CASE DIGEST -SERIES 4

(Case Snippets and Case Studies)

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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23rd September, 2020

Dear Professional Colleagues,

Subject : Case Digest – Series 4

"Intellectual growth should commence at birth and cease only at death."
~ Albert Einstein

Learning is essential to our existence. Just like food nourishes our bodies, information and continued learning nourishes our minds. Continuous learning is an indispensable tool for every career and organization. While up until a certain age learning maybe enforced by external factors and catalysts, but continuous learning is a process which requisites self-motivated persistence in acquiring knowledge and competencies in order to expand your skill set and develop future opportunities. It forms part of the journey of personal and professional development in an effort to avoid stagnation and reach our full potential.

In the present times, continuous learning and professionalism can be referred to as the two sides of the same coin and it is this erudition which forms a necessary part in acquiring critical thinking skills and discovering new ways of relating to people from different cultures.

Understanding all these thoughts and more, the Institute of Company Secretaries of India has been actively rolling out various learning initiatives in the form of Webinars and other publications of the likes of e-journals, Info Capsules, Regulatory Updates and many more.

Apart from these, Case Digest has also been developed by the ICSI which are coming across as an important tool for the stakeholders in deeply analyzing the interpretation of Law. Case briefing is a long-used method of studying law with a solid purpose being identification of the rules of law found in court cases as well as their application in courts in an objective and rational manner.

Realizing that case briefings hone the analytic skills and heightens understanding of the role of courts in defining, interpreting, and applying law, we are happy to release the **Case Digest – Series 4** which aims to explain recent cases endowing brief understanding of the case laws to its readers.

Happy Reading! Happy learning!

(CS Ashish Garg)
President
The Institute of Company Secretaries of India

CASE DIGEST – SERIES 4

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Part A
Case Snippets

COMPANY LAW

1.	**23.07.2020**	***V. J. Paul Joseph & Ors. (Appellants)* vs. *Alexander Correya & Ors. (Respondents)***	**NCLAT**

A person who is managing the affairs of Section-8 company created for charitable purpose should not execute his personal agenda as it will spoil the image of the company irrespective of good work done

Fact of the case :

The Company Petition No.29/2017 was filed by the 1st to 3rd respondents (original petitioners) against the respondent under Section 241 and 242 of the Companies Act, 2013 alleging various sets of oppression and mismanagement in the affairs of 7th respondent. It is stated that 7th respondent was incorporated as a Charitable Company and was governed by the provisions of Section 25 of the erstwhile Companies Act, 1956 and is presently governed by Section 8 of the Companies Act, 2013.

The object of 7th respondent specifically state that it is to collect funds through subscription, conducting chits and through other sources as the 7th Respondent deems fit, and for deployment of the funds of the company for the purpose of promoting education, industry and charitable activities. The funds of the 7th respondent cannot be distributed for the benefit of the members of the company.

The present appeals have been preferred by the appellants under Section 421 of the Companies Act, 2013 against the order dated 28.08.2018 passed by the NCLT, Chennai Bench, whereby the NCLT has allowed the Company Petition.

Judgement :

NCLAT upheld the order passed by NCLT, Chennai Bench and imposed a cost of Rs.10 lakh on Appellant related to various sets of oppression and mismanagement in the affairs of the company under Section 241 and 242 of the Companies Act, 2013. NCLAT further observed that the Company in question which is a charity institution presently governed by Section 8 of the Companies Act, 2013 has been created for a noble cause and in case a person who is in the management and managing the affairs of the institution not for the purpose of noble cause but his only agenda is to execute his private agenda and to benefit one or the other person, this will seriously compromise the goodwill and reputation and will spoil the image of the company for good work done.

2.	**21.07.2020**	***M/s. MTS Logistics Pvt. Ltd. & Ors. (Appellants)* vs. *Brijesh Uppal & Ors. (Respondents)***	**NCLAT**

Tribunal have jurisdiction to inflict any damages against the alien Company, while deciding the *inter-se* dispute between two directors of another Company, when the companies have close business relations and common director

Fact of the case:

On 01.05.2016 Appellant Parvesh Kumar Jain and Respondent No. 1 Brijesh Uppal have incorporated a Company named as Tryambakam Logistics Pvt. Ltd (in short "TL Company") under the Companies Act, 2013. The Company was incorporated to carry on the business of Transportation.

The Appellant MTS Logistics Pvt. Ltd. Company (in short "MTS Company") was incorporated under the Companies Act, 1956 on 16.03.2011. The Appellant Parvesh Kumar Jain was subsequently inducted as director in the Company on 15.10.2012.

The affairs of the TL Company were totally in control of appellant Parvesh and he mismanaged the company. The mala-fide intention of the Parvesh and his fraudulent acts has resulted into huge loss to the TL Company and its shareholder Brijesh. On these allegations Brijesh filed a Company Petition under Section 241 and 242 of the Companies Act, 2013 against the TL Company, Parvesh and MTS Company in NCLT, New Delhi Bench.

NCLT found that mismanagement of the business is at large and there is no cogent explanation why sufficient income was not generated. Therefore, Parvesh and MTS Company are jointly and severally liable to compensate Brijesh. The Tribunal also directed the RoC to initiate action against Parvesh for the deliberate violation for the statutory provisions of Section 188 of the Companies Act, 2013. Being aggrieved by this order appeals was filed before the NCLAT.

Judgement :

The contention of appellant MTS Company is that the NCLT had no jurisdiction to inflict any damages against the alien company, while deciding the inter-se dispute between two directors of another Company.

NCLAT held that both the companies have close business relations having a common director. Parvesh is a director in the MTS Company since 15.10.2012 and he is also a promotor director of TL Company since incorporation of the TL Company i.e. 01.05.2016. Parvesh being a director entered into a vehicle hiring agreement with MTS Company. Hence, it cannot be said that the NCLT had no Jurisdiction to inflict any damages against the appellant Company. Therefore the Tribunal rightly held that both the appellants are jointly and severally liable to pay compensation to the respondent. As it is observed that Parvesh entered into an agreement with the consent of Brijesh therefore, he is not guilty u/s 188 of the Companies Act, 2013.

3.	**06.07.2020**	***Aruna Oswal (Appellant) vs. Pankaj Oswal & Ors. (Respondents)***	**Supreme Court of India**

Dispute of Inheritance of Shares is a civil dispute; it cannot be decided under section 241/242 of the Companies Act, 2013

Fact of the case:

The brief facts of the case are that Late Mr. Abhey Kumar Oswal, during his lifetime, held as many as 5,35,3,960 shares in M/s. Oswal Agro Mills Ltd., a listed company. He died on 29.3.2016. Mr. Abhey Kumar Oswal filed a nomination according to section 72 of the Companies Act, 2013 in favour of Mrs. Aruna Oswal, his wife. Two witnesses duly attested the nomination in the prescribed manner. The name of Mrs. Aruna Oswal, the appellant, was registered as a holder on 16.4.2016 as against the shares held by her deceased husband.

Pankaj Oswal (respondent no. 1), son of late Abhay Oswal filed a partition suit in High Court claiming entitlement to 1/4th of the estate of his father including the deceased's shareholdings. The High Court passed an interim order to maintain status quo concerning shares and other immoveable property.

While the suit was pending, respondent no.1 also moved the NCLT, Chandigarh, alleging 'oppression and mis-management' under Section 241/242 of the Companies Act, 2013 in the affairs of respondent no. 2 company. The appellant challenged the maintainability of the petition. The NCLT directed filing of reply to the petition, without deciding the question of maintainability.

This was challenged before NCLAT, which in turn directed the NCLT to decide the question of maintainability of the petition. The NCLT thereafter dismissed the challenge to maintainability and held that the respondent no.1, being a legal heir, was entitled to one-fourth of the property/shares. Therefore, the matter eventually reached the Supreme Court of India.

Judgement :

Supreme Court observed that the basis of the petition is the claim by way of inheritance of 1/4th shareholding so as to constitute 10% of the holding. This is the right, which cannot be decided in proceedings under Section 241/242 of the Companies Act, 2013. Thus, filing of the petition under sections 241 and 242 seeking waiver is a misconceived exercise as the, respondent no.1 has to firmly establish his right of inheritance before a civil court to the extent of the shares he is claiming; more so, in view of the nomination made as per the provisions contained in Section 71 of the Companies Act, 2013. In order to maintain the proceedings, the respondent should have waited for the decision of the right title and interest, in the civil suit concerning shares in question.

The orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed.

4.	**24.06.2020**	***The Registrar of Companies, West Bengal (Appellant)* vs. *Karan Kishore Samtani (Respondent)***	**NCLAT**

Violation of the provisions of maximum number of Directorships that can be held by a Director under the Companies Act, 2013 - Minimum Fine to be imposed

Fact of the case:

The respondent was the director, for more than 20 companies till 31.03.2015. The respondent tendered his resignation as the director of the Company M/s Fabius Properties Pvt. Ltd. The same was accepted by the Board of Directors of the Company on 29.12.2015. However, the intimation of his resignation was sent to the Registrar of Companies vide Form DIR-12 on 10.02.2016.

The respondent has violated the provisions under Section 165(1) read with Section 165(3) of the Companies Act, 2013 which is punishable under Section 165(6) of the Act, The NCLT, Kolkata bench has imposed compounding fees of Rs. 50,000/- which is less than minimum fees prescribed under Section 165(6) of the Companies Act, 2013. Being aggrieved with this order RoC has filed this Appeal.

Judgement:

The issue for consideration is, whether Tribunal can impose the compounding fees under Section 441 (1) of the Companies Act, 2013 less than minimum prescribed for the offence under Section 165 (1) read with Section 165(6) of the Companies Act, 2013.

The NCLAT held that the NCLT, Kolkata Bench has failed to notice the minimum fine prescribed under Sub-Section 6 of Section 165 of the Companies Act, 2013 which was applicable at relevant time.

The Respondent has contravened the provisions of 165(1) of the Companies Act, 2013 which is punishable under Sub-Section 6 of Section 165 of the Companies Act, 2013. Taking into consideration, the facts and circumstances of the case, NCLAT imposed minimum fine at the rate of five thousand rupees for every day for the period 01.04.2015 to 21.02.2016 i.e. 272 days. The NCLAT quantified the penalty amount to Rs. 13,60,000/-. The Respondent has already paid Rs. 50,000/- after adjustment, now he is liable to pay Rs. 13,10,000/-. Therefore, The Respondent is directed to pay such amount within a period of 60 days in National Company Law Tribunal, Kolkata.

5.	**11.06.2020**	***Arti Meenakshi Muthiah (Appellant)* vs. *MCTM Global Investments Pvt. Ltd. & Ors. (Respondents)***	**NCLAT**

Merely adding an additional signatory to a bank account cannot be claimed to be an act of Oppression

Fact of the case :

The brief facts of the case are that the 1st respondent company is a closely held family company. The company was incorporated by Mr. M. Ct. Muthiah in 1988 and the shareholding was equally held by the Mr. M. Ct Muthiah and his wife, 2nd respondent. Mr. M. Ct Muthiah died in September, 2006 and his shareholding in 1st respondent was equally divided into his legal heirs.

The appellant (original petitioner) had filed a Company Petition before the Company Law Board, Chennai against the respondents under Section 397 and 398 read with Section 402 of the Companies Act, 1956/2013 alleging oppression and mismanagement by the respondents and after establishment of NCLT the petition was transferred to NCLT, Chennai Bench.

After hearing the parties the NCLT Chennai dismissed the petition. Being aggrieved by the impugned order the appellant has filed the present appeal.

Judgement:

NCLAT held that every shareholder have a right to transfer his right after completing all the formalities, if otherwise the same are in order. NCLAT further observed that shares relating to the appellant are untouched and she continues to be 17% shareholder of 1st respondent. Further the shares have not been transferred to an outsider. Appellant failed to show any illegality in such transfer. Further, purchase of the property is a commercial decision which cannot be question as the same may either result in profit or loss and the commercial decision does not require any judicial interference.

Furthermore NCLAT opined that merely adding an additional signatory to a bank account cannot be claimed to be an act of oppression especially when the Appellant continues to be one of the signatories. Thus, no prima facie case is made out to isnterfere in the impugned order of NCLT, Chennai Bench and the appeal is dismissed.

6.	**04.06.2019**	***Hari Sankaran (Appellant*) vs. *Union of India & Ors. (Respondents)***	**Supreme Court of India**

NCLAT order of allowing re-opening of books and re-casting of financial statements of IL&FS is valid

Fact of the case:

This appeal was filed by Infrastructure Leasing & Financial Services Limited (referred to as 'IL & FS') before the Supreme Court of India against the order dated 31.01.2019 passed by the

NCLAT, Vide the said order the Appellate Tribunal has dismissed the appeal preferred by the appellant and has confirmed the order passed by the NCLT, Mumbai Bench dated 01.01.2019 by which the NCLT allowed the application preferred by the Central Government under Section 130(1) & (2) of the Companies Act, 2013 and has permitted recasting and re- opening of the accounts of IL&FS, IL&FS Financial Services Limited ("IFIN") and IL&FS Transportation Networks Limited ("ITNL") for the last five years.

Judgement :

The Supreme Court of India inter-alia observed that the NCLT may, under Section 130 of the Companies Act, 2013, pass an order of reopening of accounts if it is of opinion that (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period casting a doubt on the reliability of the financial statements. Thus, the Tribunal would be justified in passing the order under Section 130 of the Companies Act, 2013 upon fulfilment of either of the said two conditions.

In view of the above referred legal position in addition to the reports of SFIO & ICAI, the specific observations made by the NCLT while passing the order under Section 241/242 of the Companies Act, 2013 and considering the fact that the Central Government has entrusted the investigation of the affairs of the company to SFIO in exercise of powers under Section 242 of the Companies Act, it cannot be said that the conditions precedent while invoking the powers under Section 130 of the Act are not satisfied.

The Supreme Court of India upheld the order passed by NCLAT & NCLT under Section 130 of the Companies Act, 2013 for reopening of the books of accounts and re-casting the financial statements of the Infrastructure Leasing & Financial Services Limited; IL&FS Financial Services Limited and IL&FS Transportation Networks Limited for the last five years, viz. from Financial Year 2012-13 to the Financial Year 2017-18 in larger public interest and dismissed the appeal.

7.	**07.05.2019**	***CADS Software India Pvt. Ltd. and Ors. (Appellants)* vs. *K.K. Jagadish & Ors., (Respondents)***	**NCLAT**

Removal of director due to loss of confidence as argued by the appellant does not appear in the Companies Act, 2013 and Managing Director is eligible for compensation

Fact of the case :

The 1st respondent was functioning as Managing Director of the company since 17.04.1996 and was not appointed for a fixed tenure. first respondent was removed from the company. Upon removal as Managing Director, first respondent is entitled to compensation for loss of office as per Section 202 of the Companies Act, 2013. The arguments advanced by the appellant company that 1st respondent was removed due to loss of confidence was not legally entitled to any compensation for the loss of office as Managing Director in the absence of any breach by the 1st appellant and in the absence of any fixed period of appointment as Managing Director.

Judgement :

NCLAT held that loss of confidence as argued by the appellant does not appear in the Companies Act and accordingly, the NCLT, Chennai bench has rightly given his findings and

arrived at to give compensation of Rs.105 lakhs (Rs.35 lakhs p.a. for three years) together with interest @ 10% from the date of removal of the 1st Respondent as Managing Director plus other benefits as already offered, till the date of payment by the company/other respondents.

8.	**19.09.2018**	***M/s Ind-Swift Limited (Appellant*) vs. *Registrar of Companies (Respondent)***	**NCLAT**

Repayment of Deposits accepted before Commencement of the Companies Act, 2013

Fact of the case:

Appellant is a public limited company, it had accepted deposits since 2002 and regularly paid back till 28th February, 2013. In 2013, it started facing liquidity problems and incurred losses.

The appellant company filed application before CLB and obtained relief under Section 58AA read with Section 58A (9) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, appellant sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi bench under Section 74 of the Companies Act, 2013. NCLT rejected the application. This appeal is against rejection of the application/s.

Judgement :

The NCLAT observed that the NCLT considered that the appellant had at the time of first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the company, further extension was not justified.

Section 76(2) read with Sections 73 and 74 of Companies Act, 2013 would apply to acceptance of deposits from public by eligible companies but it saves the company which had accepted or invited public deposits under the relevant provisions of erstwhile Companies Act, 1956 and Rules there under and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of Section 74 of the Companies Act, 2013 shall be deemed to have been complied with. This is, however, subject to the fact that the company complies with the requirements under the Act and the Rules and "continues to repay such deposits and interest due thereon on due dates for the remaining period" as per the terms and conditions.

Considering these provisions, it appears that Section 74(1)(b) of the Companies Act, 2013 was attracted as it appears from record that the appellant has defaulted in payment.

Thus, when once a scheme had been got settled, from CLB, default on the part of the appellant would attract penal provisions as the earlier scheme itself laid down. Hence, present appeal for further extension is dismissed.

9.	**23.05.2018**	***Karn Gupta (Petitioner) vs. Union of India & Anr. (Respondents)***	**Delhi High Court**

The petitioner has resigned from the directorship of the company in question. The petitioner would not incur a disqualification under Section 164 of the Companies Act, 2013

Fact of the case :

The writ petitioner complains that he had been appointed as a director in a company registered under the name of Eternal Wellness Centre Pvt. Ltd. on 11th July, 2012. From where he resigned on 5th December, 2012. The company failed to submit Form 32 regarding his resignation in accordance with the provisions of the erstwhile Companies Act, 1956 with the Registrar of Companies.

On 6th of September, 2017 and 12th September, 2017 MCA notified a list of directors who have been disqualified under Section 164(2) (a) of the Companies Act, 2013 as directors with effect from 1st November, 2016. Petitioners name features in this list, irrespective of his resignation. As a result, the Petitioner stands prohibited from being appointed or re-appointed as a director in any other company for a period of five years.

Judgement :

The court held that the petitioner has resigned from the directorship of the company in question, the petitioner would not incur a disqualification under Section 164 of the Companies Act, 2013. Consequently, the disqualification of the petitioner as notified in the lists by the respondent no.1 was incorrect and illegal.

The disqualification of the petitioner as notified in the impugned list as disqualification of the petitioner as a director of the company and the resultant prohibition under Section 164(2)(a) of the Companies Act, 2013 by virtue of the petitioner's name featuring in the list dated 6th and 12th September, 2017 is hereby set aside and quashed. The Registrar of Companies is directed to ensure that its records are properly rectified to delete the name of the petitioner from the lists.

10.	**01.03.2017**	***Rishima SA Investments LLC (Petitioner) vs. Registrar of Companies, West Bengal & Ors. (Respondents)***	**Calcutta High Court**

A person other than member or creditor can also challenge the 'Striking' off the Company Name

Fact of the case :

The petitioner assails a decision of the Registrar of Companies, West Bengal striking off the name of Rama Inn (International) Private Limited from the Register maintained in respect of companies. The petitioner is neither a member nor a creditor or the company itself to apply

under Section 560(6) of the erstwhile Companies Act, 1956 for recall of the order of the Registrar.

Petitioner submits that, the provisions of Section 248 of the Companies Act, 2013 have been notified subsequent to the filing of the writ petition. Therefore, the petitioner did not approach the National Company Law Tribunal under the Companies Act, 2013.

The pleadings and the contentions of the rival parties give rise to the following issues:-

1. Is a person, not being a member or a creditor or the company itself, entitled to challenge the striking off of the name of the company under Section 560 of the erstwhile Companies Act, 1956?
2. Does the petitioner have the locus standi to file and maintain the present writ petition?

Judgement :

The court held that though the petitioner is not the company nor its member or creditor & it is not the person named in Section 560(6) of the erstwhile Companies Act, 1956. It does not have the statutory right to apply under Section 560(6) of the erstwhile Companies Act, 1956 but there is a remedy for every violation of a right. The petitioner claims violation of its rights by the impugned decision of the Registrar of Companies. It cannot be said that, the petitioners does not have any forum before which it can ventilate its grievances or seek redressal with regard to the impugned decision of the Registrar of companies. The constitutional right to approach a Court Article 226 of the Constitution of India, cannot be taken away by statute. Such a person can approach a regular Civil Court or apply under Article 226 of the Constitution of India for redressal of his grievances in respect of a decision of the Registrar of Companies striking off the name of a company.

SECURITIES LAW

1.	**07.07.2020**	***M/s Sungold Capital Limited* vs. *SEBI***	**Whole Time Member, Securities and Exchange Board of India**

One of the principles underlying under SAST Regulations is exit opportunity to the public shareholders of the Target Company at the best price and accordingly, the provisions of SAST Regulations deals with offer price, which in an open offer highest of the prices of shares of the Target Company derived through various methods

Facts of the case:

The respective acquirers/PAC's after acquiring shares/voting rights of Sungold Capital Limited ("Target Company") beyond the threshold of initial/creeping acquisition have failed to make an open offer in terms of Regulation 10 and 11(1) of SAST Regulations, 1997, on, April 1, 2007 and September 14, 2007, respectively. As per Regulation 21(19) of SAST Regulations, 1997, the acquirer and the PAC's were jointly and severally liable for discharge of obligations under SAST Regulations, 1997.

SAST Regulations, 1997 has been repealed by Regulation 35(1) of SAST Regulations, 2011 and has been replaced by SAST Regulations, 2011. ***Regulation 35(2)(b) of SAST Regulations, 2011, provides that all obligations incurred under the SAST Regulations, 1997, including the obligation to make an open offer, shall remain unaffected as if the repealed regulations has never been repealed.***

Therefore, the obligations to make open offer, incurred by the acquirers/PAC's under SAST Regulations, 1997, are saved and can be enforced against them by virtue of Regulation 35 of SAST Regulations, 2011.

Order:

SEBI directed acquirers/PAC's of the target company to make a public announcement of a combined open offer for acquiring shares of Sungold Capital Ltd., under Regulation 10 and 11(1) of the SAST Regulations, 1997, within a period of 45 days from the date when this order comes into force, in accordance with SAST Regulations, 1997. The acquirers/PAC's shall along with the offer price, pay interest at the rate of 10% per annum for delay in making of open offer, for the period starting from the date when the Noticees incurred the liability to make the public announcement and till the date of payment of consideration, to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

2.	**06.07.2020**	***Amalendu Mukherjee (Noticee) in the matter of Ricoh India Limited* vs. *SEBI***	**Whole Time Member, Securities and Exchange Board of India**

The practice of insider trading is intended to be prohibited in order to sustain the investors' confidence in the integrity of the security market

Facts of the case :

The Noticee, Amalendu Mukhergee, traded through the account of Fourth Dimension Solutions Limited ("FDSL") in the scrip of Ricoh India Limited ("Ricoh") while in possession of UPSI during the period of UPSI. Noticee traded through the account of FDSL from August 14, 2014 to November 17, 2015. While trading so, the Noticee made a wrongful gain of Rs.1,13,56,118/- in the account of FDSL. Similarly, the Noticee wrongfully avoided a loss of Rs.1,16,77,892/- in the account of FDSL.

The Noticee is the Managing Director and Promoter, having shareholding of 73.23% in FDSL and control over its financials and operations. In view of,

a. improper conduct of insider trading

b. the fraud of manipulation of accounts of Ricoh with the involvement of FDSL and its Managing Director i.e, the Noticee, and

c. being the ultimate beneficiary as controlling promoter and dominant shareholder of FDSL.

d. for the protection of interest of investors relating to Ricoh, the corporate veil of FDSL requires to be lifted in the present facts and circumstances of the case.

As the corporate veil was lifted, the Noticee was also liable for the above discussed insider trading and its consequences. Therefore, Noticee was also individually liable for an amount of INR2,30,34,010/-and interest there on.

Order:

SEBI directed Fourth Dimension Solutions Limited (FDSL) Managing Director Amalendu Mukherjee to disgorge an amount worth over Rs. 2,30,34,010/- for insider trading in the scrip of Ricoh India Ltd. The amount has to be paid along with 12 per cent interest within 45 days. In addition, Amalendu Mukherjee has been restrained from accessing securities markets for a period of seven years.

3.	**01.07.2020**	***Vishal Vijay Shah (Noticee) in the matter of Maharashtra Polybutenes Limited* vs. *SEBI***	**Whole Time Member, Securities and Exchange Board of India**

The objective of opening and maintaining a separate account for the clients' securities is to segregate and identify them separately and to prevent its use by the Stock Broker for any purpose. The debiting of any client's account for transactions which are not related to that client defeats the very purpose of maintaining client's account separately

Facts of the case :

In the facts of the instant proceedings, it is observed that the Vishal Vijay Shah ("Noticee"), a registered Stock Broker had received funds in the client and settlement bank accounts from third parties in cash and had made payments to third parties on behalf of clients. It is further observed that the Noticee had also made withdrawal of cash from the client bank accounts.

Under the SEBI Circulars, a responsibility has been cast on the Stock Broker to ensure that payments are received directly from the respective clients and not from third parties. Accordingly, the Noticee should have taken expedient steps to ensure that funds received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party monetary amounts were received. However, there is nothing on record to suggest that such steps were indeed taken.

Further, the Noticee in its submissions has itself admitted to having carried out such irregular practices. The aforementioned conduct of the Noticee clearly demonstrates that it failed to maintain fairness in the conduct of its business, exercise due skill and care and comply with the statutory requirements. Thus, in addition to the violation of the SEBI Circulars the Noticee has also violated the provisions of Clauses A(1), (2) & (5) of the Code of Conduct as specified under Schedule II read with Regulation 9(f) of the Stock Brokers Regulations.

The BSE had earlier conducted inspection of the Noticee and upon a consideration of the BSE Inspection Reports in light of the Inspection Report, it is observed that the violations committed by the Noticee in the instant proceedings are repetitive in nature. Further, it is a well settled position of law that SEBI may initiate multiple proceedings for the same set of violations.

Order:

The Noticee had violated the aforementioned provisions of the Stock Brokers Regulations and aforementioned SEBI Circulars. Having regard to the facts and circumstances of the instant proceedings, SEBI accept the recommendation of the Designated Authority that the Certificate of Registration of the Noticee be suspended for a period of one year.

4.	**25.06.2020**	***M/s Beckons Industries Limited (Noticee)* vs. *SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

It is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision

Facts of the case:

In this case, it is established that Beckons Industries Limited ("Noticee") by employing fraudulent arrangement with regard to subscription of GDRs had acted in a manner which is fraudulent and deceptive, thereby detrimental to the interest of investors in the Indian securities market. The Noticee defrauded the Indian investors by entering Pledge Agreement with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of Beckons by deliberately making false/misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at Beckon's disposal when in fact GDR issuance, was just a facade to create underlying equity shares without receipt of consideration. It is particularly evident from the established facts that the entire proceedings of GDR which was transferred in the EURAM's account of Noticee served as collateral to the loan taken by Vintage FZE ("Vintage") in subscribing GDR and such amount was ultimately transferred to the Noticee's Indian Bank

Account, only as and when Vintage repaid the loan to EURAM. Thus, the manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. Therefore, SEBI found it appropriate to impose suitable penalty on the Noticee.

It is established that Beckons had deliberately and actively concealed the true and material facts and made false and misleading disclosures and also made misrepresentation of facts to the stock exchange and investors in its shares. Such acts on the part of the Listed Company cannot be viewed leniently.

Order:

SEBI imposed monetary penalty of Rs. 10,00,00,000/- on Beckons Industries Limited under 15HA of the SEBI Act alleging that the company issued the GDRs in a fraudulent way by way of credit agreement and account charge agreement, which was not disclosed to the stock exchanges and also made misleading disclosure to the stock exchanges that "it had successfully closed its Global Depository Receipts issue" and thereby violated the provisions of section 12A (a), (b) and (c) of SEBI Act read with Regulation 3 (a) (b) (c) (d), 4 (1), 4 (2) (f) (k) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

5.	**30.06.2020**	***Gurmeet Singh ("Noticee-1"), I.S. Sukhija ("Noticee-2") and H. S. Anand ("Noticee-3") in the matter of Beckons Industries Limited* vs. *SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

A basic premise that underlies the integrity of the securities market is that entities connected with the securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities

Facts of the case:

In this case, it is established that Mr. Gurmeet Singh ("Noticee-1") and Mr. I.S. Sukhija ("Noticee-2") by employing fraudulent arrangement with regard to subscription of GDRs had acted in a manner which is fraudulent and deceptive, thereby detrimental to the interest of investors in the Indian securities market. The Noticees actively played a role in defrauding the Indian investors by entering Pledge Agreement with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of Beckons Industries Limited ("Beckons") by deliberately making false/misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at

Beckon's disposal when in fact GDR issuance, was just a facade to create underlying equity shares without receipt of consideration. It is particularly evident from the established facts that the entire proceedings of GDR which was transferred in the EURAM's account of Beckons served as a collateral to the loan taken by Vintage FZE ("Vintage") in subscribing GDR and such amount was ultimately transferred to the Beckons' Indian Bank Account, only as and when Vintage repaid the loan to EURAM. Thus, the manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. Therefore, SEBI found it appropriate to impose suitable penalty.

Order:

In view of the above, it was alleged that the Noticees violated the provisions of section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 read with regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

In this regard, SEBI imposed monetary penalty of Rs. 1 crore on Mr. Gurmeet Singh and Rs. 20 lakh on Mr. I.S. Sukhija, directors of Beckons Industries Limited for employed fraudulent arrangement with regard to subscription of GDRs and had acted in a manner which was fraudulent and deceptive, thereby detrimental to the interest of investor.

6.	**22.06.2020**	***M/s Ashlar Commodities Private Limited (Noticee)* vs. *SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice

Facts of the case:

Ashlar Commodities Private Limited ('Noticee") was indulged in execution of alleged non genuine trades. It was observed from the trade log of the Noticee that it had traded in 530 unique contracts in the Stock Options segment of BSE during the relevant period, in which it has allegedly entered into non genuine trades in 528 contracts wherein it executed a total of 1154 trades out of which 1151 trades were allegedly non genuine trades which had resulted into creation of artificial volume of total 2,87,13,000 units in the given 528 contracts. It is further observed that the Noticee, by executing non genuine trades during the relevant period, registered a positive close out difference of Rs. 8,06,09,700. The trades entered by the Noticee were reversed on the same day within few minutes with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades were artificial and non-genuine in nature.

Order:

Taking into consideration all the facts and circumstances of the case, SEBI imposed monetary penalty of Rs. 84 lakh on Ashlar Commodities Private Limited under section 15HA of the SEBI Act for market abuse and fraudulent practices considering the fact that the trades of the company in 528 stock option contracts which resulted into artificial volume in range of 1% to 100%, generated out of the 528 non-genuine trades of the company and such trades had created a misleading appearance of trading in the scrip.

7.	**16.07.2020**	***B Renganathan ('Noticee') in the matter of Edelweiss Financial Services Ltd.* vs. *SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

Compliance officers are expected to discharge a responsible role in the corporate functioning. The standards of good compliance aid and build up good corporate governance to add value and confidence to the market and its investors

Facts of the case:

SEBI, upon receipt of examination report from National Stock Exchange (NSE), conducted investigation in the dealings in the scrip of Edelweiss Financial Services Ltd. ('EFSL'/'Company') to examine the violation, if any, of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations, 2015') for the period of January 25, 2017 to April 05, 2017 ('Investigation Period'/'IP').

The Company is listed on NSE and Bombay Stock Exchange (BSE). It is observed that Mr. B Renganathan ('Noticee') was the compliance officer and Company Secretary of EFSL during IP. During the course of investigation, it was observed by SEBI that Ecap Equities Limited ('Ecap'), a wholly owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Private Limited ('AIMIN'), a fintech company, on April 05, 2017 by entering into a share purchase agreement (SPA). The same was disclosed by EFSL to NSE and BSE on the same day. Further, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on January 25, 2017. Therefore, it was alleged that the acquisition of AIMIN by Ecap was a price sensitive information which had come into existence on January 25, 2017 upon signing of Term Sheet. Despite that, the Noticee, being the compliance officer of the company, failed to close the trading window during the period of January 25, 2017 to April 05, 2017. By his failure to close the trading window during this period, it is alleged that the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders mentioned in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. In view of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the 'SEBI Act'.

Order:

Adjudicating Officer, SEBI found non-compliance on the part of the Noticee by failing to close trading windows when necessary as per law. Therefore, there were repeated instances wherein the Noticee had failed to close the trading window. In view of the above the argument of the

Noticee that there was no repetition of violation is not acceptable. Adjudicating Officer's considered view that a repetitive violation, in disregard to the applicable provisions of law, cannot be construed to be a technical violation.

After taking into consideration the facts and circumstances of the case, material/facts on record, the reply submitted by the Noticee, Adjudicating Officer imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order.

8.	**08.07.2020**	***ICICI Bank Limited (Appellant)* vs. *SEBI (Respondents)***	**Securities Appellate Tribunal**

Undue delay in initiating the proceedings by the SEBI by itself causes prejudice and would ultimately attach a stigma pursuant to any adverse order that may be passed

Facts of the case:

This appeal has been preferred aggrieved by the order of the Adjudicating Officer of SEBI dated September 12, 2019. By the said order a penalty of Rs. 5 lakh each has been imposed on the appellant for violation of Clause 36 of the Equity Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 and Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

The question raised in this appeal is, whether the information relating to signing of a Binding Implementation Agreement on May 18, 2010 by an Authorized Executive Director of the appellant with the dominant Shareholders of the Bank of Rajasthan was liable to be disclosed on an immediate basis under Clause 36 of the Listing Agreement and Regulation 12(2) of the PIT Regulations, 1992.

Order:

Therefore, SAT was of the considered view that issuance of a penalty order against the appellant in September, 2019 for certain disclosure violations in mid-May 2010 by issuing a show cause notice on June 26, 2018 has caused prejudice to the appellant and the order suffers from laches. After all the charge against the appellant is one trading day's delay in disclosure, but the delay on the part of SEBI to show cause is 2955 days from the date of the event and about 2130 days from the date of the preliminary investigation report, which is too wide a gap to be ignored.

Though there are laches, that by itself in the peculiar circumstances of the case, will not vitiate the proceedings but definitely the penalty amount of Rs. 10 lakh imposed on the appellant cannot be sustained and deserves to be substituted by a lesser penalty. In the result, while upholding the impugned order on merits, SAT modify the penalty imposed on the appellant to only a warning which will meet the ends of justice in the given facts and circumstances of the matter. Appeal is thereby partly allowed.

9.	01.07.2020	*India Ratings and Research Private Ltd. (Appellant)* vs. *SEBI (Respondent)*	Securities Appellate Tribunal

SEBI can call for and examine records of any proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After making inquiry, SEBI may enhance the quantum of penalty imposed, if the circumstances of the case so justify

Facts of the case:

The Adjudicating Officer by the impugned order dated 26th December, 2019 has imposed a penalty of Rs.25 lakhs upon the Appellant for violating the Code of Conduct to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 while granting credit rating to IL&FS for the financial year 2018-19.

SEBI issued a second show cause notice dated 28th January, 2020 by exercising powers under Section 15-I(3) of the SEBI Act directing the Appellant to show cause as to why penalty should not be enhanced as in their opinion the order of the Adjudicating Officer was not in the interest of the securities market.

"Under Section 15-I (3), the SEBI can call for and examine records of proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After examining the matter, the SEBI can enhance the quantum of penalty imposed."

Misc. Application no.159 of 2020 has been filed in Appeal no.103 of 2020 praying that proceedings initiated by SEBI pursuant to the second show cause notice dated 28th January, 2020 issued under Section 15-I(3) of the SEBI Act, should be stayed.

Order:

SEBI has the power to initiate proceedings under Section 15-I (3) of the SEBI Act. SAT directed the Appellant to deposit a sum of Rs.25 lakhs pursuant to the impugned order dated 26th December, 2019 before the Respondent within four weeks which would be subject to the result of the appeal. SAT further directed that the proceedings in pursuance to the second show cause notice dated 28th January, 2020 will continue and the Respondent will pass appropriate orders after giving an opportunity of hearing to the Appellant either through physical hearing or through video conferencing but any order that is passed by the Respondent shall not be given effect to during the pendency of this appeal. Misc. Application is accordingly disposed of.

10.	27.06.2020	*Dr. Udayant Malhoutra (Appellant)* **vs.** *SEBI (Respondent)*	**Securities Appellate Tribunal**

There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters.

Facts of the case:

The present appeal has been filed against an ex-parte order dated June 15, 2020 passed by the Whole Time Member ('WTM') of SEBI directing the appellant to deposit a sum of Rs. 2,66,59,215/-plus interest till date totaling Rs.3,83,16,230.73 in an Escrow Account towards notional loss allegedly avoided by him by using unpublished price sensitive information and further directed that the bank accounts / demat accounts of the appellant shall remain frozen till such time the amount is not deposited. The WTM further directed the appellant to show cause as to why an order of disgorgement should not be passed.

The facts leading to the filing of the present appeal is, that the appellant is the Chief Executive Officer and Managing Director of a listed company known as Dynamatic Technologies Limited ('DTL') which is engaged in the manufacturing of aerospace, automotive and engineered products. The appellant has been the Managing Director since 1989. The charge leveled against the appellant is, that he had sold 51,000 shares of the company DTL on October 24, 2016 having inside knowledge of the price sensitive information, namely, the unaudited financial results of the quarter ending September 30, 2016. It was alleged that the financial results were approved by the Board of Directors on November 11, 2016 whereupon the price of the scrips of the company drastically went down. It was alleged that the appellant had inside information of the price sensitive information and, being a connected person had sold the shares and thus made a notional gain or averted a notional loss.

Order:

In the instant case, SAT do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 without considering the balance of convenience or irreparable injury. In the light of the aforesaid, the impugned order cannot be sustained and the same is quashed at the admission stage itself without calling for a counter affidavit except the show cause notice. The appeal is allowed.

DIRECT TAX

1.	**23.03.2020**	**Suo Motu Writ Petition (Civil) No(s).3/2020**	**Supreme Court**

Supreme Court indefinitely extends limitation period for filing appeals

Facts of the case :

This Court has taken *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

Order / Judgement:

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/ Tribunals within their respective jurisdiction.

2.	**06.05.2011**	***Sapient Corporation (P) Ltd. (Appellant) vs. Dy. CIT (Respondents)***	**Delhi Tribunal**

Whether the company showing super profits will be excluded while taking out the list of comparables?

Facts of the case:

The assessee claimed that its international transactions of software development was at arm's length under Transaction Net Margin Method 'TNMM' on the basis that its average operating profit ratio was higher than that of 10 comparable companies. The Transfer Pricing Officer & Dispute Resolution Panel rejected a few comparables on the ground that they were loss-making and recomputed the average operating profit ratio of the other comparables at a higher

rate. Before the Tribunal, the assessee claimed that if loss making companies were excluded, a super profit earning company should also be removed from the comparables.

Order / Judgement :

When loss making companies have been taken out from the list of comparables by the TPO, Zenith Infotech Ltd. which showed super profits should also be excluded. The fact that assessee has himself included in the list of comparables initially, cannot act as estoppel, particularly in light of the fact that the Assessing Officer had only chosen the companies which are showing profits and had rejected the other companies which showed loss.

3.	**23.02.2011**	***Dy. CIT (Appellant)* vs. *Tata Sons Ltd. (Respondents)***	**Mumbai Tribunal**

Whether the State taxes be allowed as a deduction and also be taken into account for giving credit under section 91 of the Income tax Act, 1961?

Fact of the case :

In respect of AY 2000-01, the assessee earned profits on export of software which was eligible for deduction u/s 80HHE. The assessee paid foreign income-taxes of Rs. 60 crores on the said profits in respect of which the assessee claimed tax credit u/s 90 & 91. The assessee also claimed that it was eligible for a deduction u/s 37(1) in respect of the said foreign income-taxes. While the AO allowed tax credit, he denied deduction u/s 37(1) on the ground that the said payment of foreign taxes was an "application of income" and that it was hit by section 40(a)(ii) of the Income Tax Act, 1961.

Order / Judgement :

The view that State taxes cannot be allowed as a deduction and also cannot be taken into account for giving credit is incongruous and results in a contradiction. While section 91 allows credit for Federal & State Taxes, the DTAA allows credit only for Federal Taxes. The result is that the section 91 is more beneficial to the assessee & by virtue of section 90(2) it must prevail over the DTAA. Though section 91 applies only to a case where there is no DTAA, a literal interpretation will result in a situation where an assessee will be worse off as a result of the provisions of the DTAA which is not permissible under the Act. Section 91 must consequently be treated as general in application and must prevail where the DTAA is not more beneficial to the assessee. Accordingly, even an assessee covered by the scope of the DTAA will be eligible for credit of State taxes under section 91 despite the DTAA not providing for the same.

4.	**10.05.2013**	***CIT (Appellant)* vs. *Samara India (P) Ltd. (Respondents)***	**Delhi High Court**

Whether writing of bad debts in accounts sufficient to claim deduction u/s 36(1)(vii) of the Income tax Act, 1961?

Fact of the case :

Assessee, a private limited company, is engaged in the business of dealing and servicing motor vehicles and had taken certain property on lease from three landowners for a period of three years renewable for two further periods of 3 years each. The property consisted of a plot of land whereupon the lessors were required to build a warehouse cum workshop and hand over the same to the assessee. In this regard, the assessee advanced certain sums to the lessors which were liable to be adjusted against monthly rent. The monthly rent for the property in question was agreed at Rs. 32,400/- and the assessee was entitled to adjust a sum of Rs. 17,400/- per month from the advance paid by the assessee to the lessors. In addition to the advance paid by the assessee to the lessors, the assessee also incurred substantial expenditure on the development and interiors of the property. However, the workshop was demolished by the DDA on 01.06.2000 as the land which was subject matter of the lease agreement, in fact, belonged to the DDA and not the lessors.

The assessee, thereafter, filed a suit in HC being suit titled as *Samara India Pvt. Ltd.* v. *UOI & Ors.*: CS(OS) No.2467/2001. The said suit was still pending before HC for recovery of the sums advanced by the assesse to the lessors and the amount expended by the assesse on development and interiors of the property. Assessee had written off a sum of Rs. 64,60,707/- as irrecoverable in the previous year, which was an aggregate of two components, namely, advance rent of Rs. 33,82,289/- paid by the assessee to the lessors and Rs. 30,78,418/- spent by the assessee on the property. During assessment, AO had disallowed such write offs on the basis that the amount represented capital expenditure. It was relevant to state that the genuineness of the expenditure was not doubted by the AO and it had disallowed the amount written off on the ground that the amount incurred by the assesse was on development and improvement of the leasehold property and was of an enduring nature and thus could not be considered as revenue expenditure. The AO held that in view of the explanation to Section 32(1), capital expenditure incurred by an assessee in respect of a building not owned by him, was required to be treated in the same manner as if the expenditure had been incurred on a building owned by the assessee.

Order / Judgement :

The Delhi High Court has held, following the decision of Supreme Court in *T.R.F. Ltd.* vs. *CIT* (2010), that for an assessee to claim deduction in relation to bad debts it is, now, no longer necessary to establish that debt had become irrecoverable and it is sufficient if assessee forms such an opinion and writes off debt as irrecoverable in its accounts. The Supreme Court has held that after 1.4.1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

5.	**28.05.2004**	***Addl. CIT (Appellant)* vs. *Vestas RRB India Ltd. (Respondents)***	**Delhi Tribunal**

Whether the expenditure in food and beverages of employees is excluded u/s 37(2A) of the Income tax Act, 1961?

Fact of the case :

The Company had incurred an expenditure on food and beverages of employees while discharging their duty to entertain customers of their company and claimed the deduction of the expenses incurred as such. The revenue challenges the deduction of 25% allowed from entertainment expenditure amounting to Rs. 7,79,073/- on account of participation of staff members.

Order / Judgement :

It was held that while discharging of their official duty, the employees of a company had their food along with the company's customers in a hotel. They take food while at work because it is their duty to entertain the customers of the company. Therefore, any expenditure incurred on the food and beverages of the employees without discharging their duty to entertain the customers of the company is to be excluded from the purview of Section 37(2A) of the Act.

6.	**27.05.2011**	***ACIT (Appellant)* vs. *National Stock Exchange of India Ltd. (Respondents)***	**Mumbai Tribunal**

Building – Partly used for the purpose of business – Depreciation

Fact of the case:

Assessee has installed VSAT network after obtaining a license from Department of Tele Communication (DTC for short) to operate a closed user group VSAT network for the purpose of enabling screen basis trading in the capital market throughout the country. The DTC has given license and assessee was to act as a main hirer of the network and the approved user and broker could be termed as subsidiary user of the network. The assessee being the main hirer was supposed to fulfill all the obligations and formalities including payment of rental, license fees, installation fees and all other dues for all the circuit equipment and components of this network. This network was approved to be run at no profit no loss basis. The network mainly consisted of Hub Equipment which is located in the premises of the assessee and VSAT antenna and coding equipment was located in the member's premises. On the basis of this position, AO concluded that VSAT network was being used by the members for the purpose of conducting their business and, therefore, this network was not exclusively used for the purpose of business of the assessee. Therefore, assessee was asked to explain as to why the claim of depreciation should not be restricted in view of the provisions of section 38 of the Income tax Act, 1961. The assessee filed detailed submissions. After examination of this explanation, AO observed that the equipment was being used by the members also and though assessee was recovering cost including the depreciation cost, but the same could not be termed as charging of rent from the

members because assessee, in any case, was not allowed to charge any rate in terms of the license issued by the DTC. Since assessee was not charging any rental from the broker as the assessee was debarred from making any profit from this venture, this activity of operation of VSAT communication network could not be treated as part of the business activity. On the basis of these observations, AO estimated that 40% of such network could be said to have been used for the assessee's business because a transaction could not be executed without such equipment. Accordingly, AO disallowed 60% of the depreciation on this equipment.

Order / Judgement:

Assessee installed hub in its own premises of assessee and VSAT antenna and monitors were installed at premises of member brokers. Assessee was collecting only usage charges from members. Assessee claimed depreciation on said equipment. Assessing Officer held that VSAT network was being used by members for purpose of conducting their business, therefore by invoking provisions of section 38(2) he estimated that 40% of such network could be said to have been used for the assessee's business and he disallowed 60% of depreciation. The Tribunal held that installation of system was expedient for carrying on business of assessee and full depreciation was to be allowed.

7.	**24.10.2011**	***CIT (Appellant)* vs. *Namdhari Seeds (P) Ltd. (Respondents)***	**Karnataka High Court**

Whether income arising to assessee by sale of hybrid seeds could be treated as agricultural income for purpose of exemption under section 10(1) of the Income Tax Act, 1961?

Fact of the case :

The assessee firm is a producer and exporter of vegetable seeds, fruit seeds, flower seeds and fresh vegetables. The assessee filed its return of income on 29.8.2003 declaring an income of Rs.22,32,814/- after claiming deduction u/s 80HHC at Rs.7,92,073/- and exemption u/s 10(1) at Rs.2,61,66,179. The case of the assessee for the concerned assessment year was selected for scrutiny and order u/s 143(3) rws 148 of the Act was passed on 31.12.2008. The AO, in the scrutiny assessment, made the additions of Rs. 2,61,66,179 with respect to Agricultural income treated as income from business.

Order / Judgement:

Irrespective of nature of produce or product of land, whatever is grown on land with assistance of human labour and effort and whatever does not grow wild or spontaneously on soil without human labour and effort would be an agricultural product and process of producing it would be 'agriculture' within the meaning of expression in section 2(IA), therefore seeds are agricultural product and sale of seeds can be agricultural income. However, where the assessee company was interested only to have healthy foundation seeds grown for process of converting same as certified seeds, income arising to assessee by sale of hybrid seeds could not be treated

as agricultural income for purpose of exemption under section 10(1) of the Income Tax Act, 1961.

8.	**09.03.2011**	***ITO (Appellant)* vs. *TCFC Finance Ltd. (Respondents)***	**Mumbai Tribunal**

Whether provision for diminution in value of any assets has to be added for computing book profit, regardless of fact whether or not there is any balance value of asset?

Fact of the case:

The taxpayer had made investment in unquoted shares of RFB Latex Limited. RFB Latex Limited discontinued its operation therefore the taxpayer estimating the amount was irrecoverable wrote off the Rs. 12.5 million as 'provision for diminution in value of investment'. The Assessing Officer (AO) held that provision made was diminution in the value of shares and therefore was required to be added to book profit under Section 11 5JB of the Income Tax Act, 1961

Order / Judgement:

Reflection of amount of provision for diminution in value of investment separately on liability side of balance sheet or by way of reduction from figure of investment on asset side of balance sheet is totally alien for computing book profit and only requirement is that if any provision for diminution in value of any asset has been debited to profit and loss account same will automatically stand added to amount of net profit for working out book profit. Therefore, once provision is made for diminution in value of any asset, same has to be added for computing book profit, regardless of fact whether or not there is any balance value of asset.

9.	**21.09.2011**	***CIT (Appellant)* vs. *Dataware Pvt. Ltd. (Respondents)***	**Kolkata High Court**

Burden of proof - Assessee's AO cannot question Creditor's Income Tax Return

Fact of the case:

The assessee received share application money of Rs.1 crore from a company ('creditor') and submitted the creditor's confirmation letter, details of the transaction, PAN etc to the AO. The AO made enquiries from the creditor who confirmed the transaction. However, the AO, instead of making enquiry from the creditor's AO as to whether the creditor's return had been accepted, *arrived at the finding after looking at the creditor's P&L A/c that the procurement of money by the creditor was not genuine* and added the amount to the assessee's income.

Order / Judgement :

If the creditor discloses his PAN and claims to be an assessee, the Assessing Officer cannot himself examine the return and P&L A/c. of the creditor and brand the same as unworthy of credence. Instead, he should enquire from the creditor's Assessing Officer as to the genuineness of the transaction and whether such transaction has been accepted by the creditor's Assessing

Officer. So long it is not established that the return submitted by the creditor has been rejected by the creditor's Assessing Officer, the assessee's Assessing Officer is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

10.	**20.03.2003**	***Vijay Ship Breaking Corpn. (Appellant)* vs. *Dy. CIT (Respondents)***	**Rajkot Tribunal**

The usance interest paid by the assessee apart from the purchase price of the ship fall within the scope of definition of term 'interest' under section 2(28A) of the Income Tax Act, 1961 and partakes the character of purchase price and, therefore, not liable to deduction at source under section 195(1) of the Act

Fact of the case :

The assessee-firm was engaged in the business of ship-breaking at Alang Port during the previous year relevant to the assessment year 1995-96. Old and condemned ships were acquired by the assessees for demolishing purpose. The two ships which were purchased by the assessee for breaking purposes were MV Krasnozarodsk and M.V. Global Hope. Krasnozarodsk was purchased by the assessee from M/s Electra Maritime (Jersey) Ltd., London, under Memorandum of Agreement (hereinafter referred to as MOA), dated 15.3.1993, for a total purchase price of the ship which was agreed at US $ 9,01,252.98 calculated at the rate of US $ 184.5 per long ton of LDT. It appears that the ship was manufactured in 1965 in Finland. In the MOA, credit for 180 days usance period from the date of physical delivery of the vessel at safe anchorage Alang was agreed and rate of interest was flat at 6% per annum. The other vessel M.V. Global Hope was purchased by the assessee from M/s Neter Navigator, Singapore, under MOA, dated 14.7.1994, for the total purchase price which was agreed at US $ 30,69,416.5 calculated at the rate of US $ 166.06 per long ton. The ship appears to have been manufactured in U.K. in 1969. Interest was stipulated to be paid at 7.25% from the date of notice of release for 180 days of usance period worked out on the purchase price of the ship. In both the cases the amounts were to be paid by means of irrevocable 180 days usance Letter of Credit (L.C.) as in all other cases.

During the course of scrutiny proceedings, the assessing officer observed that, as per the terms of the MOA, the assessee was making interest payment to the non-resident parties on account of credit facility availed by it for the purchase of the ships without deduction of tax at source and therefore the assessing officer disallowed by invoking the provision of section 40(a)(i) of the Income Tax Act, 1961.

Order / Judgement:

Definition of the term "interest" as given in the DTAA is a narrower definition than that given in section 2(28A) of the Income tax Act, and the provisions of DTAA prevail upon the provisions of the Act. As per the definition of the term" interest" given in the DTAA, the interest amount specified in the MOA partakes the character of purchase price and does not fall within the definition of the term "interest" given in the DTAA. Therefore, interest amount specified in the

MOA was a part of purchase price and therefore, the assessee was not liable to deduct tax at source on interest under section 195(1) of the Income Tax Act, 1961. Therefore, disallowance of the interest amount specified in the MOA was not called for under section 40(a)(i) of the Income Tax Act, 1961.

Source:

1. Digest of Case Laws Direct Taxes : http://aiftponline.org

INDIRECT TAX

1.	**29.06.2020**	**In Re Swayam**	**West Bengal Authority of Advanced Ruling**

Charitable trust facilitating Legal Aid, Medical Assistance and Vocational Training to Women and their Children Surviving Violence does not amount to 'Supply' of Service under GST

Facts of the case :

The Applicant M/s Swayam was a Charitable Trust registered under Section 12A of Income Tax Act, 1961. It facilitated Legal Aid, Medical Assistance and Vocational Training to Women Survivors and their Children who had faced violence and hardships in their life.

Judgment :

West Bengal AAR held that M/s Swayam did not charge any consideration for facilitating the legal aid and other assistance. Such activities of the applicant, therefore, does not result in 'supply' of service as defined under section 7 (1) of the GST Act. Hence, they are not liable to pay GST.

2.	**29.06.2020**	**In Re Leprosy Mission Trust India**	**West Bengal Authority of Advanced Ruling**

Imparting vocational training recognized by Government of India makes an entity eligible for exemption under GST

Facts of the case:

The applicant is registered under section 12A of the Income Tax Act 1961. It is a Non-Governmental Organization (NGO), which, among others, administers a Vocational Training Institute at Bankura named Bill Edgar Memorial Vocational Training Centre (BEMVT) primarily for skill development of the underprivileged suffering from leprosy.

Clause h(ii) of the Exemption from Notification 12/2017 – Central Tax (Rate) dated 28/06/2017 defines an 'approved vocational course' as a modular employable skill course, approved by National Council for Vocational Training (NCVT) and run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

BEMVT is registered with DGET and its courses on formal trade skills of diesel mechanic, welder and sewing technology, are approved by NCVT. Imparting education is a part of approved vocational education courses.

Judgment :

The applicant's services to the students, faculty and staff with respect to the skill development courses for diesel mechanic, welder and sewing technology are exempt under Entry 66 (a)

of Notification 12/2017 – Central Tax (Rate) dated 28/06/2017, as amended time to time. Exemptions under entry 64 or 71 of the above notification are not applicable.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act, 2017.

3.	**11.06.2020**	***Sri Hanumanthappa Pathrera Lakshmana (Appellant)* vs. *State of Karnataka (Respondent)***	**Karnataka High Court**

An anticipatory bail is sought by Appellant against an alleged offence punishable under Section 132 of CGST Act i.e. wrongful availment of ITC. Summons under Section 70 of CGST Act, 2017 are issued for him to appear before the officer

Facts of the case :

The Appellant filed the petition under Section 438 of the Code of Criminal Procedure, 1973 for granting anticipatory bail. He is the proprietor of M/s. Sri Om Traders, registered dealer under the provisions of the CGST Act and the SGST at Shivamogga, dealing in both ferrous and non-ferrous scrap. During his regular course of business, he had purchased goods from various registered and unregistered dealers and issued tax invoices as per law. He had collected the taxes and remitted to the Government as per the CGST and the SGST Act.

The respondent had issued a summon to appear before an Officer and prior to that on the same day, the respondent had conducted an inspection of the business premises and drawn a mahazar. Another notice issued by the respondent to appear before K. Venumadhava Reddy. The Appellant was ready to appear before the respondent and co-operate with the investigation. However, the respondent had already collected all the documents and completed their investigation and the petitioner has apprehended his arrest in the hands of the respondent for the offense punishable under Section 132(5) of the CGST Act.

Judgment :

The High Court of Karnataka granted the anticipatory bail to the petitioner alleged to have involved in fraudulent availment of Input Tax Credit (ITC) on the basis of invoices without actual supply of goods in contravention of Section 16 of the CGST Act and caused loss to the exchequer for Rs.9.05 crore approximately.

As per Section 69(1) of CGST Act, if the Commissioner feels there is a reason to believe that a person has committed an offence u/s 132 of the Act, he may order arrest of such person. In such an eventuality a petition u/s 438 of Criminal Procedure Code is maintainable for offence committed under the CGST Act and there is no statutory bar for invoking power u/s 438 of Criminal Procedure Code for the offence committed under CGST Act.

Also, on merits of the case, it is observed that the preliminary investigation is complete and they found that fake ITC taken by the petitioner is said to be taken by creating fake invoices. Hence the petitioner suspects that on appearing before officer, he might be taken to judicial custody. There is no bar in CGST Act for granting anticipatory bail and no prejudice would be cause to respondent by granting him anticipatory bail. Therefore, anticipatory bail is granted subject to furnishing of surety and executing a personal bond.

4.	**4.05.2020**	**In Re Anil Kumar Agrawal**	**Karnataka Authority of Advanced Ruling**

Incomes to be considered in Aggregate Turnover for GST Registration and GST on Salary of a Executive Director

Facts of the case :

The Applicant Mr. Anil Kumar Agarwal was an unregistered person who filed an application for Advance ruling under Section 97 of the CGST Act. He was receiving income from various sources like Salary as a Director from private company, Salary as partner from partnership firm, Income from renting of residential property, Interest on Loans, advances, post office savings, debentures and many more. The Question involved in this case was that which are the income which are to be included in Aggregate Turnover for registration.

Judgment :

Authority for Advanced Ruling Karnataka held that the incomes received from salary/remuneration as a Non-executive Director of a private limited company, renting of commercial property and renting of residential property and the values of amounts extended as deposits/ loans/ advances out of which interest is being received are to be included in the Aggregate Turnover for registration. The income received from the renting of residential property is also to be included in the aggregate turnover, though it is an exempted supply. It was also held that No GST is to be charged on Director's Remuneration of an Executive Director.

5.	**24.04.2020**	**In Re Rajesh Rama Varma**	**Tamilnadu Authority of Advanced Ruling(AAR)**

Is GST applicable to IT software related consulting services in Oracle ERP?

Facts of the case :

The applicant, Rajesh Rama Varma provided IT software related consulting services in the area of Oracle ERP with relation to Oracle Financials to Doyen for a consultancy fee laid down in the consultancy agreement. As part of the Contract, his role was that of a Consultant to provide support services to the Oracle ERP owned by the US client based out of Boston. The original contract was between the Principal and the US client and a part of the service was contracted to him.

Judgment :

The Tamil Nadu Authority of Advance Ruling (AAR) ruled that GST is applicable to IT software related consulting services in Oracle ERP. The Consultancy activity satisfies the conditions of Section 7(1)(a) and is a supply under GST. As per Para 5 of Schedule II read with Section 7(1A), this supply is a supply of services. Therefore, the applicant is liable to pay GST at appropriate rates on the supply of consultancy services to Doyen. In respect of the questions whether, such

supply of services is 'export of services'. 'zero-rated supply' and eligibility of refund, this authority' cannot answer the questions as they are not covered in Section 97(2) of the CGST/TNGST Act.

6.	**19.03.2020**	**In Re Sadguru Seva Paridhan Pvt. Ltd**	**GST AAAR West Bangal**

Fusible interlining cloth is not a woven fabric, 12% GST applicable

Facts of the case :

The product manufactured by the appellant is fusible interlining cloth. Before 1989, the item used to be classified under Chapters 52 to 55, as clarified under Circular No. 5/89 dated 15/06/1989. In the Union Budget of 1989-90, a new chapter note 2(c) was introduced in Chapter 59 of the Tariff, which led to inclusion of textile fabrics, partially or discretely coated with plastic by dot printing process under heading 5903. Subsequently, in the Union Budget of 1995, the said chapter note 2(c) was omitted with effect from 16/03/1995. It is the claim of the appellant that after removal of the said chapter note, the item cannot be classified under Heading 5903.

Judgment :

The Appellate Authority of Advance Ruling (AAAR), West Bengal ruled that fusible interlining cloth is not a woven fabric and falls under HSN 5903, so 12% Goods and Service Tax (GST) is applicable.

7.	**11.03.2020**	**In Re Jay Jalaram Enterprises**	**Gujarat Authority of Advanced Ruling (AAR)**

GST Rate on Popcorn

Facts of the case:

The applicant claimed that its products fell under 'Entry 50, tariff item 1005 of Schedule 1 of Notification 1/ 2017'. To translate it into GST classification terms: 'It was maize (corn) put up in a unit container and bearing a registered brand name'. Thus, the GST should be 5%, it stated. It submitted to the AAR that the Supreme Court, in another judgment, had held 'Atukulu', or parched rice, to be the same as 'Muramaralu', or puffed rice. The same logic should also extend to its product — which was nothing but puffed corn.

However, given the process of manufacture involved, which entailed heating of corn kernels, and later addition of oil and seasonings, the AAR held that the product "does not remain grain".

Judgment:

The Gujarat Authority of Advance Ruling (AAR) ruled that product namely J.J.'s Popcorn of M/s Jay Jalaram Enterprises manufactured from raw corn/maize grains, by heating turn into puffed corns/popcorns. Further other ingredients like salt and turmeric powder along with oil added to make them palatable. There is no separate heading is given for puffed popcorn but puffed

popcorn fits in the description of 'Prepared foods obtained by the roasting of cereal'. Hence the said product falls under entry at Sr. No. 15 of Schedule III of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST.

8.	**12.03.2020**	**In re Portescap India Private Limited**	**Maharashtra Authority of Advanced Ruling (AAR)**

Whether recipient of Services can apply for Advance Ruling under GST?

Facts of the case:

This application was filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 by the applicant, seeking an advance ruling in respect of the following question:

1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?
2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?
3. If answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to he paid under which tax head i.e., IGST or CGST and SGST'?

Judgment:

AAR Authority made it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purpose of this Advance Ruling, the expression `GST Act' would mean CGST Act and MGST Act.

Section 95 of the CGST Act, 2017 allows AAR authority to decide the matter in respect of supply of goods or services or both, undertaken or proposed to be undertaken by the applicant.

In this case the applicant has not undertaken the supply in the subject case. The applicant is a recipient of services pertaining to renting of immovable property in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence, Recipient of Services cannot apply for Advance Ruling under GST.

9.	10.03.2020	*Audco India Limited (Appellant)* vs. *Commercial Tax Officer (Respondent)*	Madras High Court

Best Judgement Assessment on debatable issue ?

Facts of the case:

The Appellant, Mr. K. A. Parthasarathi was engaged in the export and received the cash incentives from the export. The assessing officer has made a demand and penalty invoking Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 on the grounds that cash incentives received from the export are attracted additional tax and the same was not paid by the Appellant.

Consequently, the Appellant filed the writ petition and contended that the assessing authority imposed an additional tax on the sales made by the Appellant, which were not supported by the declaration in 'C' Forms and secondly on the Cash Incentives received by the Appellant on the Exports made by it was held to be part of taxable turnover, which was not so. According to the appellant, the imposition of additional tax, however, has not been done as a result of 'Best Judgment Assessment' under Section 12(2) of the TNGST Act, upon which only the penalty under Section 12(3)(b) of the Act is attracted.

Judgment:

The High Court of Madras held that the Assessing Officer cannot pass the best judgment assessment on the ground of best judgment assessment and the penalty under Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. It was held that the additional tax cannot be imposed on case incentives on exports and no penalty is applicable under Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

10.	03.03.2020	*Union of India (Appellant)* vs. *LC Infra Projects (P.) Ltd. (Respondent)*	Karnataka High Court

GST Interest Recovery and Attachment of Bank Account can't be done without Notice

Facts of the case:

LC Infra Projects (P.) Ltd. contended that No Show Cause Notice has been received by him as contemplated under Section 73 of CGST Act before attaching his bank Account and GST Interest Recovery. The Appellant said that it was not necessary to issue a show cause notice to the respondent-assessee as the demand was only as regards to payment of interest under Sub Section (1) of Section 50 of the GST Act. His second submission is that as the demand was not for a tax and only for interest, a notice under Sub Section (1) of Section 73 of the GST Act was not all necessary. He submitted that as a consequence of failure to pay interest, consequential action of attachment of the bank account has been taken.

Judgment:

Before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the CGST Act. Consequence of demanding interest and non-payment thereof is very drastic.The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.Before recovery interest payable in accordance with Section 50 of the CGST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal was accordingly dismissed. Interim applications do not survive.

Further, HC make it clear that as far as the main demand for interest has been set aside, the order of attachment, also will have to be set aside.

Labour Laws

1.	**29.01.2020**	***State of M.P. and Ors. (Appellant)* vs. *M. P. Transport Workers Federation (Respondent)***	**Supreme Court**

It was really not possible to sustain the impugned order which was accordingly set aside and the provisions of Madhya Pradesh Labour Laws (Amendment) & Misc. Provisions Act, 2002 were upheld

Facts of the case :

In this matter, the Respondents assail provisions of the Madhya Pradesh Labour Laws (Amendment) and Misc. Provisions Act, 2002 as ultra vires provisions of Article 14 of Constitution. The Labour Bar Association, Satna and M.P. Transport Workers Federation sought to assail the provisions of the Madhya Pradesh Labour Laws (Amendment) and Misc. Provisions Act, 2002 (for short 'the Amendment') enforced by Notification dated 5.8.2005 as ultra vires the provisions of Article 14 of the Constitution. The history to the dispute is that the power to try offences under labour laws were conferred on the Labour Courts vide Madhya Pradesh Amendment Act No.43 of 1981, as against the regular criminal Courts. That process was sought to be Signature Not Verified Digitally signed by reversed by the Amendment which was assailed.

Judgement :

It is held in this matter that while allowing the appeal: (i) The cases which ought to have been tried by the regular criminal Courts were sought to be transferred to the Labour Courts by the Amendment of 1981 and only that process was sought to be reversed by the impugned Amendment of 2002. Thus, in the wisdom of the Legislature, the process would be better served by maintaining the regular criminal Courts as a forum for adjudication of such disputes which have a criminal aspect, relating to the identical labour law statutes. It was not the function of this Court to test the wisdom of the Legislature and substitute its mind with the same. It was for the Legislature to weigh this aspect as to what would be the appropriate method for providing expeditious justice to the common man an aspect which would be common both to the wisdom of the Legislature and of the judiciary. (ii) The process as evolved shows that the system, as it was, working in the criminal Courts for the last more than a decade and no grievance had been made about the same. The absence of any representation on behalf of the Respondent(s) further gives credence to this reasoning. (iii) It was really not possible to sustain the impugned order which was accordingly set aside and the provisions of Madhya Pradesh Labour Laws (Amendment) & Misc. Provisions Act, 2002 were upheld.

2.	**19.05.2020**	***The Workmen through the Convener FCI Labour Federation (Appellant) vs. Ravuthar Dawood Naseem (Respondent)***	**Supreme Court**

In contempt proceedings where two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. Element of willingness is an indispensable requirement to bring home the charge of contempt within the meaning of Act

Facts of the case :

In the instant matter, a contempt petition was filed alleging non-compliance of an order instructing the respondent to regularize and departmentalise certain workers who had been working as daily rated or casual labour. The matter in question was whether action of the management of Food Corporation of India (Corporation), in denying regularizing contract laborers justified or amounts to Contempt of Court?

Judgement :

The Honorable Court held, while dismissing the Petitions: (i) There was no specific direction given to the Corporation to regularise the concerned workmen only in a specific department. No contempt action could thus be initiated on the basis of general direction to regularize and departmentalize the concerned workmen under specific department. The Instant matter was not a moonshine defence and no case for initiating contempt action against the Corporation made out. (ii) Exercise of contempt jurisdiction is a powerful weapon in the hands of Courts of law, which operates as a string of caution and unless satisfied beyond reasonable doubt, it would neither be fair nor reasonable for Courts to exercise jurisdiction under the Act. These proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. Imposing sentence in exercise of contempt jurisdiction on mere probabilities is dangerous. (iii) To punishing a contemnor, it has to be established that disobedience of the order is "wilful". Word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. It means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions but has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Although, if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. (iv) In contempt proceedings where two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. Element of willingness is an indispensable requirement to bring home the charge of contempt within the meaning of Act. (v) To constitute civil contempt, it must be established that disobedience of the order is wilful, deliberate and with full knowledge of consequences flowing therefrom.

3.	**07.02.2020**	***Oil and Natural Gas Corporation (Appellant)* vs. *Krishan Gopal and Ors. (Respondent)***	**Supreme Court**

Industrial Tribunal had the jurisdiction to adjudicate upon the dispute and had rightly passed an award directing regularisation of the services of the workmen

Facts of the case :

This batch of appeals arises from the judgments of the High Courts of Andhra Pradesh, Delhi, Madras and Uttarakhand. A judgment of a two judge Bench of this Court in *Oil and Natural Gas Corporation Limited* vs. *Petroleum Coal Labour Union ("PCLU")* has assumed focus since the decisions of the High Courts in four of the present appeals have relied on the judgment of this Court in coming to the conclusion that the workmen were entitled to regularisation in service. In one of the five appeals, however where the prayer for regularisation was rejected, the decision in PCLU has been distinguished. Hence on either end of the spectrum, the judgment in PCLU has a significant bearing on the outcome of the appeals.

In this appeal, one of the issues was: "Whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the workmen concerned in the posts is valid and legal?" Answering the above issue, the Supreme Court held that (i) All the workmen (except for one) possessed the qualifications required for regularization; and (ii) The workmen had been employed prior to 1985 in posts through irregular means.

Judgement :

Accordingly, the Court held that the Industrial Tribunal had the jurisdiction to adjudicate upon the dispute and had rightly passed an award directing regularization of the services of the workmen.

4.	**07.02.2020**	***Oil and Natural Gas Corporation (Appellant)* vs. *Krishan Gopal and Ors. (Respondent)***	**Supreme Court**

Corporation is bound by law to take its decision to regularise the services of the workmen concerned as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year

Fact of the case :

The second issue in this matter was the same which was dealt with in the judgment in PCLU was: "Whether the appointment of the workmen concerned in the services of the Corporation is irregular or illegal?"

On behalf of the Management, it was urged that the initial selection of the workmen was not in accordance with the recruitment rules and was illegal in view of the judgment of the Constitution Bench in Umadevi. This plea was rejected, following the decision in *Ajaypal Singh*

vs. *Haryana Warehousing Corporation* and it was held that the management could not deny the rights of the workmen by contending that their initial employment was contrary to Articles 14 and 16 of the Constitution.

The provisions contained in clause 2(ii) of the Certified Standing Orders for contingent employees of ONGC were in issue, the management contending that there was no right of regularisation merely on the completion of 240 days in twelve consecutive months.

Judgement :

The Court further held that the legal contention urged on behalf of the Corporation that the statutory right claimed by the workmen concerned under Clause 2(ii) of the Certified Standing Orders of the Corporation for regularizing them in their posts as regular employees after rendering 240 days of service in a calendar is not an absolute right conferred upon them and their right is only to consider their claim. This plea of the learned Senior Counsel cannot again be accepted by us for the reason that the Corporation is bound by law to take its decision to regularise the services of the workmen concerned as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year as they have acquired valid statutory right.

5.	**15.01.2020**	***Rajneesh Khajuria (Appellant) vs. Wockhardt Ltd. and Ors. (Respondent)***	**Supreme Court**

The Industrial Court will not have jurisdiction to examine the question of termination as a consequence of the order of transfer

Fact of the case :

Brief facts leading to the present appeal are that the employee was appointed on 6th June, 1985 as a Professional Service Representative and was posted at Sagar, Madhya Pradesh. Thereafter, he was promoted to Field Sales Officer Grade FM-One. One of the conditions in the letter of appointment was that the employer shall be entitled, at any time during the course of employment, to transfer the employee to any of its affiliates, subsidiaries or sister companies. The employee was transferred to Mumbai on 21st March, 2005 with immediate effect. The employee did not join duty at Mumbai; therefore, reminders were sent by the employer on 1st April, 2005 and 8th April, 2005. The service of the employee was terminated on 15th April, 2005.

The employee along with National Federation of Sales Representatives' Union3 filed a complaint on 30th April, 2005 before the Industrial Court, Maharashtra established under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The allegation of the employee is that he had reasonable and bona fide apprehension that the employer, after filing of the present complaint, was going to take adverse actions such as mala fide transfers, suspension, disciplinary actions, summary terminations etc.

Judgement :

The Challenge in present appeal was to an order passed by High Court holding that, transfer of Appellant was as per terms and conditions of employment and it was held that, employer had to decide who should work at particular place and who was to be transferred to another place in interest of establishment. The Court deliberated the matter as jurisdiction of the Industrial Court is, to decide complaints relating to unfair labour practices except unfair labour practices falling under Item 1 of Schedule IV. The unfair labour practices mentioned in Item 1 of Schedule IV fall within the jurisdiction of the Labour Court. In view of the specific provision that the complaint relating to unfair labour practices described in Item 1 of Schedule IV fall within the jurisdiction of the Labour Court, therefore, the Industrial Court will not have jurisdiction to examine the question of termination as a consequence of the order of transfer. Since the statute creates a forum for redressal of grievances in respect of termination of services, it is the said forum alone which can be invoked for redressal of grievances. The jurisdiction of a forum can be invoked only in accordance with the statutory provisions. Therefore, alleging termination as a consequence of non-joining on the transferred post will not confer jurisdiction on the Industrial Court. The dispute regarding termination as act of victimization falls exclusively within the jurisdiction of the Labour Court. Consequently, Appellant has not made out any case for interference against an order passed by the High Court in the present appeal. Therefore, the Labour Court alone was competent to decide the issue of alleged un-lawful termination of the Appellant. There is no merit in the present appeal. Accordingly, the appeal is dismissed.

BANKING LAWS

1.	**10.01.2020**	***Anuradha Bhasin and Ors. (Petitioner)* vs. *Union of India (UOI) and Ors. (Respondent)***	**Supreme Court**

Journalists are to be accommodated in reporting and there is no justification for allowing a sword of Damocles to hang over the press indefinitely

Facts of the case :

The issue starts with the security advisory issued by the Civil Secretariat, Home Department, Government of Jammu and Kashmir stating to cut short their stay and make their safe arrangements to go back. Subsequently, educational institutions and offices were also shut down until further orders. On August 4, 2019 internet services, mobile connectivity and landline were shut down until further orders.

On August 5, 2019, the Constitutional Order No. 272 was passed by the President of India applying all provisions of the Constitution of India to Jammu and Kashmir and stripped it from special status enjoyed since 1954. On the same day, due to prevailing circumstances, the District Magistrate passed the order restricting the movement and public gathering, apprehending breach of peace and tranquility under Section 144 of CrPC. Due to this, journalist movements were restricted and this was challenged under Article 19 of the Constitution which guarantees freedom of speech and expression and freedom to carry any trade or occupation.

In this context, in the Supreme Court, legality of internet shutdown and movement restrictions are challenged under Article 32 of the Constitution.

Judgement :

In it was observed that widening of the 'Chilling Effect Doctrine' has always been viewed with judicial scepticism. In this context, one possible test of chilling effect is comparative harm. In this framework, the Court is required to see whether the impugned restrictions, due to their broad-based nature, have had a restrictive effect on similarly placed individuals during the period.

It is the contention of the Petitioner that she was not able to publish her newspaper from 06-08-2019 to 11-10-2019. However, no evidence was put forth to establish that such other individuals were also restricted in publishing newspapers in the area. Without such evidence having been placed on record, it would be impossible to distinguish a legitimate claim of chilling effect from a mere emotive argument for a self-serving purpose.

Journalists are to be accommodated in reporting and there is no justification for allowing a sword of Damocles to hang over the press indefinitely.

2.	**13.01.2020**	***Vicky (Appellant)* vs. *State (Govt . of NCT of Delhi) (Respondent)***	**Supreme Court**

The substantive sentences in first two groups and that in respect of the case in the third group would run consecutively

Facts of the case :

The Honorable court has referred the case of V.K. Bansal, wherein the appellant-accused was facing fifteen cases and the Supreme Court has grouped fifteen cases into three different groups:- (i) the first having twelve cases relating to advancement of 8 loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant thereon as Director; (ii) the second having two cases relating to advancement of loan to the appellant M/s Arawali Alloys Ltd. acting through the appellant as its Director; and (iii) the third having a single case qua the criminal complaint by the State Bank of Patiala.

Judgement :

The Court directed that the substantive sentences within first two groups would run inter-se concurrently. The Supreme Court directed that the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively.

3.	**10.02.2020**	***Rajeshbhai Muljibhai Patel (Petitioner) and Ors* vs. *State of Gujarat and Ors. (Respondent)***	**Supreme Court**

Court had the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc.

Facts of the case :

Appellant No.1-Rajeshbhai Muljibhai Patel is the real brother of Yogeshbhai Muljibhai Patel who is the accused in C.C.No.367/2016 filed under Section 138 of N.I. Act by appellant No.3-Hashmukhbhai Ravjibhai Patel. Both appellant No.1- Rajeshbhai and his brother Yogeshbhai are stated to be residents of United Kingdom. In this appeal, appellant No.1-Rajeshbhai is represented through his Power of Attorney holder-appellant No.2- Vipulkumar Hasmukhbhai Patel. Respondent-Yogeshbhai is represented through his Power of Attorney holder-another respondent-Mahendrakumar Javaharbhai Patel.

The Validity of - Sections 114, 406, 420, 465, 467, 468 and 471 of Indian Penal Code, 1860 and Sections 138 and 139 of Negotiable Instruments Act, 1881 was in question.

Hence, present appeal - Whether High Court erred in quash criminal case against Accused under Section 138 of Act and declining to quash FIR against Appellants under Sections 114, 406, 420, 465, 467, 468 and 471 of Code.

Judgement :

Supreme Court held, while allowing the appeals that though, the Court had the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation,

etc. Criminal complaint filed under Section 138 of the N.I. Act against accused ought not to have been quashed merely on the ground that there are inter se dispute between Appellant No. 3 and Respondent No. 2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, committed a serious error in quashing the criminal complaint filed under Section 138 of N.I. Act.

4.	**28.02.2020**	***Canara Bank (Appellant)* vs. *P. Selathal and Ors. (Respondents)***	**High Court**

On vague averments, Plaintiffs could not get out of the law of limitation. Suits being vexatious and frivolous, the plaints are required to be rejected in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure (the code)

Facts of the case :

That as the original borrower failed to repay the loan amount due to the appellant bank, the appellant bank filed O.A. No. 489 of 2001 before the Debt Recovery Tribunal, Chennai in the month of October, 1997 against the principal borrower, its partners as well as against the Guarantor. That on 31.10.2001, DRT, Chennai passed an order in O.A. No. 489/2001 to proceed exparte against the Guarantor. That O.A. No. 489/2001 was transferred to DRT, Coimbatore and was renumbered as T.A. No. 822/2002. That T.A. No. 822/2002 (previously O.A. No. 489/2001) filed by the appellant bank came to be decreed by the DRT for Rs.57,35,770/ with 18% interest per annum in favour of the appellant bank and against the principal borrower as well as Guarantor. That a Recovery Certificate dated 16.09.2003 was issued in favour of the appellant bank for a sum of Rs.57,35,770/ with 18% interest per annum.

In present appeal was pertaining to whether suits filed by Plaintiffs were liable to be rejected in exercise of powers under Order 7 Rule 11(d) of Code.

Judgement :

Considering the law laid down by this Court in the aforesaid decisions, more particularly in the case of T. Arivandandam, the suits being vexatious and frivolous, the plaints are required to be rejected in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure. In T. Arivandandam, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order 7 Rule 11(a).

Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, Plaintiffs could not get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation.

Thus, on this ground also, the plaints were liable to be rejected. The plaints were vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this was a fit case to exercise the powers under Order 7 Rule 11(d) of the Code of Civil Procedure. Both the courts had materially erred in not rejecting the plaints in exercise of powers under Order 7

Rule 11(d) of the Code of Civil Procedure. Both the courts below had materially erred in not exercising the jurisdiction vested in them.

5.	**28.02.2020**	***Pareshbhai Amrutlal Patel and Ors. (Appellant) vs. The State of Gujarat and Ors. (Respondent)***	**Supreme Court**

Since the issue in both the cases revolves around the same cheque, therefore, instead of quashing the FIR, the ends of justice would meet if proceedings arising out of FIR were transferred to the Court of Judicial Magistrate

Facts of the case :

The stand of the appellants is that such cheque was given to them along with letter dated 25th November, 2002 in view of the fact that the Company had not issued shares for which the appellants had 3 for short, 'Code' contributed a sum of Rs.4,50,000/-. The cheque in question was issued since the shares could not be issued, therefore, cheque was issued payable after a long period.

Quashing of proceedings - Denial of - Sections 114, 120-B, 379, 406, 419, 420, 465, 467, 468 and 475 of Indian Penal Code, 1860 and Section 138 of the Negotiable Instrument Act, 1881 was in question.

Judgement :

Hence, in present appeal - Whether impugned proceedings initiated against Appellants liable to be quashed. It is held, while disposing off the appeal:

(i) The issue in both the complaints pertains to cheque which was said to be from the cheque book of the Company of which Respondent No. 2 was the officer.

(ii) Since the issue in both the cases revolves around the same cheque, therefore, instead of quashing the FIR, the ends of justice would meet if proceedings arising out of FIR were transferred to the Court of Judicial Magistrate, where the proceedings of other complaint under Section 138 of the NI Act were pending so that the complaint filed by the Appellants and the proceedings arising out of FIR alleged by Respondent No. 2 were decided together to avoid contradictory judgments and to facilitate the issues which were common in both.

6.	**03.03.2020**	***K. Virupaksha and Ors. (Appellant*) vs. *The State of Karnataka and Ors. (Respondent)***	**Supreme Court**

Criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the Investigating Officer or the criminal court would not be justified

Facts of the case :

The appellants herein had also referred to the provision as contained in Section 32 of the SARFAESI Act which provides for the immunity from prosecution since protection is provided thereunder for the action taken in good faith.

The learned senior counsel for the Complainant has in that regard referred to the decision of this Court in the case of General Officer Commanding, *Rashtriya Rifles vs. Central Bureau of Investigation & Anr. (2012) 6 SCC 228* to contend that the defence relating to good faith and public good are questions of fact and they are required to be proved by adducing evidence.

Judgement :

Though on the proposition of law as enunciated therein there could be no cavil, which aspect of the matter is also an aspect which can be examined in the proceedings provided under the SARFAESI Act, 2002. In a circumstance where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the Investigating Officer or the criminal court would not be justified.

7.	**19.03.2020**	***Shyam Sahni (*Appellant) vs. *Arjun Prakash and Ors. (*** **Respondent**)	**High Court**

To ensure further progress of the trial, the order of the learned Single Judge directing respondent No.1 to deposit his passport before the Court stands confirmed

Facts of the case :

The appellant filed a civil suit being CS (OS) No.1134 of 2008 before the High Court seeking declaration, permanent injunction and possession of the suit property being the first and second floor of the residential house constructed upon Plot No.68, Friends Colony (West), New Delhi. Alternatively, appellant has sought the partition of the suit property. Case of the appellant is that in 1954, Late Niamat Sahni acquired Plot No.68, Friends Colony (West), New Delhi, measuring 3000 sq. yards from Friends Colony Cooperative Housing Building Society Limited wherein, she constructed a main building having a ground floor and first floor. Niamat Sahni herself and with her son Shyam Sahni (appellant) and his family were residing in the ground floor. Soon after the demise of Niamat Sahni, the appellant came to know that Sarabjit Prakash and respondent No.1 have executed documents purporting to be sale deeds and other

documents in their favour or in favour of other persons qua first floor and second floor and terrace in the residential building constructed upon 68, Friends Colony (West) New Delhi belonging to mother of the appellant, the appellant has filed a civil suit seeking declaration, possession and permanent injunction and also for partition in CS (OS) No.1134 of 2008 which is pending at the stage of cross-examination of the defendants witnesses.

Judgement :

The impugned order of the Division Bench dated 01.08.2018 passed by the High Court of Delhi at New Delhi in FAO (OS) No.210 of 2017 is set aside and this appeal is allowed.

In order to ensure the presence of respondent No.1 and to ensure further progress of the trial, the order of the learned Single Judge directing respondent No.1 to deposit his passport before the Court stands confirmed.

The learned Single Judge is requested to take up the civil suit being CS (OS) No.1134 of 2008 and continue with the trial and dispose the same expeditiously preferably within a period of nine months.

8.	**16.10.1992**	***Ramachandra Ganpat Shinde (Appellant)* vs. *State of Maharashtra (Respondent)***	**Supreme Court**

"Respect for law is one of the cardinal principles for an effective operation of the constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law

Facts of the case :

Important twin questions of law, namely, whether the court while exercising its power under Article 226, could give direction contrary to the statutory mandate, if so whether such an order is liable to judicial review by an independent proceeding under Article 226 and if so under what circumstances and to what extent, arise for decision in this appeal. Shri Vithal Sakhar Sehakari Karkhana Ltd., Venu Nagar, Gurusale in Solapur Dist., the 4th respondent, for short "the society" is a specified Cooperative Society under the Maharashtra Cooperative Societies Act, 1960 (Act 21 of 1961) for short 'the Act'. Its term of office is 5 years. It was due to expire by December 3, 1991. The Dist. Collector, 2nd respondent is the competent authority under the Act to initiate election process in accordance with the Act and the Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971 for short, 'The Rules'. The Dist. Collector accordingly initiated the process pursuant to which the society submitted to the Collector on October 18, 1991 the List of Voters as on June 30, 1991. Thereon the Collector issued the following programme to finalise the list of voters. November 12, 1991 was fixed as the date to display on the notice board of the provisional voters list inviting claims or objections or suggestions for the inclusion or omission from the provisional list. November 20, 1991 was the last date to present such claims or objections to the Collector in terms of Rule 6(2) of the Rules. The Collector had to take a decision therein under Rule 6(4) on December 7, 1991 and the final list of the voters should be published under Rule 7 on December 17, 1991. In terms of the programme the provisional list was published on November 12, 1991 and after consideration of the objection or claims the final list was published on December 17, 1991.

Judgement :

Supreme Court in this matter observed and held as under:

The Change of Law Reform 1955" at pages 4 and 5, stated that "it is in the Courts and not in the legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their courts, their respect for law will survive the short comings of every other branch of the Government; but if they lost their respect for the work of the Courts, their respect for the law and order will vanish with it to the great detriment of society." (vide the Judicial Process by H.J. Abraham, p.3).

"Respect for law is one of the cardinal principles for an effective operation of the constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication - be it judicial, quasi-judicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law."

For an order obtained by abuse of the process of the court or by playing fraud or collusion, this Court should not countenance such an argument and should not allow such an order to remain operative for a moment. In our view, acceding to it would amount to putting a premium on fraud, collusion or abuse of the process of the court creating disbelief and disillusionment of the efficacy of judicial process and rule of law and a feeling would be generated that persons capable to manoeuvre and abuse the judicial process would reap the benefit thereof and get away with the orders. Every endeavor would be made to inculcate respect for fair judicial process and faith of the people in the efficacy of law.

9.	**11.10.2019**	***Tony Enterprises and Ors. (Appellant)* vs. *Reserve Bank of India and Ors. (Respondent)***	**Kerala High Court**

Money lost by loan account holders through online fraud can't be recovered by invoking powers under SARFAESI Act

Facts of the case :

W.P.(C).No.28823/2017 has been filed by Tony Enterprises and Tony Lites, a proprietary firm and a partnership firm respectively, both of which have a cash credit account at Chittoor Road branch of Oriental WPC 28823/2017 & 28824/2017 Bank of Commerce. The petitioners had also availed the online banking facility of the Bank, the alerts in respect of which would be sent and were linked to the mobile number of one Mr. Tony Davies, the sole proprietor of the first

petitioner and the Manager of the second petitioner. On 8th June, 2017, Mr. Tony Davies came to realize that a total amount of Rs. 16,25,000/- had been unauthorized transferred from the accounts of the petitioners by way of online transactions effected through the online banking app of the Bank. The registered mobile number of Mr. Tony Davies had become dysfunctional on 6 th June 2017 and he had approached the service provider, M/s. Idea Cellular on 7th June 2017 to enquire regarding the same. He was told by the representative of M/s. Idea Cellular that his number had become dysfunctional as a duplicate SIM card had been issued in respect of the number on 6th June 2017 upon the request of a person who had fraudulently represented himself as Mr. Tony Davies. Upon subsequent restoration of network services after re-issuance of a duplicate SIM, he realized that such amounts had been unduly transferred to several accounts from the bank accounts of the petitioners. WPC 28823/2017 & 28824/2017

Judgement :

In this matter, the High Court considered the issue whether the Bank can proceed against the borrower based on an assumed liability or not when there is a serious challenge to a banking transaction on the ground of fraud.

In Reference to a RBI circular, the Court stated that,

"The events referred therein are only illustration. It cannot be said the list as above is exhaustive. The circular proceeds based on assumed facts and circumstances. It refers to contributory fraud, negligence deficiency etc. It does not indicate about liability when there is a dispute to the events as above. In that background, the question also arises as to the remedy of the bank to recover the amount under the 'disputed transaction'"

The HC held that the money lost by loan account holders through online fraud can't be recovered by invoking powers under SARFAESI Act saying that,

"in cases that contain allegations of fraud, the matter goes out of bounds of the SARFAESI Act. The Bank, therefore, is liable to prove its claim against the persons who have committed fraud. The Bank in such cases cannot adjudicate their claim and decide against the borrower. The question, therefore, that arises is whether the Bank can proceed against the borrower based on an assumed liability or not when there is a serious challenge to a banking transaction on the ground of fraud."

INSURANCE LAWS

1.	**28.01.2020**	***Oriental India Insurance Company Limited (Appellant) vs J.K Cement Works (Respondent)***	**Supreme Court of India**

Damage caused by heavy rainfall would not fall beyond the 'flood and inundation' Clause of the Standard Fire and Special Perils insurance policies

Facts of the case :

The J.K Cement Works (Respondent) purchased a Standard Fire and Special Perils insurance policy from the Oriental India Insurance Company Limited (Appellant) herein for the stock of coal. Among other things, the policy covered damage caused by Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation. Due to heavy rains, some of the coal was washed off, and the stock of coal suffered damage. Consequently, the Respondent informed the Appellant of the damage and requested the appointment of a surveyor. The surveyor so appointed submitted its report assessing the loss caused to the Respondent. The Respondent informed the Appellant of the damage and requested the appointment of a surveyor. The surveyor so appointed submitted its report assessing the loss caused to the Respondent. The Appellant repudiated the Respondent's claim on the ground that the loss caused to it did not fall within the scope of the policy, having occurred due to heavy and extraordinary rain and not flood or inundation. Aggrieved by this repudiation, the Respondent filed a consumer complaint before the National Commission seeking compensation. The National Commission allowed the complaint to the extent of the loss assessed by the surveyor and directed the Appellant to pay Rs. 58,89,400/to the Respondent, along with interest @ 9% per annum from 01.06.2004 till the date of payment.

Judgement :

A flood may be described as overflow of water over land. Floods can be broadly divided into the following categories: coastal floods, fluvial floods (river floods), and pluvial floods (surface floods) Coastal floods occur when water from a sea or an ocean flows into nearby areas. They are caused either by extreme tidal activity (high tides) or by a storm surge - strong winds from a hurricane or other storms forcing the water onshore - or by the simultaneous occurrence of both these phenomena. Fluvial or river flood occurs when the water level exceeds the capacity of a river, stream, or lake, resulting in the overflow of the surplus water to surrounding banks and neighbouring land. They are usually caused by either excessive rainfall or unusually high melting of snow because of rising temperatures. Lastly, pluvial or surface floods refers to the accumulation of water in an area because of excessive rainfall. These floods occur independently of an overflowing water body. Pluvial floods include flash floods which take place due to intense, torrential rains over a short period of time. A pluvial flood may also occur if the area is surrounded by hilly regions from where the run-off water comes and accumulates in the low-lying area. In urban localities, because of concrete streets and dense construction, rainwater is unable to seep into the ground. Steady rainfall over a few days or torrential rains

for a short period of time may overwhelm the capacity of the drainage systems in place, leading to accumulation of water on the streets and nearby structures, and resulting in immense economic damage.

So far as the term 'inundation' is concerned, it can be used to refer to both the act of overflow of water over land that is normally dry and to the state of being inundated. Inundation can also be intentional, which is sometimes carried out for military purposes, as well as for agricultural and river-management purposes. In the latter sense, i.e. as a state of being, inundation refers to accumulation of water in which objects or land may be submerged. In simpler terms, inundation can be used to refer both the act of overflow of water as well as the result of such overflow.

The NCDRC in the following cases: (i) *Bajaj Allianz General Insurance Co. Ltd.* v. *M/s. Gondamal Hardyal Mal*, MANU/CF/0039/2009 : [2009] NCDRC 127, (ii) *Oriental Insurance Co. Ltd.* v. *M/s. Sathyanarayana Setty & Sons*, MANU/CF/0338/2012 : [2012] NCDRC 124, and (iii) *Oriental Insurance Co. Ltd.* v. *M/s. R.P. Bricks,* MANU/CF/0313/2013 : [2013] NCDRC 494, had held that damage caused by heavy rainfall would not fall beyond the 'flood and inundation' Clause of the Standard Fire and Special Perils insurance policies. This view has been consistently taken by the NCDRC. The view of the NCDRC supports the impugned judgment and the same cannot be said to be erroneous.

The appeal stands dismissed. The Appellant is directed to pay the sum awarded by the NCDRC within a period of eight weeks from the date of this order, to the Respondent.

2.	**04.03.2020**	***Nirmala Kothari (Appellant)* vs. *United India Insurance Co. Ltd. (Respondent) (Civil Appeal no. 1999-2000 of 2020)***	**The Supreme Court of India**

Liability of the Insurance company cannot be denied on the ground that the employer has not verified the driver licence from the RTO if the driver produces a licence to him which on the face of it looks genuine

Facts of the case :

Appellant/Complainant's husband was owner of a car which was insured with the Insurance Company. The said vehicle met with an accident with a tractor as a result of which the Appellant's husband, and his daughter died and the vehicle was damaged. The complaint had been filed by the same complainant against the Respondent/Insurance Company, requesting for compensation as accident claim with interest and compensation for mental agony and cost of litigation. The Respondent/Insurance Company repudiated the said claim also vide their letter on ground that the driver of the vehicle did not possess a valid and effective driving licence at the time of the accident in question. The consumer complaint was also allowed by the District Forum and the Respondent/Insurance Company was directed to pay an amount for personal accident claim along with interest per annum from the date of filing the complaint and the cost of litigation. Being aggrieved against the said order of the District Forum, the Respondent/Insurance Company challenged the same by way of appeal before the State Commission. The said appeal having been dismissed vide impugned order, the Respondent/Insurance Company came before the National Commission by way of the Revision

Petition. The National Commission absolved the Respondent/Insurance Company of its liability since no record of the licence of the Driver was found with the licencing authority.

Judgements:

It is held :

(i) While hiring a driver the employer was expected to verify if the driver had a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer was not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and had satisfied himself that the driver had a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company was able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

(ii) On facts, in the instant case, the Appellant/Complainant had employed the Driver, as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It was not the contention of the Respondent/Insurance Company that the Appellant/complainant was guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment was not liable to be sustained and was hereby set aside.

The appeal stands allowed. The Respondent/Insurance Company is held liable to indemnify *the Appellant.*

Source:

- Manupatra
- Advocatekhoj.com

CYBER LAWS

1.	**10.01.2013**	***Sanjay Kumar (Petitioner)* vs. *State of Haryana (Respondent)***	**Punjab-Haryana High Court**

All the sentences were ordered to run concurrently

Facts of the case :

Brief facts of the prosecution case are that the Branch Manager, Bank of Baroda, Faridabad moved a complaint dated 17.02.2003 before the Police stating that the petitioner was deputed by M/s Virmati Software and Telecommunication Ltd. to maintain the Software System supplied by them to the bank. He was also looking Software System of certain other banks. In connection with rendering such services, the petitioner was having access to their accounting system which was computerized and was also in a position to enter into ledgers and various other accounts. While condensing the files, certain discrepancies were pointed out by the officials of the bank and in that process, it was revealed that the accused-petitioner, who was having SB Account No. 16202 in his personal name in their bank, manipulated the entries by forging and fabricating certain entries from one account to another, in the computer system by handling the software and got the entries pertaining to the amount of the bank in his favour and knowingly and intentionally withdrew the amount from the bank. As per enquiry, it has been revealed that the accused by carrying out forgery, fabricating the entries in the computer system of the bank, illegally and wrongfully, withdrew Rs.3,20,000/- from the bank and thus, caused wrongful gain to himself and wrongful loss to the bank. The forgery was committed by the accused on 05.07.2001 and 02.01.2002 for Rs.1,20,000/- and Rs. 2,00,000/- respectively. They came to know regarding the fraud committed by the accused on 07.02.2003 and when records were placed before him, the accused confessed and admitted his guilt in writing on 07.02.2003 and deposited the amount of Rs.3,20,000/- and requested the bank authorities not to initiate further action in this regard. On receipt of the complaint, a case bearing FIR No. 114 dated 24.02.2003, under Sections 406, 420, 467, 468, 471 of the Indian Penal Code and Sections 65, 66 and 72 of the Information and Technology Act, 2000 was registered against the petitioner. After completion of investigation, challan against the accused- petitioner was presented in the Court. Thereafter, charge was framed against the accused-petitioner to which he pleaded not guilty and claimed trial.

Judgement :

Present criminal revision has been preferred by the petitioner against judgment dated 21.08.2012 passed by the learned Sessions Judge, Faridabad, whereby an appeal preferred by the petitioner has been dismissed and judgment of conviction dated 01.09.2011 and order of sentence dated 03.09.2011 passed by learned Judicial Magistrate First CRR No.66 of 2013 (O&M) 2 Class, Faridabad, has been upheld, vide which the petitioner has been convicted for offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Sections 65 and 66 of the Information & Technology Act, 2000 and sentenced to undergo rigorous imprisonment as follows:-

Under Section Period Fine 420 IPC Two years Rs.1,000/- 467 IPC Three years Rs.2,000/- 468 IPC Two years Rs.1,000/- 471 IPC Two years Rs.1,000/- 65 I.T. Act Two years Rs.1,000/- 66 I.T.

Act Two years Rs.1000/- In default of payment of fine, the petitioner shall further undergo simple imprisonment for a period of two months. All the sentences were ordered to run concurrently.

2.	**02.03.2013**	***Poona Auto Anillaries Pvt. Ltd., Pune (Complainant)* vs. *Punjab National Bank, HO New Delhi & Others (Respondent)***	**Secretariat of IT, Maharastra**

Complainant was asked to share the liability since he responded to the phishing mail but the Bank was found negligent

Facts of the case :

The Complainant in this case is a Private Limited Company, having its registered office in Pune. Manmohan Singh Matharu is the authorized representative and Managing Director of the Complainant Company. On 23/08/2011, Rupees 80,10,000/- was fraudulently transferred from the current account of the Complainant with PNB to PNB's, Jammu and Kashmir Kathua Branch In the account of M/s Sutlej Textiles, which is a K.K. Birla group firm. The amounts were transferred in 40 transactions of Rs. 2 lakh each and one transaction of Rs. 10,000/- in quick successions. Out of the Total Rs. 80.10 lakh transferred Into the account of M/s Sutlej Textiles, Rs. 40 lakh was transferred to a PNB, Mulund a/c of Maxima Trading Company Private Ltd owned by James Pulikotti, Rs. 20 lakh was transferred to PNB, Bhavnagar, Gujarat a/c no. 00510021fXf049723 of lmran Kalva of Samudra Trading Company in and Rs. 20 lakh was transferred to PNB, Vyara, Gujarat a/c 6698002100000235 of Dalver Singh Khurana.

From the Rs. 40 lakh transferred to PNB, Mulund a/c of Maxima Trading Company Private Ltd, Rs. 60,000/- was transferred to account of Zeenat Mansoori in Syndicate Bank branch of New Marine Lines, Mumbai and Rs.38 lakh was transferred to an account of M/s Ascent Global Consultant of Rambharosh G. Safi In Shyamrao Vitthal Co-operative Bank.

Judgement :

In one of the largest compensation awarded in legal adjudication of a cybercrime dispute, Maharashtra's IT secretary had ordered PNB to pay Rs 45 lakh to the Complainant Manmohan Singh Matharu, MD of Pune-based firm Poona Auto Ancillaries. A fraudster had transferred Rs 80.10 lakh from Matharu's account in PNB, Pune after Matharu responded to a phishing email. Complainant was asked to share the liability since he responded to the phishing mail but the Bank was found negligent due to lack of proper security checks against fraud accounts opened to defraud the Complainant.

3.	**24.03.2015**	***Shreya Singhal (Appellant)* vs. *Union of India (Respondent)***	**Supreme Court**

Scrapping of Section 66A

Facts of the case :

This batch of writ petitions filed under Article 32 of the Constitution of India raises very important and far-reaching questions relatable primarily to the fundamental right of free speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. The immediate cause for concern in these petitions is Section 66A of the Information Technology Act of 2000. This Section was not in the Act as originally enacted, but came into force by virtue of an Amendment Act of 2009 with effect from 27.10.2009. Since all the arguments raised by several counsel for the petitioners deal with the unconstitutionality of Section 66 A of IT Act, 2000.

Judgement :

Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2). Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid. Further, Section 79 is valid subject to Section 79(3)(b) being read down and so on.

4.	**31.08.2015**	***Sharat Babu Digumarti (Appellant)* vs. *State, Govt. of NCT of Delhi (Respondent)* (Bazee.com Case, Appeal)**	**Supreme Court**

Office is responsible for the safety of the Portal, taking action on suspect lists when reported by our users, and block the user or close items listed accordingly

Facts of the case :

The appellant along one Avnish Bajaj and others was arrayed as an accused in FIR No. 645 of 2004. After the investigation was concluded, charge sheet was filed before the learned Metropolitan Magistrate who on 14.02.2006 took cognizance of the offences punishable under Sections 292 and 294 of the Indian Penal Code (IPC) and Section 67 of the Information Technology Act, 2000 (for short, "the IT Act") against all of them. Avnish Bajaj filed Criminal Misc. Case No. 3066 of 2006 for quashment of the proceedings on many a ground before the High Court of Delhi which vide order dated 29.05.2008 came to the conclusion that prima facie case was made out under Section 292 IPC, but it expressed the opinion that Avinish Bajaj, the petitioner in the said case, was not liable to be proceeded under Section 292 IPC and, accordingly, he was discharged of the offence under Sections 292 and 294 IPC. However, he was prima facie found to have committed offence under Section 67 read with Section 85 of the IT Act and the trial court was directed to proceed to the next stage of passing of order of charge uninfluenced by the observations made in the order of the High Court. Being grieved by the aforesaid order, Avnish Bajaj preferred Criminal Appeal No. 1483 of 2009.

Judgement :

Petitioner was working as Senior Manager, Trust and Safety, BIPL on the day when DPS MMS was put up for sale on Bazee.com. That the office is responsible for the safety of the Portal, taking action on suspect lists when reported by our users, and block the user or close items listed accordingly. It was held that there is prima-facie sufficient material showing petitioner's involvement to proceed against him for the commission of offence punishable under Section 292 IPC. Though, he was already discharged of offences only under Section 67 read with Section 85 of IT Act and Section 294 IPC.

5.	**02.11.2018**	***Christian Louboutin Sas (Appellant)* vs. *Nakul Bajaj & Ors (Respondent)***	**High Court of Delhi**

Intermediary Liability as an E-Commerce Operator

Facts of the case

The present suit has been filed by the Plaintiff, who claims to be a manufacturer of luxury shoes. The name of the Plaintiff Company - Christian Louboutin (hereinafter, 'Plaintiff') is based on the name of its founder, namely Mr. Christian Louboutin, a famous designer of high end luxury products. The Plaintiff claims that the name, likeness and photographs of Mr. Louboutin enjoy goodwill and protection under the Trademarks Act, 1999 (hereinafter, 'TM Act'). The products of the Plaintiff are worn and preferred by a large number of celebrities. The Plaintiff claims that it enjoys enormous repute and goodwill in the fashion industry and was rated amongst top 5 prestigious women's luxury shoe brand. The name "Christian Louboutin", in word form and logo form, as also the red sole mark, are registered trademarks in India, and there are various other applications which are also pending registration. The Plaintiff further claims that its products are sold only through an authorized network of exclusive distributors. In India, there are two stores in Mumbai and one in Delhi which are authorized by the Plaintiff.

As per the plaint, the goods of the Defendants are impaired or are counterfeits. Apart from offering for sale and selling the Plaintiff's products, on the website of the Defendants, the image of the founder of the Plaintiff is also used, and the names "Christian" and "Louboutin" are also used as meta-tags. By using these meta-tags, the defendants attract traffic to their website. According to the Plaintiff, the Defendants' website gives an impression that it is in some manner sponsored, affiliated and approved for sale of a variety of luxury products bearing the mark of the Plaintiff's genuine products. This results in infringement of the trademark rights of the Plaintiff, violation of personality rights of Mr. Christian Louboutin and dissolution of the luxury status enjoyed by their products and brands.

Judgement :

Great analysis of section 79 of IT Act, 2000 and the Intermediary Guidelines has been done by Honorable Judge Ms Pratibha M Singh. Importantly, it lays down the circumstances, in which the Intermediary will be assumed to be abetting the sale of online products/services and therefore, cannot go scott free. In the said matter, the Complainant, a manufacturer of Luxury Shoes filed for injunction against an e-commerce portal www.darveys.com for indulging in Trademark violation, along with the seller of spurious goods.

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Part B
Case Studies

GST EVASION BY KISHORE WADHWANI : A CASE ANALYSIS*

Background

GST evasion of more than Rs. 400 Crores on Tobacco Products by Gutka King Kishore Wadhwani

Goods and Services Tax is a destination based tax with motto One Nation One Tax. It is the biggest Tax Reform in the History of India. GST evasion is an illegal activity in which a person or entity deliberately avoids paying the true GST liability. In the year 2020 whole of India have been affected by pandemic COVID 19 due to which Lockdown was announced in phases. Some fraudsters tried to use this period for GST Evasion by various methods, Kishore Wadhwani was one of them. He did GST evasion of more than Rs. 400 Crores on Tobacco products. The biggest GST evasion during the Lockdown.

Tobacco Industry in India

31st May is celebrated as "World No Tobacco Day". But still there are many people addicted to Tobacco in India. WHO (World Health Organisation) says if things remained unchecked, India will have highest number of patients of Mouth Cancer. In the last few years, excise duty rates changed for Tobacco products and cigarettes, but beedi, which is as harmful as cigarette remain exempted. But after an increase in the number of patients of oral cancer and similar diseases, excise rates had been changed.

Now the excise rates are:

Item	*Rate of Excise*
Cigarette	64%
Bidi	22%

It has been decided in recent GST council meeting that there will be an additional cess charged on the tobacco-related products, over and above the GST charged at the rate of 28%.

Tax Reform & Tax Evasion

Goods and Services Tax (GST) came in to existence on 1st July, 2017 and from that date more than 931 cases of fraudulent GST has been identified by Department of Revenue through data analysis.

To decrease the cases of GST evasion there are concepts like Search, Seizure, Inspection and Arrest.

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* *Case Study written by CA Sarika Verma, Assistant Director and CS Pankhuri Agrawal, GST Consultant, The ICSI.*

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The Finance Ministry in the month March, 2020 has said that the central GST authorities have detected evasion of Rs 70,206 crore between July 1, 2017 launch of GST and January, 2020. That is why the Authorities spread their wings to catch the fraudulent and bogus companies to stop the evasion of GST and wrong claim of ITCs. Accordingly the tax department managed to recover nearly half of this amount (Rs 34,591 crore).

Lockdown & Operation Kark

'Operation Kark' was named Kark because in Hindi Language Cancer Disease is called 'Kark Rog' and Tobacoo products are the major cause of Mouth Cancer.

Phase I: 30th May, 2020 was the day on which 'Operation Kark' was launched.

Phase II: Under the second phase the search operation was started and GST intelligence officials carried out their raids in the month of June, 2020 at more than 50 premises which belongs to different pan masala and cigarette manufacturers in Indore.

The world was under the severe pressure of pandemic since beginning of this year. On March 25, 2020 Hon'ble Prime Minister announced the lockdown in the entire county and only essential commodities' movements were allowed.

The Directorate General of Goods and Service Tax Intelligence (DGGI) is the apex intelligence organization working under the Central Board of Indirect Taxes & Customs, Department of Revenue, and Ministry of Finance is entrusted with detection and investigation of cases of Evasion of GST & it has jurisdiction all over India. The Directorate General of GST intelligence (DGGI) and Directorate of Revenue Intelligence (DRI) got some news from their intelligence and arrested Kishore Wadhwani, a business man from Bhopal (Madhya Pradesh) on 15th June, 2020 from a five-star hotel in Mumbai (Maharashtra). The reality of the case came in front of the country people i.e. the evasion of more than Rs. 400 crores by illegal supply of pan masala manufactured in the manufacturing units of Ellora Tobacco Company Limited.

Kishore Wadhwani A Business Man or A Fraud?

The 55-year-old Indore-based businessman, Kishore Wadhwani is a Director registered with Ministry of Corporate Affairs (MCA) with Director Identification Number (DIN) 268022. It has also came in notice of the authorities that Mr. Wadhwani had set-up eight companies in the real estate, hospitality, and media sectors to launder illicit wealth generated from these businesses. The different companies owned and handled by Mr. Wadhwani are:

	Name of the Companies	*Activity*
1.	Maa Sunder Shakti Marketing and Advertising Private Ltd	This is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 12-07-2001. It was inolved in Manufacture of tobacco products.
2.	T.K. Buildcon Private Limited	This is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 03-02-2006. It is involved in real estate business.

3.	L.T. Buildcon Private Limited	This is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 07-02-2006. It is involved in real estate business
4.	Arcast Industries (P) Ltd.	This is a Private Company limited by Shares. It was registered with Registrar of Companies, Delhi on 30-03-1955.
5.	Spades and Trowel Infrastructures (P) Ltd.	This is a Private Limited is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 28-12-2007.
6.	APM Packaging (P) Ltd.	This is Private Limited is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 17-06-1996.
7.	Good Earth Housing (P) Ltd.	This is Private Limited Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 02-01-2002.
8.	Dabang Duniya Publications (P) Ltd.	Dabang Dunia Publications Private Limited is a Private Company limited by Shares. It was registered with Registrar of Companies, Gwalior on 24-10-2011. It involved in running a daily local newspaper business.

Related Law

Under Section 41 of CGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

The credit referred to in sub-section (1) of Section 41 of CGST Act, 2017 shall be utilized only for payment of self assessed output tax as per the return referred to in the said sub-section.

Section 70 of CGST Act, 2017 : Power to summon persons to give evidence and produce documents

Under sub section 1 of 70 of the CGST Act, 2017**,** the proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

Every such inquiry referred to in sub-section (*1*) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

Production during Lockdown

COVID-19 lockdown which began in India from 25th March, 2020 bought everything to hault. Sale and distribution of Pan masala and chewing tobacco was completely banned as they decrease immunity.

During the investigations it has been came in to knowledge of the tax authorities that the raw material was being procured secretly and the product was dispatched through secret passages to avoid both excise and GST.

The manufacturing units of Ellora Tobacco Company Limited were running during the lockdown period. The Machines were running with generators to conceal production from the department. The MRP of the seized goods was shown as Rs. 27 crore, however the packing material found in the warehouse was enough for packing 5,000 cartons. A warehouse not declared by a dealer to the GST authorities is considered unlawful by the tax authorities.

Press Vehicle* vs. *Cargo Truck

Kishore Wadhwani and his associates, allegedly used his media outlet Dabang Duniya Publications (P) Ltd. to obtain curfew passes which were misused to transport gutka paan masala, tobacco, cigarettes and raw material in Madhya Pradesh and nearby states during the Covid-19 lockdown when only the transportation of essential goods was allowed.

In phase four of the nationwide lockdown imposed to control the spread of COVID-19 in the Country, when transport of only essential commodities was allowed, The collector of Indore on 20th May, 2020 issued an order to transport pan masala (gutka) within the state after adding the item to the essential commodities list.

According to reports, nearly 70 cargo trucks transported pan masala to other cities of the state in the midst of lockdown after the order.

Played With Financials of the Company

In the third week of June, DGGI raided five different locations of the firm and seized documents from those locations. After analyzing the records it was also discovered that during the last two financial years, the company had deposited Rs. 2.09 crore and Rs. 1.46 crore as GST. Whereas the initially it was discovered that tentative tax payable was more than 100 crores on illegal sale of gutka and allied products, in 13 months from April 2019 to May 2020. The product was being stored in secret warehouses and the actual tax evasion can me be more than 400 crores.

Mr. Wadhwani fraudulently shown his newspaper's circulation to be 1,20,000 while the real circulation was just 4,000 to 6,000. The profits earned from pan masala business are being mixed up with that of the newspaper.

Conclusion

Kishore Wadhwani was arrested under Sections 41(1), A, B, C, D of the Goods and Services Tax Act, 2017 and Sections 409, 467, 471, 120 (B) of the Indian Penal Code.

The long arm of the law is bound to catch you proved absolutely correct in this case as the culprit Kishore Wadhwani left no stone unturned to hide his malpractices. But the active officers of GST exposed him. He formed dummy Companies, used Press Stickers, took advantage of COVID 19 Lockdown but couldn't escape from the hands of Law. Truth and Justice

ultimately prevailed. Truth is like the sun. It can be hidden only for sometime not permanently. The Court ordered to put the Gutkha businessman Kishore Wadhwani behind bars on 22nd June, 2020 for tax evasion of Crores of Rupees.

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CASE STUDY – CORPORATE GOVERNANCE FAILURE IN ICICI BANK LTD.*

Background

ICICI Bank is a leading private sector bank in India. ICICI Bank was originally promoted in 1994 by Industrial Credit Investment Corporation of India (ICICI) Limited, an Indian Financial Institution (FI), and was its wholly-owned subsidiary. The Bank's consolidated total assets stood at ₹13.77 trillion at March 31, 2020. ICICI Bank currently has a network of 5,324 branches and 15,688 ATMs across India. ICICI Bank offers a wide range of banking products and financial services to corporate and retail customers through a variety of delivery channels and through its group companies. In the Board of the ICICI Bank Ltd. Mr. Girish Chandra Chaturvedi is Non-Executive (part-time) Chairman, Mr. Lalit Kumar Chandel is a Government Nominee Director, Mr. Hari L. Mundra, Mr. S. Madhavan, Ms. Neelam Dhawan, Mr. Radhakrishnan Nair, Ms. Rama Bijapurkar, Mr. B. Sriram and Mr. Uday Chitale are independent directors, Mr. Anup Bagchi, and Ms. Vishakha Mulye, are executive directors and Mr. Sandeep Bakhshi, is Managing Director & CEO. ICICI Bank has constituted Audit Committee, Board Governance, Remuneration & Nomination Committee, Corporate Social Responsibility Committee, Customer Service Committee, Credit Committee, Fraud Monitoring Committee, Information Technology Strategy Committee, Risk Committee, Stakeholders Relationship Committee and Review Committee for identification of wilful defaulters/non co-operative borrowers. The news that ICICI Bank has been mired into controversy after it was revealed that it lent advances of ₹3250 crores to Videocon was published in the leading Newspapers of India in April 2018. (The main concern was of conflict of interest, the promoter of Videocon and husband of Chanda Kochhar former MD & CEO of ICICI Bank was linked).

Case Facts:

Genesis/Evolution of the scam

ICICI Bank's then MD & CEO Chanda Kochhar's husband Deepak Kochhar got a sweet deal from the promoter of Videocon Group Venugopal Dhoot after lending of loan of ₹3250 crores by ICICI Bank to Videocon Group. In December 2008, Venugopal Dhoot of the Videocon Group set up a company with Deepak Kochhar, husband of ICICI Bank MD and CEO Chanda Kochhar, and two of her relatives; then gave a ₹ 64 crore loan to this company through a fully owned entity before he transferred the latter's ownership to a trust headed by Deepak Kochhar for just ₹ 9 lakh, the transfer of the company to Deepak Kochchar happened six months after the Videocon Group got a loan of ₹3,250 crore from ICICI Bank. Almost 86 per cent of that loan (₹2,810 crore) remains unpaid and Videocon account was declared an NPA in 2017. ICICI's board has denied any wrongdoing, highlighting that the loan was underwritten in accordance with the bank's credit standards and was extended as part of a consortium involving over 20 banks. The bank has stressed that it has not given any credit to the borrower group outside of the consortium.

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* *Case Study written by Rahul Ratna, Assistant Director, The ICSI.*

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Peak

- In December 2008, Deepak Kochhar and Venugopal Dhoot set up NuPower Renewables Pvt. Ltd. (NRPL). Venugopal Dhoot held 50 per cent stake in the company with his family members and associates. Deepak Kochhar and Pacific Capital owned by Deepak Kochhar's father and Chanda Kochhar's brother's wife held the remaining 50 per cent.
- In January 2009, Venugopal Dhoot resigned as director of NuPower and transferred his 24,999 shares in the company to Deepak Kochhar for ₹ 2.5 lakh.
- Following a sequence of transfer of shares from Venugopal Dhoot to Deepak Kochhar and then from Deepak Kochhar and his relatives' Pacific Capital to Supreme Energy, Supreme Energy became a 94.99 per cent shareholder in NuPower by the end of March 2010. Deepak Kochhar held the remaining 4.99 per cent stake in NuPower at the time.
- In November 2010, Venugopal Dhoot transferred his entire holding in Supreme Energy, to his associate Mahesh Chandra Punglia.
- Beginning September 29, 2012 to April 29, 2013, Mahesh Chandra Punglia transferred his holding to Pinnacle Energy, a trust, where Deepak Kochhar was the managing trustee. The total transaction value of the complete transfer of shares from Mahesh Chandra Punglia to Kochhar's Pinnacle Energy trust was ₹ 9 lakh.
- In effect, Supreme Energy gave a loan of ₹ 64 crore to NuPower and then got subsumed by Pinnacle Energy within three years.
- On the issue of loan granted to Videocon Group, the ICICI Bank said: "In 2012, a consortium of over 20 banks and FIs where State Bank of India was the facility agent (Lead) sanctioned facilities to the Videocon group (Videocon Industries Ltd. and 12 of its subsidiaries/ associates as co-obligors) for a debt consolidation programme and for the group's oil and gas capital expenditure programme aggregating approximately ₹ 40,000 crore, ICICI Bank sanctioned its share of facilities aggregating approximately ₹ 3250 crore which was less than 10% of the total consortium facility in April 2012." The Videocon group account has been classified as an NPA during 2017."
- Venugopal Dhoot said, "On January 15, 2009, he resigned as a director of NuPower Renewables and Supreme Energy Private Ltd and sold at par the 24,996 shares of NuPower and 9,990 shares of Supreme Energy held by him, thereby relinquishing his right, title and interests in the said shares, giving up control and management of Supreme Energy and completely disassociating himself from both the Companies all on the same day, as he got too busy with his other larger business like oil & gas, telecommunication, etc." However, Registrar of Companies filings of Supreme Energy show that Venugopal Dhoot owned it until October 2010 and then transferred his share holding to Mahesh Chandra Punglia in November 2010.
- On the question of conflict of interest, NuPower said: "There is no conflict of interest whatsoever and the above transactions have nothing to do with any loans processed by ICICI Bank. Pinnacle Energy trust and Supreme Energy have no business relationship with ICICI Bank."

- As of March 2017, Deepak Kochhar held an aggregate of 43.4 per cent in NuPower both as direct holding and through Supreme Energy and Pinnacle Energy. The remaining holding is with Mauritius-based DH Renewables. As of March 31, 2016, Kochhar along with Supreme Energy and Pinnacle Energy held 96.23 per cent.

Management Action

The board of ICICI Bank started an internal enquiry and on April 3, 2018 then ICICI Bank Chairman M K Sharma said that the board came to the conclusion that there is no question of any quid pro quo/ nepotism/ conflict of interest as is being alleged in various rumours. The board has full confidence and reposes full faith in the Bank's MD and CEO Ms. Chanda Kochhar. The ICICI Bank board clearly failed in its main fiduciary responsibility of protecting investor interest. That is basically what boards are appointed to do. It then claimed to have found no evidence of any wrongdoing. On 30th May, 2018 the ICICI Bank started an independent probe. The ICICI Bank board asked Chanda Kochhar to go on leave while retired Justice B.N. Srikrishna conducts an independent inquiry into the possible conflict of interest in the case of the ₹ 3,250 crore loan given to the Videocon Group by the ICICI Bank in 2012. On October 4, 2018 the ICICI Bank board accepted Chanda Kochhar's request to seek early retirement. The bank says that the enquiry instituted by the board will remain unaffected and certain benefits will be subject to the outcome of the enquiry. A panel headed by Justice BN Srikrishna found that Kochhar violated the bank's code of conduct in the Videocon loan case. Following the report, the bank's board says it will treat her separation as 'termination for cause' under their internal policies.

Action by the Regulatory Authorities

On 31.03.2018 the Central Bureau of Investigation (CBI) files an initial inquiry. The investigative agency later also questions Deepak Kochhar and his brother Rajiv Kochhar, group CEO of Avista Advisory Group, the agency had been examining the possibility of conflict of interest in Avista restructuring loans given to Venugopal Dhoot-headed Videocon Group by ICICI Bank. Singapore-based Avista, which specialises in debt recast, acted as an adviser for several borrowers of ICICI, including Videocon, especially with regard to foreign currency convertible bonds (FCCBs).

On April 4, 2018 the Serious Fraud Investigation Office (SFIO) sought the Ministry of Corporate Affairs' nod to probe ICICI Bank's ₹ 3,250 crore loan to the Videocon group in 2012.

On May 23, 2018, the Securities and Exchange Board of India (SEBI) serves a notice to ICICI Bank's CEO and MD Chanda Kochhar on dealings of the lender with Videocon Group and NuPower Renewables, an entity promoted by her spouse Deepak Kochhar. SEBI asked Kochhar and the bank to submit their responses till June 7, 2018. On June 8, 2018 ICICI Bank and Chanda Kochhar sought more time to respond to the show cause notice served by SEBI. On July 5, 2018 SEBI asks Kochhar to reply to the show cause notice over alleged violation of listing disclosure norms by July 10, 2018. SEBI said in a show cause notice that ICICI Bank's chief executive Chanda Kochhar didn't adhere to its code of conduct, which required the disclosure of any conflict of interest in the case involving Videocon Group and NuPower Renewables, a firm owned by her husband Deepak Kochhar. The show cause notice also said that the bank indirectly violated the disclosure norms of the Securities and Exchange Board of India (SEBI) by not divulging this information, according to people with knowledge of the matter. SEBI rules mandate all listed companies should have a code of conduct that have to be followed by directors and key managerial personnel. These cover conflicts of interest, besides compliance

with laws and regulations and ethical issues. Later in September 18, 2018, SEBI confirmed that it has received the replies from the ICICI Bank but the bank did not filed any settlement application.

On January 24, 2019, the CBI registers FIR against Chanda Kochhar, her husband Deepak Kochhar and Videocon group MD Venugopal Dhoot over alleged irregularities in loans sanctioned by the bank to the group in 2012.

In January, 2020, the Enforcement Directorate has temporarily attached ₹78 crore worth of properties belonging to former ICICI Bank CEO Chanda Kochhar as part of its investigation into a money laundering case. In March, 2020, the Bombay high Court had dismissed Chanda Kochar' petition filed against her termination as Managing Director and CEO of the ICICI Bank. In September, 2020 Deepak Kochar husband of Chanda Kochar has been sent to 10-day custody of the Enforcement Directorate for alleged money-laundering.

Further Course of Actions

Corporate Governance is one of the most important differentiators of business that is extract from an organisation's culture, its policies and ethics, especially of the people running the business, and the way it deals with various stakeholders. While significant steps have been taken by the regulatory authorities in India to enhance corporate governance, the stakeholders are still not protected from poor corporate governance. The corporate governance policy must address the issues like Nepotism, favouritism, conflict-of-interest, quid pro quo, transparency, Lack of accountability. In the present case of ICICI Bank there is clear violation of SEBI (Listing Obligations and Disclosure) Regulations. A preliminary examination by the SEBI has favoured adjudication proceedings against ICICI bank and then CEO. The Bank and the concerned officials will certainly face penalties for the violation of SEBI regulations. As per the SEBI (Settlement of Administrative and Civil Proceedings) Regulation, 2014, no settlement or compounding of acts of a fraudulent nature, which caused substantial losses to investors, is allowed. Considering this, these offences would be treated as being of a criminal nature.

Also, the penalty amount would be decided on the basis of the benefit derived by the applicant as well as the amount of loss suffered by the investor.

The action by the market regulator will definitely force the corporates to strictly follow the corporate governance norms.

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Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi -110 003

tel 011-45341000 **fax** +91-11-24626727

email info@icsi.edu **Website** www.icsi.edu