of law.

Decision: Dismissed.

Reason:

It is trite that where both, a civil remedy as well as a criminal remedy for any transaction are available, the aggrieved person can avail both the remedies. What has been filed by the present respondent through civil suit is a civil remedy pertaining to civil liability of the petitioner to pay the outstanding amount. The complaint case filed by the present respondent pertains to criminal liability where despite being served with a statutory notice after dishonour of cheque, the petitioner/accused opted not to pay. The goal of the civil suit is the decree of the suit amount while the goal of the criminal proceedings is imposition of punishment, which can be imprisonment as well. There is no bar on the respondent proceeding with both remedies simultaneously.

So far as the complaint being premature, the argument is completely devoid of merit. The period of 45 days under reference is not a lump sum consolidated period; it is 15 days (after service of statutory notice, to pay vide proviso (c) to Section 138 of the Act) plus 30 days (to file complaint under Section 141(1)(b) of the Act). The period of 30 days or 31 days (the provision uses the expression "one month") is akin to the limitation period after arising of cause of action. The cause of action arises if by 15th day of service of the statutory notice, the cheque amount is not paid by the drawer. As submitted by learned counsel for petitioner, the statutory notice, which was issued in time, was served on the petitioner/accused on 22.09.2022. That being so, the time to make payment of the cheque amount expired on 07.10.2022 and the complaint case could be filed by 06.11.2022. As submitted by learned counsel, the complaint case was filed on 29.10.2022, that is within the prescribed period of limitation to file such complaint.

Lastly comes the argument of signatures on the cheques. Both cheques clearly bear in print, name of the present petitioner/accused as drawer/signatory of the cheques. Whether or not those signatures under name of the present petitioner/accused are genuine is a matter of trial. It is trite that the High Court while adjudicating upon a petition under Section 528 BNSS shall not carry out a mini trial. The petition is not just devoid of merit but completely frivolous, so dismissed with costs.

LW 76:10:2025

GEA WESTFALIA SEPARATOR INDIA PVT. LTD v. SVS AQUA TECHNOLOGIES LLP [BOM]

Arbitration Petition (L) No. 7677 of 2025 with connected cases

Somasekhar Sundaresan, J. [Decided on 10/09/2025]

Section 34 of the Arbitration and conciliation Act, 1996 read with Section 18 of the MSMED Act-arbitration by MSEFC- award passed- arbitration took place in Pune where the seller was located—Buyer located in Vadodara- purchase contract does not have exclusive jurisdiction clause- arbitration clause in the purchase agreement provided for Mumbai- contended that place of arbitration should have been Mumbai- whether correct-Held, No.

Brief facts:

These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") impugning arbitral awards (collectively, "Impugned Award") passed by the Micro and Small Enterprises Facilitation Council, Pune ("Facilitation Council").

The Petitioner, GEA Westfalia Separator India Private Limited ("GEA") has been directed to pay the Respondent, SVS Aqua Technologies LLP ("SVS Aqua") a awarded sums along with interest in connection with resolution of disputes and differences emanating from a Manufacturing and Supply Agreement dated November 13, 2019 ("Agreement") by the Facilitation Council.

At the threshold, SVS Aqua has objected to the territorial jurisdiction of this Court. SVS Aqua's contention is that the Facilitation Council conducted the arbitration in Pune and therefore, as a matter of territorial jurisdiction, a challenge under Section 34 of the Arbitration Act ought to be before the Civil Courts in Pune. GEA's contention is that this Court has jurisdiction in view of Clause 23 in the Agreement, which is an explicit arbitration clause. The Agreement does not have any clause recording confirmation of the parties about exclusive or non-exclusive jurisdiction of any Court.

This is the specific issue that lies at the threshold of these Petitions. Only if this issue is answered in favour of this Court having jurisdiction, can these Petitions be considered under Section 34 of the Arbitration Act. Therefore, this was framed as a preliminary issue.

Decision: Dismissed.

Reason:

After elaborately discussing various judgements, the Court held as under:

a. The parties in the instant case do not have any contractual commitment in the Agreement that the Courts in Mumbai would have exclusive (or even non-exclusive) jurisdiction in relation to their disputes;

b. Had there been such a provision by which the parties agreed on a specific forum having jurisdiction, the principles from the case law cited by GEA could have potentially had relevance;

c. In the absence of such a provision, this is not a case where one can wish away that every activity in the arbitration proceedings gravitated to Pune since Section 18 of the MSMED Act statutorily conferred territorial jurisdiction on the Facilitation Council in Pune for purposes of conducting arbitration. That is a strong pointer to the seat of these arbitration proceedings being Pune;

d. In the absence of a binding and committed provision on exclusive jurisdiction in the Agreement, the conflict is between the arbitration by ICADR Rules that could have potentially been conducted in Mumbai; and the arbitration in terms of the MSMED Act that was actually conducted in Pune;

e. In the factual matrix obtaining in the instant case, not only is the discussion in Gammon Engineers totally distinguishable owing to the absence of a clause recording consent to a forum having jurisdiction, but also as a matter of fact and law, nothing in the conduct of the arbitration proceedings that led to the Impugned Award had any connection or gravitation towards the contractual arbitration clause;

f. Neither was the substance nor the procedure of the arbitration clause in the contract applicable and therefore, in the facts of this case, the actual arbitration agreement that ran its intended course was the statutory arbitration agreement deemed to have been executed within the meaning of Section 7 of the Arbitration Act, but in terms of Section 18 of the MSMED Act;

g. Without any clause on jurisdiction - not even a non-exclusive jurisdiction clause - in the Agreement, there is no connecting factor at all to lead to jurisdiction in this Court being attracted for purposes of Section 34 read with Section 2(1)(e) of the Arbitration Act. Nothing has taken place in Mumbai - GEA operated in Vadodara, SVS Aqua operated in Pune, the only activity envisaged for Mumbai (arbitration) did not take place;

h. In this light, the supplanting of the contractual arbitration provisions by the statutory arbitration provisions flowing from Section 18 of the MSMED Act, would lead to an inexorable consequence that it would be the Court that would be responsive to Section 34 read with Section 2(1)(e) of the Arbitration Act that would have jurisdiction. Such Court would, therefore, necessarily be the relevant court in Pune.

In these premises, it is held that this Court does not have jurisdiction in the matter and these petitions cannot be entertained. All the captioned Petitions and the attendant Interim Applications are dismissed for want of jurisdiction.

LW 77:10:2025

INTEC CAPITAL LTD v. SHEKHAR CHAND JAIN & ANR [DEL]

ARB. A. (COMM.) 25/2024 & I.A. 10158/2024

Jasmeet Singh, J. [Decided on 04/09/2025]

Arbitration and Conciliation Act, 1996 - loan agreement with the borrowers- personal guarantors executed personal guarantee- personal guarantee inferred in the loan agreement- loan agreement contained arbitration clause while the guarantee agreement did not contain – disputes arose- arbitrator held guarantors are not covered by the arbitration clause of the loan agreement- whether correct- Held, No.

Brief facts:

The appellant is the lender and the respondents are personal guarantors to the financial facility provided to the borrowers. The loan agreement contained an arbitration clause. Further the loan agreement incorporated by reference the guarantee obligations of the guarantors. The guarantee agreement does not contain any arbitration clause. Disputes arose between the parties and the appellant invoked arbitration against the borrower as well as the guarantors. The arbitrator held that arbitration is not applicable to the guarantors as the guarantee agreement does not contain arbitration clause. Aggrieved by the impugned order passed by the learned arbitrator, the appellant has filed the present appeal.

Decision: Allowed.

Reason:

The core issue requiring determination is whether the arbitration clause contained in the Loan Agreement binds the respondents, who executed contemporaneous Deeds of Guarantee securing the said loan.

At the outset, it is undisputed that the Loan Agreement, executed between the appellant and the principal borrowers, contains an arbitration clause, being Clause 32. It is also not in dispute that the respondents did not sign the Loan Agreement but executed separate Deeds of Guarantee on the same date. The question, therefore, turns on whether the arbitration clause in the Loan Agreement can be said to have been incorporated into the Deeds of Guarantee.

It is seen that Clause 4 of the Deeds of Guarantee is not a mere general reference but expressly acknowledges that the Guarantor has read and understood the Loan Agreement, agrees to be bound by its terms and accepts the Guarantee to be an "integral part" of the Loan Agreement. The use of the phrase "integral part" is significant, as it denotes that the Guarantee is not intended to operate as an isolated instrument, but in conjunction with and subject to the terms of the Loan Agreement.

Thus, this satisfies the test of incorporation of the Loan Agreement in entirety. Further, the reliance of the appellants on Shinhan Bank (supra) is well-founded. In that case, the Hon'ble Supreme Court held that where the amenities agreement forms part of the leave and license agreement, all terms of the leave and license agreement, including the arbitration clause, would stand incorporated.

Even assuming that Clause 4 of the Deeds of Guarantee amounts only to a reference to the Loan Agreement, the present case would still fall within the exception recognized in Inox Wind Ltd. (supra), wherein the Hon›ble Supreme Court held that in the context of standard form contracts, even a general reference is sufficient to incorporate the arbitration clause. In the present case, the Loan Agreement and the Deeds of Guarantee are standard form documents, thereby satisfying this test as well.

The learned arbitrator, however, held that Inox Wind Ltd. (supra) was inapplicable, reasoning that the Loan Agreement and the Deeds of Guarantee constitute two separate contracts and, therefore, the case falls within the "two-contract" scenario.

I am of the considered view that this finding of the learned arbitrator is erroneous, as the Hon'ble Supreme Court clarified in paragraph 16 of Inox Wind Ltd. (supra), the principle applicable to "single contract" cases has been extended even to situations where separate contracts exist, provided they are part of a single commercial relationship.

In light of this exposition, the Loan Agreement and the Deeds of Guarantee, though distinct in form, are part of a single composite transaction executed on the same date and intended to govern the same commercial arrangement. The evident commercial intention was to secure the repayment of the loan by binding both the borrower and the guarantors to the same set of obligations, including the dispute resolution mechanism. The principle that contemporaneous documents forming part of a single transaction must be read together, as enunciated in Punjab National Bank Ltd. (supra), also fortifies the case of the appellant. Therefore, the present case squarely falls within the "single contract" scenario envisaged in Inox Wind Ltd. (supra) and the arbitration clause contained in the Loan Agreement stands duly incorporated into the Deeds of Guarantee.

In view of the considered analysis, this Court finds that the learned arbitrator erred in treating the reference to the Loan Agreement in the Deeds of Guarantee as a mere general reference. On a proper construction, the terms of the Deeds of Guarantee establish incorporation of the Loan Agreement in entirety, thereby binding the respondents to its arbitration clause. Hence, the impugned order passed by the learned arbitrator suffers from patent illegality under Section 37(2)(a) of the Act and is liable to be set aside.

Competition Laws

LW 78:10:2025

AIR WORKS INDIA (ENGINEERING) PRIVATE LIMITED v. GMR HYDERABAD INTERNATIONAL AIRPORT LIMITED & ORS [CCI]

Case No. 30 of 2019

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

[Decided on 15/09/2025]

Competition Act, 2003- Section 4- non-renewal of complainants license- whether abuse of dominance-Held, No.

Brief Facts:

The present matter concerns non-renewal of the Informant's license by OP-1 for space at the airside of RGIA which is stated to be required, inter alia for the provision of LMS. This was stated to have been done for limiting the services provided by the Informant, denying market access to the Informant by withholding access to the premises in the said airport and leveraging its dominant position at the airport to eliminate competition in the market of provision of LMS wherein OP-2, which is a subsidiary of OP-1, is also functioning. The aforementioned conduct is alleged to be in violation of Sections 4(2)(b), 4(2)(c) **and** 4(2)(e) **of the Act.**

Decision: Dismissed.

Reason:

Regarding allegation raised under Section 4(2)(b) of the Act, whereby OP-1 is alleged to have limited/restricted the services provided by the Informant, the Commission observes that as per the reply filed by OP-1, 8 airlines are undertaking self-line maintenance and 24 airlines are availing third party maintenance services. It is also noted by the reply of OP-1 dated 26.07.2023, that at RGIA, British Airways is also working as a third party LMS provider, which implies that the 8 airlines undertaking self- maintenance can also be employed as third party service providers by the 24 airlines which are availing third party maintenance. In view of the above, the Commission disagrees with the conclusion of the DG that any exit of one existing player from the market will adversely impact either the prices or the services, since self-handling entities can also provide LMS to the airlines availing third party services. Moreover, the Informant was never out of the relevant market as it was offering services as per scheduled timings of airlines using vehicles, tools and engineers based on necessary passes issued by OP-1 to make entry and exit from the airport. The Commission further notes that OP-1 has given a list of LMS providers which operate without space but the same was not taken into consideration by the DG. This indicates that space at the airport is not an essential ingredient for providing LMS. The Commission, further notes that the DG has not collected sufficient evidence to show that the OP-1 has limited/restricted provision of LMS or technical/scientific development. In this regard, OP-1 has started third party selection of LMS provider by tender and this conduct of OP-1 cannot be said to be anti-competitive more so when the Informant participated in the said tender. Thus, OP-1 has not denied services of the Informant but only conveyed its intention not to renew the license. In view of the above, the Commission observes that non-renewal of the Informant's license for space on the airside of RGIA by OP-1 does not have the potential to limit and restrict the provision of LMS and technical development relating to such services, so as to cause prejudice the consumers and hence, is not in contravention of Section 4(2)(b) of the Act.

With regard to the allegation of denial of market access under Section 4(2)(c) of the Act, the Commission has perused the observations of the DG and reply of the OPs and observes that OP-1 itself admitted that the reason for non-renewal of the Informant's license was not the adoption of the Ground Handling Regulations only, but the space constraints on the airside. As per the Concessionaire Agreement, OP-1 has the right to grant SPRs to any person for the purpose of carrying out the activities and business on such terms and conditions as it deems appropriate as per law. The Commission further notes that it is not necessary to analyse the adoption of such regulations by OP-1. Further, the Concessionaire Agreement has conferred exclusive right to OP-1 for management and operation of RGIA and it can take executive decisions in pursuance of the same as per law. Unless and until, there is any contravention of the provisions of the Act, there is no occasion to interfere with the autonomous functioning of OP-1. Simply because OP-1 conducted a tender in line with Ground Handling Regulations and selected an entity, it cannot be said that it has violated the provisions of the Act. Adopting a benchmark or a method for selection of a service provider per se cannot be termed as anti-competitive. At this juncture, it is noted that OP-1 had given sufficient time to vacate the premises by way of a legal notice to the Informant conveying its intention not to renew the license in due course.

Going by the justification offered by OP-1, it appears that the reason for not renewing the Informant's license was the OP-1's need for readily available enclosed space on the airside of the airport. Hence, the space which was about to become available on expiry of the Informant's license was chosen. In contrast, the space which was reserved for Bird Execujet, was an open space and establishment of an enclosure/office may have taken time.

The Commission also observes that OP-1, had provided information to the DG about the allocation of 178 sqm space on the ground floor in the AEMB after June 2019, which was also taken back from Spice Jet for OP-1's

operational use. Further, OP-1 provided information to the DG that space had been taken from OP-2 and allotted to British Airways since an airline operator is given primacy over other third party service providers but this fact has been ignored by the DG.

Thus, refusal of OP-1 to renew the Informant's space license cannot be perceived as a denial of market access to the Informant from the downstream market of provision of LMS at RGIA. Further, the Commission notes that Informant continued with the services of LMS even without the space, which shows that space is not a sine qua non for provision of LMS because there are several airlines and third party providers which provide LMS without any space at the airport. Had space been so crucial, the Informant and other LMS providers could not have continued the service. All these facts establish that there was no denial of market access to the Informant. Accordingly, no case of violation of Section 4(2)(c) of the Act has been made out in the matter.

On the allegation of leveraging of dominant position by OP-1 in the upstream market to benefit its own subsidiary (OP-2) in the downstream market, the Commission observes that in the emails sent by OP-1 to certain airlines informing them about the non-renewal of the Informant's license, whereby the airlines were asked to choose an alternate vendor, OP-1 did not urge them to choose OP-2 or any other specific vendor. Further, in 2 cases OP-2 got the LMS work through a bidding process and in 1 case it was approached by the airline itself. It is also observed that the shift of employees from the Informant to OP-2, both before and after the expiry of the Informant's license, does not necessarily point towards any uncertainty arising in the minds of the employees due to non-renewal of licence as observed by the DG. Thus, the non-renewal of the Informant's license by OP-1 cannot be considered to be an attempt to leverage its dominant position in the delineated upstream market to benefit its subsidiary (OP-2) in the downstream market, in violation of Section 4(2)(e) of the Act. Accordingly, the matter is directed to be closed.

LW 79:10:2025

XYZ (CONFIDENTIAL) v. EMAAR INDIA LIMITED & ORS [CCI]

Case No. 10 of 2025

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

[Decided on 29/08/2025]

Competition Act, 2002- Sections 3 and 4- anti-competition restrictions and abuse of dominance- purchaser of villas- no specific allegations in the complaint- whether complaint to be allowed- Held, No.

Brief facts:

The present Information has been filed by XYZ (Confidential) against M/s Emaar India Limited ('OP-1'), M/s Emaar India Community Management Private Limited ('OP-2'), Department of Town and Country Planning, Haryana through its Director ('OP-3'), Senior Town Planner ('OP-4'), District Town Planner, Department of Town & Country Planning ('OP-5') and Union of India, through Chief Secretary, Foreign Investment at DPIIT ('OP-6') (hereinafter collectively referred to as 'OPs') inter alia alleging contravention of the provisions of Sections 3 and 4 of the Act.

Decision: Dismissed.

Reason:

As regards dominance of OPs in the instant matter, the Commission has examined the list of licenses along with the land schedule for the years 2009 to 2013 mentioned on the website of Department of Town & Country Planning, State of Haryana and observes that there are various players in the relevant market along with OP-1. The Commission also observes from the information available in the public domain that there are several other reputed real estate developers such as DLF, Godrej Properties, Tata Housing, Signature Global, Vatika Group, ATS Group, and Tulip Infratech who have been building villas in Gurugram since 2010. These developers offer a range of villa options in Gurugram. Hence, the Commission is of the view that prima facie OP-1 does not appear to be dominant in the relevant market of "the provision of services for development and sale of villa in Gurugram". In absence of dominance of OP-1 in the relevant market, there is no requirement to examine the allegations of abuse of dominance. Hence, there can be no case of abuse of dominance in terms of Section 4 of the Act.

With regard to contravention of Section 4 by OP-2, the Commission notes that OP-1 and OP-2 are related as part of the Emaar India group. OP-1 is the real estate development arm, while OP-2 focuses on community management services within Emaar's projects. Hence, the Commission is of the view that dominance of OP-2 and its abuse do not arise in the specifics of this case.

With respect to the allegation under Section 3(4) of the Act, the Informant has not provided any evidence to support his allegations. Hence, the Commission is of the view that no case of anti-competitive arrangement can be made out against OP-1 under Section 3 of the Act.

The Commission also observes that with regard to OP-3 to OP-6, the Informant has neither made any specific allegations against them nor provided any evidence. Hence, the Commission is of the view that no case can be made out against OP-3 to OP-6 under the provisions of the Act.

In view of the facts and circumstances of the present case, the Commission finds that no prima facie case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the said request is rejected.