4

LEGAL WORLD

- MOHAN LAL & ANR v. GRAIN CHAMBER LTD., MUZAFFARNAGAR & ORS [SC]
- SINCERE SECURITIES PRIVATE LIMITED v. CHANDRAKANT KHEMKA & ORS [SC]
- IL&FS FINANCIAL SERVICES LIMITED v. ADHUNIK MEGHALAYA STEELS PRIVATE LTD [SC]
- RAGHUNATH PATIL, PRESIDENT OF SHETKARI SANGHATANA v. RASHTRIYA CHEMICALS AND FERTILIZERS LTD [CCI]
- CH. JOSEPH v. THE TELANGANA STATE ROAD TRANSPORT & ORS. [SC]
- XPRO INDIA LIMITED v. THE STATE OF WEST BENGAL & ORS. [CAL]
- KAMINI SHARMA v. STATE OF HIMACHAL PRADESH & ORS. [HP]
- THE ASSISTANT DIRECTOR (ESIC) v. SANSERA ENGINEERING P. LTD [KANT]
- KESARWANI TRADERS v. STATE OF UP & ORS [ALL]

Corporate Laws

Landmark Judgement

LMJ 09:09:2025

MOHAN LAL & ANR v. GRAIN CHAMBER LTD., MUZAFFARNAGAR & ORS [SC]

Civil Appeals Nos. 114 and 115 of 1965

J.C. Shah & S.M. Sikri, JJ. [Decided on 15/11/1967]

Equivalent Citations: 1968 AIR 772; 1968 SCR (2) 252; AIR 1968 Supreme Court 772; (1968) 38 Comp Cas 543.

Indian Companies Act, 1913-Section 162- winding up of companies- loss of substratum- Company was dealing in sale of gur including futures- In 1950 trading in futures were prohibited- appellants sought the winding up of the company- petition rejected- whether correct-Held, Yes.

Brief facts:

The Respondent company was formed for the purpose of carrying on business of an exchange in grains, cotton, sugar, gur, pulses and other commodities. Members of the Respondent has to sell and purchase through the Appellant only. The buyer and the seller who are members of the Company negotiate transactions of sale and purchase in gur through their respective brokers and then approach the Company. The Company enters into two independent contracts whereby the Company is the purchaser from one and is the seller to the other at rates agreed upon between the seller and the buyer. The seller has therefore to sell to the Company a specified quantity and the buyer agrees to purchase the same quantity from the Company under an independent contract.

On March 14, 1949, the Company passed a resolution sanctioning transaction of business in "futures" and the Appellants commenced dealing with the Company in "futures" in gur.

In exercise of the powers conferred by s. 3 of the Essential Supplies (Temporary Powers) Act 24 of 1946, the Government of India issued a notification on February 15, 1950, amending the sugar (Futures & Options) Prohibition Order, 1949, and made it applicable to "futures" and options in gur. By that Order entry into transactions in "futures" after the appointed day was prohibited.

Entries were posted in the books of account of the Company on the footing that all outstanding transactions in futures in gur were settled on February 15, 1950. In the account of Mohan Lal & Company an amount of Rs 5,26,996/14/- stood to the credit of the appellants. Against that amount Rs. 5,15,769/5/were debited as "loss adjusted", and on February 15, 1950, an amount of Rs. 11,227/9/- stood to their credit. Similar entries were posted in the accounts of other persons who had outstanding transactions in gur.

In 1960, the Appellants filed a winding up petition against the Respondent company alleging diverse grounds that the Company was unable to pay its debts, that it was just and equitable to wind up the Company, because the directors and the officers of the Company were guilty of fraudulent acts resulting in misappropriation of large 'funds, and that the substratum of the Company had disappeared, the business of the Company having been completely destroyed. The High Court dismissed the petition.

Decision: Dismissed.

Reason:

The plea that there was frustration of the contracts, and on that account the Company was liable to refund all the amounts which it had received, has no substance. As we have already held, the outstanding contracts were not at all affected by the Government Order. Imposition by the Central Government of a prohibition by its notification dated March 1, 1950 restraining persons from offering and the Railway Administration from accepting for transportation by rail any gur, except with the permit of the Central Government from any station outside the State of Uttar Pradesh which was situated within a radius of thirty miles from the border of Uttar Pradesh does not lead to frustration' of the contracts. Fresh contracts were prohibited but settlement of the outstanding contracts by payment of differences was not prohibited, nor was delivery of gur in pursuance of the contract and acceptance thereof at the due date by the Company prohibited. The difficulty arising by the Government orders in transporting the goods needed to meet the contract was not an impossibility contemplated by s. 56 of the Contract Act leading to frustration of the contracts. Finally, it was urged that by reason of the notification issued by the Central Government, the substratum of the Company was destroyed and no business could be carried on by the Company thereafter. It was said that all the liquid assets of the Company were disposed of and there was no reasonable prospect of the Company commencing or carrying on business thereafter.

The Company was carrying on extensive business in "futures" in gur, but the Company was formed not with the object of carrying on business in "futures' in gur alone, but in several other commodities as well. The Company had immovable property and liquid assets of the total value of Rs. 2,54,000. There is no' evidence that the Company was unable to pay its debts. Under s. 162 of the Indian Companies Act, 1913 the Court may make an order for winding up a Company if the Court is of the opinion that it is just and equitable that the Company be wound up. In making an order for winding up on the ground that it is just and equitable that a Company should be wound up,

the Court will consider the interests of the shareholders as well as of the creditors. Substratum of the Company is said to have disappeared when the object for which it was incorporated has substantially failed, or when it is impossible to carry on the business of the Company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities. In the present case the object for which the Company was incorporated has not substantially failed, and it cannot be said that the Company could not carry on its 'business except at a loss, nor that its assets were insufficient to meet its liabilities. On the view we have taken, there were no creditors to whom debts were payable by the Company. The appellants had, it is true, filed suits against the Company in respect of certain gur transactions on the footing that they had entered into transactions in the names of other persons. But those suits were dismissed. The business organisation of the Company cannot be said to have been destroyed, merely because the brokers who were acting as mediators in carrying out the business between the members had been discharged and their accounts settled. The services of the brokers could again be secured. The Company could always restart the business with the assets it possessed, and prosecute the objects for which it was incorporated. It is true that because of this long drawn out litigation, the Company's business has come to a standstill. But we cannot on that ground direct that the Company be wound up. Primarily, the circumstances existing as at the date of the petition must be taken into consideration for determining whether a case is made out for holding that it is just and equitable that the Company should be wound up, and we agree with the High Court that no such case is made out.

LW 65:09:2025

SINCERE SECURITIES PRIVATE LIMITED v CHANDRAKANT KHEMKA& ORS [SC]

Civil Appeal No. 12812 of 2024

Satish Chandra Sharma & Sanjay Kumar, JJ. [Decided on 05/08/2025]

Brief facts:

Respondent No.1 is the suspended director of the Corporate Debtor. Appellant is the owner of the subject property. All other parties to the CIRP were at consensus that the property in question need not be retained by the corporate debtor, as it is not required by it and imposes a huge financial burden on it, in terms of the lease/license rentals payable therefor. Accordingly NCLT directed the corporate debtor to hand over the property to the Appellant. However, Respondent No.1 appealed to the NCLAT on the grounds that (i) the erstwhile Resolution Professional of the corporate debtor made a factually incorrect statement before the NCLT and (ii) the property in question is essential for the functioning of the corporate debtor and Section 14(1)(d) of the IBC barred its return to the appellants. NCLAT therefore remanded the matter before the NCLT. Hence, the present appeal before the Supreme Court.

Decision: Allowed.

Reason:

Despite all others involved in the CIRP being in favour of doing so, Chandrakant Khemka alone opposes the return of the subject property to the appellants. His lofty claim that the rent due to the appellants would stand secured by the provisions of the IBC does not stand to reason, Further, Chandrakant Khemka is himself not willing to bear the expenditure for retaining the possession of the subject property.

In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

The commercial wisdom of the CoC must, accordingly, be given primacy during the CIRP. When UCO Bank, constituting the CoC, decided that retention of the possession of the subject property was not in the interest of the CIRP, that decision must be given the respect that is lawfully due to it.

In the case on hand, the chronology of events manifests that, at its very first meeting held on 20.02.2023, the CoC discussed the issue of retention of the ground floor of White House. It asked the Resolution Professional to visit the said premises and decide as to whether holding on to the same was required, spending a huge amount towards rentals. Thereafter, at its third meeting held on 06.04.2023, the CoC took note of the Resolution Professional's report that it was not feasible to hold on to the subject property, as only 8 to 9 staff members were there and the revenue generated would not be sufficient to pay the lease/license rentals. The CoC recorded that the matter was duly discussed and the Resolution Professional was asked to hand over possession as early as possible, as there was no requirement to hold on to the said premises spending such a huge amount towards rentals.

It was only thereafter that the appellants filed Interlocutory Applications before the NCLT praying for a direction to deliver possession of the subject property to them along with other reliefs. It is, therefore, manifest that this was not a simple case of the owner of the property seeking recovery of possession thereof from the corporate debtor,

which would be barred by the express language of Section 14(1)(d) of the IBC. On the other hand, as already noted hereinbefore, it was the CoC and the Resolution Professional who were and still are desirous of returning the possession of the property in question to the appellants, keeping in mind the adverse financial implications of retaining the same. It appears that Chandrakant Khemka, respondent No. 1, who is not willing to personally bear the expenditure for such retention, is bent upon stalling that process for some undisclosed and extraneous reasons. This was, therefore, not a situation which warranted an order of remand in the context of Section 14(1)(d) of the IBC.

LW 66:09:2025

IL&FS FINANCIAL SERVICES LIMITED v ADHUNIK MEGHALAYA STEELS PRIVATE LTD [SC]

Civil Appeal No. 5787 of 2025

Manoj Misra & K.V. Viswanathan,JJ. [Decided on 30/07/2025]

Insolvency and Bankruptcy Code, 2016- Section 7 – CIRP by financial creditor – application rejected on the ground of limitation – whether correct-Held, No.

Brief facts:

Appellant granted loan facility of Rs.30 crores to the Respondent in 2015. On 01.03.2018, the account of the respondent was admittedly declared as a Non-Performing Asset (NPA) as the respondent was unable to meet its debt obligations in the sum of Rs.55,45,97,395/-. Appellant filed section 7 application on 15.01.2024. The date of default was mentioned as 01.03.2018.The NCLT rejected the CIRP application as time barred and the NCLAT had confirmed the same in appeal. Hence the present appeal before the Supreme Court.

Decision: Allowed.

Reason:

Keeping all these principles in mind, if we examine the facts of the present case, it will be clear that the Balance Sheet of F.Y. 2019-20, viewed in the background of the other admitted documents, including the financial statements of the previous years, clearly constitutes a valid acknowledgment of a subsisting liability and indicated the existence of a jural relationship and an admission as to the existence of such relationship. We say so for the following reasons:-

i) The general tenor and context of the balance sheet of F.Y. 2019-20 considered in the background of surrounding circumstances arising from the balance sheets of F.Y. 2015-16, 2016-17 & 2017-18 clearly points to the fact that the entry in the balance sheet of F.Y. 2019-20 constitutes a valid acknowledgement and pertains to the same borrowing as was reflected in the balance sheet of F.Y. 2015-16, 2016-17 & 2017-18.

ii) Under the Indian Accounting Standards (Ind AS) 7, a cash flow statement is appended to the financial statement. The cash flow statement indicates that in F.Y. 2018-19 there was proceeds from borrowings of Rs.72,30,902/- and added to Rs.23,68,91,933/-, a figure of Rs.24,41,22,835/- is arrived at.

iii) More importantly, in the cash flow statement, it was indicated that no part of cash flow proceeds was utilised in the repayment of existing borrowings under the financial activities since the amount under the head "cash flows from (used in) financial activities" is nil. This clearly indicates that the debt remained unpaid even in 2019-20.

In addition to the above, it is significant to note that in this case in the reply filed to the Section 7 application, apart from a general objection as to the application being barred by limitation only a bare denial was made.

In the application under Section 7 detailed averments were made referring to a series of audited financial statements and Balance Sheet from F.Y. 2015-16 to F.Y. 2019-20 to make out a case that the entry in F.Y. 2019-20 constituted an acknowledgment under Section 18 of the Limitation Act by the respondent. In any event, we have not based our finding on the mere factum of non-denial but have construed the entry in the Balance Sheet of F.Y. 2019-20 to conclude that the entry in the F.Y. 2019-20 constitutes a valid acknowledgment.

The Balance Sheet of F.Y. 2019-20 was admittedly signed by the board of directors on 12.08.2020. This date was within the subsisting period of limitation for the reason that taking 01.03.2018 as the commencement of limitation, limitation ordinarily would have continued till 28.02.2021. Since an acknowledgment came into effect on 12.08.2020, limitation would have stood extended till 11.08.2023. However, Covid-19 intervened resulting in this Court passing a series of orders extending the period of limitation. The relevant order applicable in this case is the order of 10.01.2022.

We have no manner of doubt that sub-Para 1 of Para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean that the limitation would, reckoning the acknowledgment of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025.

Since the application has been filed on 15.01.2024 the same is within time. Limitation, in view of the acknowledgment as found above, having commenced only on 12.08.2020, the question of limitation expiring between 15.03.2022 and 28.02.2022 cannot arise. Hence, Para 5(III) of the order of this Court dated 10.01.2022, has no application to the facts of this case.

In view of the observations made hereinabove, the judgments of the NCLAT dated 25.03.2025 and NCLT dated 16.05.2024 are set aside. The appeal is allowed. The matter is remitted to the adjudicating authority to proceed with and decide in accordance with law, treating the application under Section 7 of the IBC, filed by the appellant, as one filed within limitation. No order as to costs.

Competition Laws

LW 67:09:2025

RAGHUNATH PATIL, PRESIDENT OF SHETKARI SANGHATANA v RASHTRIYA CHEMICALS AND FERTILIZERS LTD. [CCI]

Case No. 03 of 2025

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

[Decided on 06/08/2025]

Competition Act, 2002- sale of urea- Sections 3 and 4- respondent enjoying dominant position- indulged in tying up of other products with the sale of urea- whether hit by the vice of imposing unfair terms- Held, Yes. Investigation by DG directed.

Brief facts:

The Informant alleged that the conduct of the OP in imposing the unfair condition of tying the sale of other products with the purchase of its Urea in the State of Maharashtra is in complete violation of Section 4(2)(a) of the Act, as it amounts to imposing unfair terms and conditions on farmers. It is also alleged that such forcible tying also leads to denial of access in the market for sale of other products such as NPK, to the dealers who solely deal in such products, in violation of Section 4(2)(c) of the Act.

It is also alleged by the Informant that the OP has leveraged its dominant position in the "market for sale and supply of Urea in Maharashtra" to protect its business in the supplementary "market for sale and supply of other agricultural products" by foreclosing and indulging in denial of market access to other players in the secondary market which is a violation of Section 4(2)(e) of the Act.

With regard to alleged violation under Section 3 of the Act, the Informant has stated that the OP stands at the top of the production chain as the manufacturer of Urea, which is then supplied to different districts within the State of Maharashtra in terms of Centre's supply movement order. The Urea is then sent to retailers/dealers, who ultimately sell it to farmers/end consumers. The OP is alleged to have imposed the requirement of purchase of other products (such as water-soluble fertilizers, etc.) as a pre-condition to purchase Urea in the State of Maharashtra, in violation of Section 3(4)(a) read with Section 3(1) of the Act. It is also stated that this conduct of the OP is leading to appreciable adverse effect on competition ("AAEC") by harming farmers, who are unable to make a choice about other products they may wish to purchase in addition to Urea. It is also stated that this is leading to foreclosure of market for dealers/competitors who solely sell the tied-in product(s) and creation of entry barriers for other smaller competitors.

Decision: Investigation by DG ordered.

Reason:

From various representations made by the Fertilizer and Dealers' Association, it appears that the OP imposes the condition of purchase of other products with the purchase of Urea which on the face of it appears to be imposition of unfair condition which has been prohibited under Section 4(2)(a)(i) of the Act. Thus, the Commission is of the prima facie opinion that the conduct of the OP appears to be in violation of Section 4(2)(a)(i) of the Act.

In the present matter, where sale and supply are regulated, it does not appear that the OP has denied market access to the other manufacturers of Urea for sale and supply in the State of Maharashtra. Further, the Commission notes that the Informant has not alleged denial of market access to the competitors in the proposed relevant market i.e., "sale and supply of Urea in the State of Maharashtra", wherein the OP is stated to be operating and holding a position of dominance. Thus, the Commission observes that the allegation of violation of Section 4(2)(c) of the Act by the OP does not hold merit.

Though the Informant has not submitted copy of any written agreement between the OP and the dealers/stockiest etc., perusal of the evidences filed with the Information in the form of various representations, media reports and instructions issued by the Government etc. make out a prima facie case of violation of Section 4(2)(d) of the Act.

In this regard, the Commission notes that the OP holds a position of dominance in the market for sale and supply of Urea in the State of Maharashtra and by tying the sale of other products with that of Urea, it appears that it has leveraged its position to enter into or to protect the market for other products. Such leveraging by a dominant entity has been frowned upon under the scheme of the Act as it hinders fair competition in the market. In this context and factual matrix, the Commission is of the prima facie view that there appears to be a violation of Section 4(2)(e) of the Act.

Upon consideration of the facts and circumstances of the present case, the Commission is of the prima facie view that the conduct of the OP appears to be in contravention of provisions of Section 3(4)(a), 4(2)(a)(i), 4(2)(d) and 4(2)(e) of the Act. On the basis of the material available on record, there appears to be substance in the allegations levelled by the Informant and the same merits an investigation by the Director General ('DG').

Industrial & Labour Laws

LW 68:09:2025

CH. JOSEPH v THE TELANGANA STATE ROAD TRANSPORT& ORS. [SC]

Civil Appeal No(S).____of 2025 (@ SLP (C) No. 36278 of 2017)

J.K. Maheshwari & Aravind Kumar,JJ. [Decided on 01/08/2025]

Employment law- driver found to be 'colour blind' and relieved- his request for alternate employment was rejected- whether correct-Held, No.

Brief facts:

The Appellant herein was selected and appointed as a 'driver' in Respondent Corporation on 01.05.2014. On a periodical medical examination conducted by the medical officer of the dispensary belonging to the respondent-corporation, it was found that the appellant was 'colour blind' and was declared unfit to hold the post of 'driver'. The appellant preferred an appeal challenging the observation regarding his fitness for the post of 'driver', alternatively, the appellant also sought for alternate employment in the event, he was declared 'medically unfit'. The appellant approached the High Court which directed the Respondent to provide an alternate employment. On appeal the Division Bench set aside the order of the Single Bench. Hence the present appeal before the Supreme Court.

Decision: Allowed.

Reason:

To conclude, the record before us makes it clear that the Appellant was prematurely retired from service on medical grounds without any meaningful effort by the Respondent–Corporation to explore his suitability for alternate employment. This action, taken in disregard of Clause 14 of the binding Memorandum of Settlement dated 17.12.1979 and without adherence to principles of fairness or accommodation, cannot be sustained in law.

The Corporation's omission to consider redeployment violates both statutory and constitutional obligations. Settled jurisprudence, including Kunal Singh (supra), which mandates that an employee who acquires a disability during service must be protected through reassignment where possible. The duty to reasonably accommodate such employees is now part of our constitutional fabric, rooted in Articles 14 and 21.

While judicial restraint guards against overreach, it must not become an excuse for disengagement from injustice. When an employee is removed from service for a condition he did not choose, and where viable alternatives are ignored, the Court is not crossing a line by intervening, it is upholding one drawn by the Constitution itself. The employer's discretion ends where the employee's dignity begins.

In light of the foregoing, the judgment of the High Court in W.A. No. 1343 of 2017 is set aside. The Respondent-Corporation is directed to appoint the Appellant to a suitable post, consistent with his condition, and on the same pay grade as he held on 06.01.2016, within eight weeks from the date of receipt of this order. The Appellant shall be entitled to 25% of the arrears of salary, allowances, and benefits from the date of his termination to the date of reinstatement. The intervening period shall be reckoned as continuous service for all purposes. The Appeal stands allowed. There shall be no order as to costs.

LW 69:09:2025

XPRO INDIA LIMITED v THE STATE OF WEST BENGAL & ORS. [CAL]

WPA 4620 of 2025

Shampa Dutt (Paul), J. [Decided on 28/08/2025]

Payment of Gratuity Act- forfeiture of gratuity- employee charged for interacting with rival company- domestic inquiry instituted- employee resigned and did not participate- employee claimed gratuity- employer sought to forfeit on the ground of moral turpitude- whether permissible- Held, No.

Brief facts:

The Respondent, who was employed a technician, was subjected to domestic enquiry primarily on the ground that he was in contact with a rival company and was trying to set up another company. The Respondent did not join the inquiry proceedings but resigned and claimed gratuity. The gratuity was denied to him on the grounds of moral turpitude. The Controlling Authority as well as the Appellate Authority under the payment of Gratuity Act allowed the payment of gratuity to the Respondent. Aggrieved petitioner employer challenged the decision in the present petition.

Decision: Dismissed.

Reason:

In the present case, the enquiry report shows:-

i. The petitioner/company could neither produce any witness nor show any call records to substantiate their charge that the respondent was in touch with a rival company.

ii. As to what the enquiry officer meant by "as per my direction" is not clear and if believed, would go against the petitioner.

iii. The witnesses produced, only stated that they saw the private respondent talk to some personnels of the rival company.

iv. It was also stated that the private respondent had left the office on that day.

The petitioner in this case, could not prove that any damage or loss to, or destruction of, property belonging to the employer was due to the act of the respondent, which was riotous, disorderly, or involves moral turpitude.

In *Sushil Kumar Singhal vs Regional Manager Punjab National Bank, in Civil Appeal No. 6423 of 2010 (arising out of SLP (C) No. 4216 of 2008), decided on 10 August, 2010,* the Supreme Court has described:-

"21. Moral Turpitude means [Per Black's Law Dictionary (8th Edn.,2004)] :-

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude such as fraud or breach of trust. Also termed moral depravity.

Moral turpitude means, in general, shameful wickedness- so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people."

22. In Pawan Kumar Vs. State of Haryana & Anr., AIR 1996 SC 3300, this Court has observed as under:-

"`Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct, which is inherently base, vile, depraved or having any connection showing depravity."

23. The aforesaid judgment in Pawan Kumar (supra) has been considered by this Court again in Allahabad Bank & Anr. Vs. Deepak Kumar Bhola, (1997) 4 SCC 1;and placed reliance on Baleshwar Singh Vs. District Magistrate and Collector, AIR 1959 All. 71, wherein it has been held as under:-

"The expression `moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities.

Thus looking for another job, even if with a rival company (though, not proved in this case) with better perks and facilities is a basic right and does not constitute moral turpitude as it is not contrary to honesty, modesty or good morals.

The said/conduct of the enquiry/disciplinary authority is clearly an abuse of power and totally against the principles of natural justice, there being no independent, specific findings of the disciplinary authority against the petitioner. No reasoning nor the principles of natural justice was followed.

The findings of Disciplinary Authority is based on "no evidence" and has been passed without considering the principles of natural justice, which is a clear perverse determination of fact *[State of Rajasthan – vs – Heem Singh (Supra)].*

Relying upon the judgment in *Western Coal Fields Ltd. vs Manohar Govinda Fulzele, (Supra),* this Court sets aside the order and punishment of the disciplinary authority for the reasons stated above and directs the petitioner to pay the total amount of gratuity along with simple interest @ 8% p.a. with effect from 30th April, 2009 till payment within 60 days from the date of this order.

The order under challenge thus also requires no interference as the appellate authority has not interfered either with the disciplinary proceeding or the punishment. The appellate authority was clearly within its power under the payment of gratuity to decide the case on merit regarding the entitlement/forfeiture of gratuity.

The order of the appellate authority is well reasoned and within jurisdiction to the extent of the provisions of the payment of gratuity and is clearly in accordance with law.

LW 70:09:2025

KAMINI SHARMA v STATE OF HIMACHAL PRADESH & ORS. [HP]

CWP No.393 of 2022

Sandeep Sharma, J. [Decided on 11/8/2025]

Maternity Benefit Act, 1961- contract employee- maternity leave granted- during the maternity period regularisation took place- medical certificate was furnished by the employee- employer cancelled the maternity leave and directed her to join the duties- whether tenable- Held, No.

Brief facts:

The petitioner joined the department as JBT on contract basis. On 21.8.2021, petitioner gave birth to a baby and

thereafter availed Medical Leave w.e.f. afore date. While petitioner was on maternity leave, order dated 21.10.2021, came to be issued by the respondents, thereby regularizing services of the petitioner. Since petitioner pursuant to her regularization was to furnish her joining, she gave her joining on 22.10.2021 in continuation of her ongoing maternity leave w.e.f. 21.8.2021, which was duly accepted by the respondent department, however within a period of two months of her joining as regular employee, office order dated 13.12.2021 came to be issued by the respondents, thereby cancelling Maternity Leave of the petitioner on the ground that once she had submitted Medical Fitness Certificate at the time of her joining on 22.10.2021, she cannot avail Maternity Leave thereafter, which otherwise stood granted to her w.e.f. 21.8.2021.

Decision: Allowed.

Reason:

Facts, as have been noticed herein above, are not in dispute, rather stand duly admitted by the respondents in their reply. An attempt has been made to defeat the rightful claim of the petitioner on the ground that once petitioner had submitted Medical Fitness Certificate at the time of her regularization, she cannot be permitted to avail Maternity Leave, which was granted to her while she was working on contract basis vide order dated 21.8.2021.

Though having taken note of the fact that petitioner at the time of her regularization on 22.10.2021, submitted Medical Fitness Certificate, this court does not find any infirmity or illegality in the afore submissions made by learned Additional Advocate General because admittedly, in terms of provision of Leave Rule, if an incumbent assumes the duty in the midterm of the Medical Leave, she cannot claim the balance leave thereafter, however case at hand is peculiar one for the reason that Maternity Leave w.e.f. 21.8.2021 was granted to the petitioner while she was on contract basis, on account of her having given birth to a baby on 21.8.2021, but before Maternity Leave of 180 days could be availed by her, respondents by way of order dated 21.10.2021, regularized the services of the petitioner in terms of Regularization Policy, as a result thereof, petitioner was compelled to join on 22.10.2021.

Since at the time of regularization, certificate of fitness is otherwise required to be produced by the petitioner, petitioner submitted Medical Fitness Certificate duly issued by competent authority, but submission of Medical Fitness Certificate, in peculiar facts and circumstances as detailed herein above, could not have given any right to the respondents to curtail the Maternity Leave of the petitioner granted to her w.e.f. 21.8.2021, for a period of 180 days.

Careful perusal of afore communication reveals that while accepting regularization and joining on regular basis at Government Primary School Gater, petitioner categorically apprised the authorities concerned that same is in continuity with her ongoing maternity leave w.e.f. 21.8.2021 under Centre Bhararighat, Block Dhundan, District Solan, Himachal Pradesh, but there is nothing on record that at the time of receipt of aforesaid communication, objection, if any, was ever raised by the authority concerned, rather same was duly accepted.

Moreover, this Court finds that prior to passing of afore order, no notice was ever issued to the petitioner, thereby calling upon her to render explanation qua her wilful absence from the duty w.e.f. i.e. 23.10.2021 to 15.12.2021. Though for the reasons stated herein above, there was no requirement, if any, for the respondents to treat the period of absence of the petitioner as extraordinary leave, but even if it is presumed that respondents, taking note of the rules, could have proceeded to pass such order, same could not have been passed without sending notice to the petitioner, who would have rendered plausible explanation qua her absence, which otherwise has been rendered in the present petition.

Leaving everything aside, since petitioner prior to her regularization w.e.f. 21.10.2021, stood sanctioned maternity leave for 180 days w.e.f. 21.8.2021 to February 2022, coupled with the fact that she was compelled to join in December 2021, ground taken by the respondents with regard to submission of medical fitness certificate at the time of regularization of the petitioner may not be available to the respondents to deny benefit of Maternity Leave, which stood sanctioned prior to her regularization, especially in peculiar facts and circumstances of the case.

Consequently, in view of the above, this Court finds merit in the present petition and as such, same is allowed. Orders dated 13.12.2021, 23.12.2021 and 19.6.2025 (Annexures P-4, P-5 and P-6) are quashed and due and admissible amount, if not already released to the petitioner, shall be released expeditiously, preferably, within four weeks, failing which respondents would be under obligation to pay interest @6% p.a. from the date amount fell due to the petitioner till its payment/recovery. In the aforesaid terms, present petition is disposed of along with pending applications, if any.

LW 71:09:2025

THE ASSISTANT DIRECTOR (ESIC) v SANSERA ENGINEERING P. LTD [KANT]

Miscellaneous First Appeal No. 3687 of 2016 (ESI)

Ramachandra D. Huddar, J. [Decided on 30/07/2025]

Employees State Insurance Act, 1948- Section 45A- determination of contribution- construction work at the factory- construction workers not covered for ESI contribution by the employer - demand raised by the Corporation- ESI court reduced the demand by 75%- whether correct- Held, No.

Brief facts:

The Corporation raised a demand of Rs.13,52,825/- towards the contribution from the respondent employer and the ESI Court, on appeal by the employer reduced the

demand to Rs.3,50,000/-. Aggrieved the Corporation has challenged this before the High Court.

The impugned demand was challenged by the respondent before the ESI Court primarily on the ground that, the workers engaged for construction and repair works were not under the control and supervision of the respondent and that the amounts paid to the contractors included substantial material costs rendering the labour component indeterminate.

The ESI Court, while recording a finding that, the demand appear to include non-wage element, proceeded to reduce liability. without assigning any precise calculation or logic for the said quantification. It is this act of reduction unsupported by evidentiary material or statutory rationale, which forms the core grievance of the present appeal.

Decision: Allowed.

Reason:

This Court has meticulously considered the rival submissions advanced on behalf of both the parties and has perused the records in detail. Upon such consideration, the following issues arise for adjudication:

(i) Whether the labourers engaged through contractors for construction and repair works undertaken within the factory premises are to be treated as 'employees' within the meaning of Section 2(9) of ESI Act?

(ii) Whether the order passed by the Corporation under Section 45-A of the Act was validly made in accordance with law particularly in view of respondents failure to furnish necessary records?

(iii) Whether the ESI Court was justified in modifying the statutory demands in the absence of cogent evidentiary basis or alternative computation?

(iv) What order is to be made in the facts and circumstances of this case?

In the instant case, the respondents are to exclude the construction workers on the ground that they were engaged by independent contractors and that their work did not constitute regular factory activity. This argument is devoid of merit. It is well established that, construction and maintenance work undertaken for the expansion or operational upkeep of the factory premises of the factory are not alien or external to the functioning of manufacturing unit. On the contrary, such works are integral to the continuity, efficiency and safety of the factory's operations.

The construction of additional sheds, installation of new units, renovation of existing structures and replacements to support utility systems are all activities intimately connected with the efficient running of the factory. Such works cannot be compartmentalized as noncore or detached for the purpose of the establishment. Therefore, persons employed in such work even though from contractors even they fall in the ambit of definition of '***Employee'*** under Section 2(9) of the Act.

In the present case, the records clearly demonstrate that the respondent was provided sufficient opportunities to furnish requisite details of the payments made to the contractors including bifurcation of labour and material components. Despite this, no such details are provided. In such circumstances, the Corporation upon evaluating the nature of work and based on prevailing wage patterns and internal assessments, estimated 25% of the contractor payments to represent labour component and computed contribution accordingly.

This Court finds no infirmity in the method adopted by the Corporation. When an employer withholds material records, it cannot later be heard to complain that the assessment was speculative. The law does not permit a defeating party to take advantage of its own wrong. The statutory presumption under Section 45-A of the Act is not merely procedural; it has substantial legal force and must be given due weight.

On the third issue, the approach adopted by the learned ESI Court is found to be perverse. The Court has not recorded any finding to the effect that, the `Labour' Component was less than 25% nor has it relied on any contrary material or expert testimony. There is no computation offered to support the revised figure of Rs.3,50,000/- A judicial authority cannot indulge in conjectural quantification especially, when dealing with statutory dues under a welfare legislation. Such arbitrariness defeats the purpose of the Act and undermines the powers conferred upon the Corporation.

The reduction of demand by nearly 75% without any basis not only lacks legal justification but, also sets a dangerous precedent whereby employers may feel emboldened to suppress records and escape liability through evasive tactics. Such an approach is neither legally tenable nor socially desirable.

In summation, this Court is of the clear and considered opinion that, the order passed by the ESI Court modifying the demand is legally unsustainable and calls for interference. The determination made by the Corporation was in accordance with the statutory framework and supported by the facts available. The respondent had every opportunity to rebut the demand by furnishing the records, but, failed to do so.

The learned counsel for the appellant relied upon Division Bench Judgment of this Court where, I am one of the member i.e. in Misc. First Appeal No.7749/2013 (ESI) and submits that, in similar situation the Division Bench of this Court has categorically discussed with regard to the provisions of Section 45-A of the ESI Act. The observation with regard to the said provision is found at para.31 and 32 of the said judgment.

They read as under:

"31. Considering Section 45A of the Act, the Hon'ble Supreme Court in para 15 of the judgment in C.Santhakumar's case referred to supra held that the order under Section 45A(1) of the Act shall be used as sufficient proof of the claim of the

Corporation. It was further held that when there is a failure in production of records and when there is no cooperation, the Corporation can determine the amount and recover the same as arrears of land revenue under Section 45B of the Act.

32. In the present case since the records were not produced before the Corporation during determination under Section 45A of the Act, the ESI Court had to accept such determination unless and until the same was disproved by the appellant. Therefore the question is whether the appellant had let in such evidence to disprove the determination made by respondents under the order under Section 45A of the Act."

The said observation squarely applies to the present facts of the case. In conclusion, for the reasons stated above, this appeal deserves to be allowed and the impugned order passed by the ESI Court is liable to be set aside and the order passed by the Corporation under Section 45-A of the ESI Act is to be restored.

LW 72:09:2025

KESARWANI TRADERS v STATE OF UP & ORS [ALL]

Writ Tax No. 1235 of 2025

Piyush Agrawal, J . [Decided on 18/08/2025]UP GST Act, 2017- "bill to - ship to" sale transaction - sellers registration was valid at the time of transaction-department considered the transaction as unregistered dealer transaction-whether correct-Held, No.

Brief facts:

By means of present writ petition, petitioner assails the order passed by Additional Commissioner Grade -2 (Appeal) Judicial Division, Third, State Tax, Prayagraj, impugned notice dated 07.09.2022 issued by Assistant Commissioner, Fatehpur, Sector- 3, Prayagraj (B), Prayagraj as well as order dated 17.11.2023 along with recovery notice DRC-07.

The petitioner is a registered dealer engaged in the business of purchase and sale of MS TMT bar etc. In a normal course of business, the petitioner placed an order to a registered dealer i.e. M/s Purvanchal Tradelink India, Sonbahdra (selling dealer) for supply of TMT Bars, who in turn, placed an order to the supplier namely SM Shop Raipur, Chhattisgarh (supplying dealer), who in turn issued a tax invoice No.00961 dated 20th June, 2018. In the said invoice, M/s Purvanchal Tradelink India was shown as buyer and the petitioner been shown as consignee. The said goods were sent through vehicle No.CG-10-C-6933 as well as e-Way bill was also generated. In short, the said transaction can at best be said to be "Bill To Ship To", which is permissible under the GST regime. The proper officer rejected this transaction on the ground that the selling dealer was unregistered dealer. The appeal preferred by the petitioner was dismissed and hence the present petition.

Decision: Allowed.

Reason:

It is not in dispute that proceedings have been initiated against the petitioner under Section 74 holding that tax invoice No.0014 dated 20th June, 2018 issued by M/s Purvanchal Trade Link India, Sonbahdra is not a registered dealer and, therefore, the claim made by the petitioner was a paper transaction. The record further shows that in the transaction, SM Shop, Raipur, Chhattisgarh have issued a tax invoice No.00961 dated 20th June, 2018 which was a "Bill To Ship To" transaction where the truck number was specifically mentioned as CG10-C-6933. Further, petitioner has been shown as consignee and the supplier has been shown as buyer. The said fact has not been disputed by the authorities. Further, the record shows that specific pleadings in the grounds of appeal before the first appellate authority was taken that the said vehicle was intercepted by a mobile squad of Chhattisgarh and a rubber stamp was put on e-Way bill and was duly signed (copy of the grounds of appeal has been appended as Annexure 6 to the writ petition). The grounds taken by the petitioner have been noticed in the impugned order at internal page 2 of the impugned order but no rebuttal or contradicting material against the petitioner has been brought on record to justify the action.

Once the said fact has been noticed in the impugned order and not disputed at the movement of goods have started from Raipur, Chhattisgarh to the place of petitioner, the benefit of the same cannot be legally denied. Further, the copy of the tax invoice of the selling dealer SM Shop Raipur and e-Way bill have been filed at page 67 and 68 of the paper book as Annexure 6 which clearly shows the movement of goods was as "Bill To Ship To" transaction. Further, the record shows that the registration of the seller i.e. M/s Purvanchal Tradelink India, Sonbahdra was cancelled subsequent to the date of transaction, hence, no adverse inference can legally be drawn against the petitioner as on the date of transaction, the seller was having a valid registration.

Once on the date of transaction the seller was having a valid registration and the transaction was through a valid billing channel, which has neither been denied nor any adverse material has been brought on record, no adverse inference can be drawn against the petitioner. In view of the above, the impugned orders cannot be sustained in the eyes of law and are hereby quashed. The writ petition stands allowed.