CASE DIGEST -SERIES 5

(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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Dear Professional Colleagues,

Subject : Case Digest – Series 5

"One must learn by doing the thing, for though you think you know it you have no certainty, until you try."
- Sophocles

The learning remains incomplete unless and until one comprehends its practical dimensions. Merely amassing theoretical concepts without having robust understanding as to why, when and how to apply the same in solving real life business problems, may not render you a true professional.

In today's era of cut throat competition where only excellence may survive and thrive, it is imperative to ensconce practical insights of concepts, theories and laws so that optimal solution is devised to create a win-win situation for all the stakeholders.

While the question that persists is that as to how we may delve deep into various forms of business challenges and find out optimal solutions; the answer to the same lies at the heart of case studies which provide the perfect simulation learning model.

Company Secretaries being Governance Professionals witness various forms of business challenges with varying complexities. In order to comprehend the dynamics inherent in a business scenario, ponder over various alternative solutions and formulate an appropriate solution, it is essential that one is conversant with various laws, regulations, policies, procedures, theories etc. exerting an impact on the same so as to render it immaculate and inimitable.

Given all the above and more, Case Digest Series has been initiated by the ICSI as a unique initiative of fostering the learning amongst students and assisting them to bridge the gulf between theory and practice.

It can be said without an iota of doubt that **Case Digest Series-5** will play a crucial role in enhancing learning of the students. I congratulate Team Academics for bringing out this Series and thus complimenting the academic journey of future Governance Professionals.

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

CASE DIGEST – SERIES 5

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Case Snippets

COMPANY LAW

1.	30.09. 2020	*Mr. Pankaj Kumar Mishra (Appellant) vs. Registrar of Companies, Mumbai & Ors. (Respondents)*	NCLAT

The Tribunal must give a reasonable opportunity of making representations and of being heard before passing an order, to the Registrar, the Company and all the persons concerned under Section 252 (1) of the Companies Act, 2013.

Facts of the case:

The name of the Company (Viking Ship Mangers Pvt. Ltd.) was struck off by ROC Mumbai from the Register of Companies. The Principal Commissioner of Income Tax-15, Mumbai (Respondent No. 2 herein) challenged the order of ROC before the NCLT, Mumbai bench under Section 252 of the Companies Act, 2013 stating that this strike-off will cause huge loss of revenue to the Government of India. The NCLT without serving any notice to the Company, allowed the appeal and directed to restore the name of the company in the Register of Companies.

Being aggrieved with this order, Appellant submitted that Section 252 (1) of the Companies Act, 2013, provides that before passing any order under this Section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the persons concerned. Rule 37 of the NCLT Rules, 2016 also provides that the Tribunal shall issue notice to the Respondent to show cause against the Application or Petition on date of hearing to be specified in the notice.

Judgement:

The NCLAT held that without giving any opportunity of being heard, the order has been passed by the NCLT. Hence, the order is not sustainable in law. Therefore, it is set aside, and the matter is remitted back to the NCLT, Mumbai bench with the direction that after hearing the parties decide the said appeal under Section 252 of the Companies Act, 2013, as per law without influence by its earlier Order.

2.	23.09. 2020	*Alibaba Nabibasha (Petitioner) vs. Small Farmers Agri-Business Consortium & Ors. (Respondents)*	**Delhi High Court**

After resignation, Director can't be held responsible for daily affairs of Company including Cheques issued and dishonoured

Facts of the case:

The petition was filed seeking quashing of five complaint cases initiated against the Petitioner. These complaint cases are primarily grounded on the return of five cheques which were issued on behalf of the Respondent No. 2 company for a total amount of Rs. 45 Lakhs. Petitioner submitted that he ceased to be the Director of the Respondent No.2 company w.e.f. 27. 10. 2010, at least eight years prior to the issuance of the cheques in question and the resignation of the Petitioner was also notified to the Registrar of Companies by the Respondent No.2 by filing Form 32 dated 04. 01.2011, which is a public document.

The Petitioner contended that he was not the Director when the underlying contract was executed between the Respondent No.1 and Respondent No.2, nor when the cheques were issued and when they were presented.

According to the Respondent, the Petitioner was involved in the discussion before an agreement was executed between the Respondent No.1 and the Respondent No.2. Further, the Petitioner being a responsible Director of accused Respondent No.2 company participated in meetings and assisted the officials of the Respondent No.1 who had visited the Respondent No.2 for verification of its financial and physical status.

Judgement:

Delhi High Court held that, in cases where the accused has resigned from the Company and Form 32 has also been submitted with the Registrar of Companies then in such cases if the cheques are subsequently issued and dishonoured, it cannot be said that such an accused is in-charge of and responsible for the conduct of the day-to-day affairs of the Company, as contemplated in Section 141 of the NI Act. Thus, Petitioner after his resignation cannot continue to be held responsible for the actions of the Company including the issuance of cheques and dishonour of the same. Hence, complaint cases filed under Section 138 of the NI Act, against the petitioner are quashed.

3.	22.09.2020	*Navneet Sahay Verma and Anr. (Petitioners) vs. Registrar of Companies and Anr. (Respondents)*	**Bombay High Court**

The disqualified director cum promoter can continue to act in the capacity of promoter to nominate any other person as a director to apply under the Companies Fresh Start Scheme (CFSS)-2020

Facts of the case:

The Petitioner No.1 is both Director & Promoter of the company and Petitioner No.2 is an erstwhile Director, who have been disqualified. Due to the disqualification, they cannot apply under the Companies Fresh Start Scheme-2020. Hence, seek a direction that they may be

permitted to apply under the Scheme and for the said purpose their DIN should be activated. The Respondent submitted that for the Company applying under the Scheme, the DIN of the Petitioners is not required to be activated as there is a provision under Section 167(3) of the Companies Act 2013 itself which will serve the same purpose.

Judgement:

Bombay High Court held that even though the directors of the company vacated their offices, if a person is acting in the capacity of director cum promoter and is disqualified as a director, he can continue to act in the capacity of a promoter to nominate any other person as a director. Hence, in the capacity of promoter the Petitioner can nominate any person as a director and follow Section 167(3) of the Companies Act, 2013 to apply under the Companies Fresh Start Scheme-2020. Therefore, it is not necessary to issue any further directions in this regard. This course of action is, available to the Petitioner/s regarding the Scheme.

4.	14 .09.2020	*QVC Exports Pvt. Ltd. & Ors. (Appellants) vs. Cosmic Ferro Alloys Ltd. & Ors. (Respondents)*	NCLAT

Removal of Nominee Director with majority in duly convened EGM giving special notice

Facts of the case:

1st Appellant and 2nd Respondent jointly entered into a Consortium Agreement and agreed to form a partnership to submit a Resolution Plan to take over 1st Respondent Company. Resolution plan was submitted and approved by the COC as well as ratified by NCLT, Kolkata under Section 31 of Insolvency & Bankruptcy Code, 2016. As per mutual understanding nominee directors of both the parties were appointed in 1st Respondent Company. Appellant argued that due to several disputes which arose between both the parties, special notice was issued for removal of nominee director of Appellant from directorship and the resolution was passed in an EGM, thereby ousting the appellant from the consortium without giving a fair opportunity to give representation. Further, it was stated that in a quasi-partnership company or closely held company, a nominee director of the two partners cannot be removed, that too without any reason.

Respondents argued that there is no bar for removal of nominee of minority shareholder under the Companies Act, 2013. Further, in spite of giving notice, no shareholders from 1st to 3rd appellant were present and thus they did not raise any objection to passing of the resolution for removal of nominee director and the removal has already been approved by the Registrar of Companies.

Appellant were present.

Judgement:

The NCLAT held that as proper notice was issued to convene EGM and the same was received by the appellants including the nominee director, but they did not make any representation and the EGM voted for removal of nominee director with majority. Thus, there is no illegality in this process and dismissed the appeal.

5.	09.09.2020	*M/s. Mohindera Chemicals Private Limited (Appellant) vs. Registrar of Companies, NCT of Delhi & Haryana & Ors. (Respondents)*	NCLAT

Appellant Company has been functional as can be seen from the content of the submitted Balance Sheets, hence the name of the Company is be restored in the Register of Companies.

Facts of the case:

The present appeal has been filed by the Appellant M/s Mohindera Chemicals Private Limited as Appellant claims that the name for the Appellant was wrongly struck off from the Registrar of Companies with effect from 08.08.2018 by the Respondent No. 1. Appellant submitted that merely because the Balance Sheet remained to be filed, the ROC presumed that the Company is not functional, and the name got struck off. It is stated that if the name is not restored the Appellant Company will seriously suffer as there are huge outstanding dues which the company has to receive and the debtors are ready to pay but are unable to pay because the name is struck off.

Respondent submitted that there was lapse on the part of the Appellant Company and the ROC followed due procedure and thereafter, the name got struck off as the Appellant did not respond to the Public Notice.

Judgement:

The NCLAT held that Appellant Company has been functional as can be seen from the content of the submitted Balance Sheets and directed the ROC to restore the name of the company in the Register of Companies subject to the conditions that Appellant will pay costs of Rs. 1 lakh to Respondent No. 1. and the Appellant company will file all the outstanding Documents/ Balance Sheets and Returns within two months along with penalties and late payment charges etc. as may be due and payable under Law.

6.	02.09.2020	*Sandeep Agarwal & Anr. (Petitioners) vs. Union of India & Anr. (Respondents)*	Delhi High Court

The purpose and intent of the Companies Fresh Start Scheme, 2020 is to allow a fresh start for Companies which have defaulted. For the Scheme to be effective, Directors of these defaulted Companies must be given an opportunity to avail the Scheme.

Facts of the case:

The present petition has been filed by the Petitioners - Mr. Sandeep Agarwal and Ms. Kokila Agarwal, both of whom are directors in two companies namely Koksun Papers Private Limited (hereinafter, "Koksun Papers") and Kushal Power Projects Private Limited (hereinafter, "Kushal Power"). The name of Kushal Power was struck off from the Register of the Companies on 30.06.2017, due to non-filing of financial statements and annual returns. The Petitioners, being directors of Kushal Power were also disqualified with effect from 01.11.2016 for a period of five years till 31.10.2021 under Section 164(2)(a) of the Companies Act, 2013. Pursuant to

their disqualification, their Director Identification Numbers ("DIN") and Digital Signature Certificates ("DSC") have also been cancelled. In view thereof, they are unable to carry on the business and file returns etc., in the active company Koksun Papers. By the present petition, the disqualification is challenged, and quashing is sought of the impugned list of disqualified directors.

Judgement:

Delhi High Court observed that this Scheme provides an opportunity for active companies who may have defaulted in filing of documents, to put their affairs in order. It thus provides Directors of such companies a fresh cause of action to also challenge their disqualification qua the active companies. In the present case, the Petitioners are Directors of two companies – one whose name has been struck off and one, which is still active. In such a situation, the disqualification and cancellation of DINs would be a severe impediment for them in availing remedies under the Scheme, in respect of the active company. The purpose and intent of the Scheme is to allow a fresh start for companies which have defaulted. For the Scheme to be effective, Directors of these companies ought to be given an opportunity to avail the Scheme.

It is not uncommon to see directors of one company being directors in another company. Under such circumstances, to disqualify directors permanently and not allowing them to avail their DINs and DSCs could render the Scheme itself nugatory as the launch of the Scheme itself constitutes a fresh and a continuing cause of action.

Thus, in order to enable the Petitioners to continue the business of the active company Koksun Papers, directed MCA to set aside the disqualification of the Petitioners as Directors. The DINs and DSCs of the Petitioners are also directed to be reactivated, within a period of three working days from the date of order.

7.	**24.08.2020**	***Economy Hotels India Services Private Limited (Appellant) vs. Registrar of Companies & Anr. (Respondents)***	**NCLAT**

'Reduction of Capital' under Section 66 of the Companies Act, 2013 is a 'Domestic Affair' of a Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails.

Facts of the case:

The Appellant Company is a closely held Private Company, limited by shares, incorporated on 08.08.2012 under the provisions of erstwhile Companies Act, 1956. The authorized share capital of the Company as on 31.03.2018 was Rs. 90 lakhs only divided into 9 lakhs equity shares of Rs. 10/- each and that the issued, subscribed and paid up share capital of the Company as on 31.03.2019 was Rs. 30 lakhs divided into 3 lakhs equity shares of Rs. 10/- each. Further, the Company had 67,17,900 unsecured fully compulsory convertible debentures of Rs. 100/- each as on 31.03.2019. The Appellant company had filed a petition under Section 66(1)(b) of

the Companies Act, 2013 praying for passing of an order for confirming the reduction of share capital.

The pre-mordial plea of the Appellant is that the NCLT, New Delhi Bench had failed to appreciate the creeping in of an 'inadvertent typographical error' figuring in the extract of the 'Minutes of the Meeting' characterising the 'special resolution' as 'unanimous ordinary resolution'. Moreover, the Appellant had fulfilled all the statutory requirements prescribed u/s 114 of the Companies Act, 2013 and as such the impugned order of the Tribunal is liable to set aside. The Appellant has also submitted that only due to a 'typographical error' in the extract of 'Minutes', a resolution passed unanimously by the shareholders will not ceased to be a 'special resolution'.

Judgement:

The NCLAT observed that 'Reduction of Capital' under Section 66 of the Companies Act, 2013 is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails. As the Appellant has admitted its typographical error in the extract of the Minutes of the Meeting and also taking into consideration of the fact that the Appellant had filed the special resolution with ROC, which satisfies the requirement of Section 66 of the Companies Act, 2013. NCLAT allowed the Appeal by setting aside the impugned order passed by the NCLT, New Delhi Bench, thereby confirming the reduction of share capital of the Appellant Company.

8.	17.08. 2020	***K.V. Brahmaji Rao (Appellant)* vs. *Union of India (Respondent)***	**NCLAT**

The person who may be the head of some other organizations cannot be roped and his/her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013.

Facts of the case:

The Respondent herein had initiated petition against the persons who had been named as accused in the FIR dated 31.01.2018 and further on 15.02.2018 filed by Punjab National Bank (In Short 'PNB'). FIRs were registered against some known and unknown accused who had been alleged to be perpetration of the huge Financial Scam against the PNB. The Respondent ordered investigation into the affairs of 107 Companies and 7 LLPs under the provisions of the Companies Act, 2013 and LLP Act, 2008 and also sought to supplement the investigation by seeking indulgence of the Tribunal as per the provisions of Sections 221, 222, 241, 242 and 246 r/w Section 339 of the Companies Act, 2013.

At the relevant time the Appellant was Executive Director, PNB, Head Office, New Delhi. NCLT, Mumbai bench, by the impugned order allowed the Applications and passed the order for frizzing Assets of the Appellant and injuncted him from disposing movable and immoveable Properties/Assets. Being aggrieved with this order, the Appellant preferred this Appeal.

The Appellant submits that the impugned order has been passed in violation of Principle of Natural Justice since the Appellant was not served with advance copy of the said Application and without giving opportunity of hearing impugned order has been passed.

Judgement:

The NCLAT observed that the person who may be the head of some other organizations cannot be roped and his or her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013. Admittedly, the Appellant was the Executive Director of PNB, Head Office, New Delhi i.e. employee of other organization. Therefore, he cannot be impleaded as Respondent in the case against the Nirav Modi Group and Gitanjali Group of Companies. Thus, the impugned order of NCLT, Mumbai bench is set aside, and the Appeal is allowed.

9.	**04.08. 2020**	***Vijay Goverdhandas Kalantri & Anr. (Petitioners*)** **vs.** ***Union of India & Ors. (Respondents)***	**Punjab & Haryana High Court**

The jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court

Facts of the case:

This petition was filed as a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for setting aside the impugned action of Respondent Nos.1, 2 and 3 disqualifying the petitioners to act as Director from 01.11.2018 under Section 164(2)(a) of the Companies Act, 2013. In the present case, admittedly, both the Petitioners are residents of Mumbai and the Company-Respondent no.4 itself is registered with the Registrar of Companies, Mumbai (Respondent no.3) and has no connection with the Registrar of Companies, Punjab and Chandigarh (Respondent no.2). The counsel for the petitioners has been unable to show how the present writ petition was maintainable before this Court.

Faced with this situation, Petitioners contended that since the petitioners wish to invest in a company within the jurisdiction of this Court, hence, the present writ petition has been filed.

Judgement :

Punjab & Haryana High Court observed that there is no ground whatsoever made out for invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India in as much as neither the Petitioners are residents of Punjab, Haryana or UT Chandigarh nor is the Company-Respondent no.4, qua which the Petitioners were disqualified to act as Directors, registered with the Registrar of Companies, Punjab and Chandigarh (Respondent no.2). The jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. Article 226 of the Constitution of India, in clear terms, empowers the High Court to entertain a writ petition if the cause of action to file such a writ petition against the Respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of the High Court.

In the present case the petitioners have been unable to show as to what part of the cause of action arose within the territorial jurisdiction of this Court. Thus, the present writ petition seems to have been filed only to gain benefit of the interim order passed by the Court of Punjab & Haryana *in CWP. No.24977 of 2017 'Gurdeep Singh & Ors. vs. Union of India & Anr.'* and other similar cases, though the initiation of the writ proceedings before this High Court is clearly unsustainable and an abuse of jurisdiction. In view of the above, the present writ petition is dismissed with exemplary costs.

SECURITIES LAW

1.	01.10.2020	*National Stock Exchange of India Limited (Noticee) vs. SEBI*	**Adjudicating Officer, Securities and Exchange Board of India**

National Stock Exchange of India Limited had engaged in unrelated or non-incidental activities which are not related to its activities as a stock exchange without approval of SEBI

Facts of the case:

Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination to ascertain whether National Stock Exchange of India Limited (hereinafter referred to as "NSE" or "the Noticee") had engaged in unrelated or non-incidental activities which are not related to its activities as a stock exchange without approval of SEBI as required under Regulation 41(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (hereinafter referred to as "SECC 2012") and Regulation 38(2) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred to as "SECC 2018"). The period of the examination relates to all the existing stakes/shares in other entities held by NSE as on June 30, 2018. Further, wherever deemed necessary, reference may have also been made to events/timeframe outside the said period.

Order:

In view of the above, it is concluded that Noticee had engaged, directly and/ or through its wholly owned subsidiary NSE Strategic Investment Corporation Ltd. ("NSICL"), in activities that are unrelated/non-incidental to its activities as a stock exchange by way of acquisition of stake in Power Exchange India Limited, Computer Age Management Systems Pvt. Ltd, NSEIT Limited, NSDL E-Governance Infrastructure Ltd., Market Simplified India Ltd., and Receivables Exchange of India Ltd. without seeking approval of SEBI and thus, it has violated the provisions of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012. SEBI observe that each investment activities constitute an independent violation and as such there are six instances of violations of the provisions of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012. The breach in the facts and circumstances as found hereinabove, in SEBI's view deserves imposition of monetary penalty upon the Noticee under section 15HB of the SEBI Act.

SEBI imposed a monetary penalty under section 15HB of the SEBI Act against the Noticee for carrying out activities which are unrelated/non-incidental to its activities as a stock exchange through the acquisition of stake in six entities, as mentioned in the table below:

Sl. No.	*Name of the entity in which unrelated/non-incidental activities were carried out by the Noticee*	*Penalty Amount under section 15HB of the SEBI Act (In ₹)*
1.	Power Exchange India Limited	1,00,00,000
2.	Computer Age Management Systems Pvt. Ltd	1,00,00,000
3.	NSEIT Ltd.	1,00,00,000
4.	NSDL E-Governance Infrastructure Ltd.	1,00,00,000
5.	Market Simplified India Ltd.	1,00,00,000
6.	Receivables Exchange of India Ltd.	1,00,00,000
	Total Penalty Amount	6,00,00,000

For more details:
https://www.sebi.gov.in/enforcement/orders/oct-2020/adjudication-order-in-the-matter-of-national-stock-exchange-of-india-limited_47776.html

2.	**20.08.2020**	***Dr. Satish Chandra, Ms. Sucharita Das and The Orissa Minerals Development Co. Ltd. (collectively known as "Noticees") vs. SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

The disclosures were made by The Orissa Minerals Development Co. Ltd. to stock exchanges belatedly each after a period of more than 24 hours since the time of their receipt by OMDC.

Facts of the case:

Securities and Exchange Board of India (hereinafter referred to as "SEBI"), conducted investigation into the alleged delayed disclosure of the price sensitive information (hereinafter referred to as "PSI") by The Orissa Minerals Development Company Ltd., (hereinafter referred to as "OMDC/Company"), in the scrip of OMDC, to the Stock Exchanges [The Bombay Stock Exchange (herein after referred to as "BSE") and National Stock Exchange (hereinafter referred to as "NSE")] for alleged violation of provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 during the investigation period July 02, 2012 to August 10, 2012 (hereinafter referred to as "IP").

The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that the Noticees have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also

violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA").

By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation.

Order:

In view of the foregoing, considering the facts and circumstances of the case, the material on record, SEBI, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules,1995 and Section 23-I of the SC(R) Act, 1956 read with Rule 5 of the Adjudication Rules, 2005, hereby impose a total penalty of Rs. 2,00,000/- (Rupees Two Lacs only) under Section 15HB of the SEBI Act, 1992 and Section 23A(a) of the Securities Contracts (Regulation) Act, 1956, on the Noticees i.e. The Orissa Minerals Development Co. Ltd., Dr. Satish Chandra and Ms. Sucharita Das for violation of Clause 2.1 of Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II to Regulation 12(2) of the PIT Regulations, 1992 and also against The Orissa Minerals Development Co. Ltd for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA.

For more details:
https://www.sebi.gov.in/enforcement/orders/aug-2020/adjudication-order-in-the-matter-of-the-orissa-minerals-development-co-ltd-_47370.html

3.	**31.07.2020**	***Mr. Vidyadhar D Vardam, M/s. Avenue Supermarts Limited and Ms. Ashu Gupta (collectively known as "Noticees") vs. SEBI***	**Adjudicating Officer, Securities and Exchange Board of India**

The purpose of the disclosures under Insider Trading norms is to bring about transparency in the transactions of Directors/ Promoters/ Acquirers/ employees and assist the SEBI to effectively monitor the transactions in the market.

Facts of the case:

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the scrip of Avenue Supermarts Limited (hereinafter referred to as 'Noticee 2/ ASL/ Company'), which is listed on the Bombay Stock Exchange (herein after referred to as 'BSE') and the National Stock Exchange (herein after referred to as 'NSE') with respect to certain possible violations, during the period from 1st January 2018 to 31st December 2018 (herein after referred to as 'Examination Period'). SEBI observed that one of the employees of the ASL viz. Mr. Vidyadhar Dinkar Vardam (hereinafter referred to as 'Noticee 1/by name') had not complied with the disclosure norms as laid down in regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations'). SEBI also observed that the Noticee 1 had failed to file the required disclosure in terms of regulation 7(2)(b) of PIT Regulations and there is lapse on the part of the Compliance Officer viz. Ms. Ashu Gupta, (hereinafter referred to as 'Noticee 3/ by name') (Collectively Noticees 1, 2 and 3 are referred to as 'Noticees') with respect to regulatory compliance under the provisions of PIT

Regulations and the Code of conduct framed thereunder for its employees as envisaged under PIT Regulations. Therefore, SEBI initiated adjudication proceedings against the Noticees under the provisions of Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act').

Order:

SEBI find that the allegation of violation of Regulation 7(2)(a) of the PIT Regulations against the Noticee 1, for making delayed disclosures on five (5) occasions stands established. SEBI also find that the allegation of violation of Regulation 7(2)(b) of the PIT Regulations against the Noticee 2 and allegation of violation of Regulation 9(3) read with 7(2)(b) of the PIT Regulations against the Noticee 3 for making delayed disclosures on one (1) occasion stands established.

Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, SEBI hereby impose the following penalties on the Noticees under the provisions of Section 15A(b) of the SEBI Act.

Noticee No.	*Name of the Noticee*	*Penalty*
1.	Mr. Vidyadhar D. Vardham	Rs. 2,00,000/-
2.	Avenue Supermarts Limited	Rs. 3,00,000/-
3.	Ms. Ashu Gupta	Rs. 1,00,000/-

For more details:
https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-avenue-supermarts-limited_47242.html

4.	**27.08.2020**	***National Highway Authority of India (Appellant) vs. SEBI (Respondent)***	**Securities Appellate Tribunal (SAT)**

There is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then non-compliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the SEBI to relax the strict enforcement of the Regulations

Facts of the case:

The present appeal has been filed by the Appellant against the impugned order dated 26th May, 2020 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs.7 lakhs for violation of Regulation 52(1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the 'LODR Regulations, 2015') namely, that there was a delay in filing the half yearly financial results for the period ending 30th September, 2018 and 31st March, 2019 within 45 days from the end of the half financial year.

The Appellant is an autonomous body set up by the Parliament under an Act known as National Highway Authority of India Act, 1988 (hereinafter referred to as 'NHAI Act') for the purpose of development, maintenance and management of national highways. This body which is not a Company as defined under the Companies Act is listed on the Bombay Stock Exchange and National Stock Exchange in pursuance of a Listing Agreement for Debt Securities dated 7th February, 2012 and, therefore, is subject to the provisions of the LODR Regulations, 2015. The requirement under Regulation 52(1) of the LODR Regulations, 2015 is to file the unaudited half yearly financial results within 45 days from the end of the half financial year.

Order:

SAT is of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, SAT is of the opinion that the imposition of penalty of Rs.7 lakhs in the given circumstances was harsh and excessive. Thus, the imposition of Rs.7 lakhs upon the Appellant cannot be sustained and is substituted with a warning with a further condition that in the event the Appellant violates Regulation 52 of the LODR Regulations in future it will be open to the Respondent to initiate proceedings under the Act/LODR Regulations and proceed in accordance with law. In view of the aforesaid, the appeal is allowed in part. The penalty of Rs.7 lakhs is substituted with a warning. In the circumstances of the case, there shall be no order as to costs.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020232_2.PDF

5.	**25.08.2020**	***Mrs. Bharti Goyal(Appellant) vs. SEBI (Respondent) and; Mr. Laxmikant Vyas(Appellant) vs. SEBI (Respondent)***	**Securities Appellate Tribunal (SAT)**

A group of entities are held to be responsible for raising the price of the scrip of the company (Mapro Industries Ltd.) and a warning to them that repetition of trading of similar nature/pattern as the impugned ones will lead to penal consequences is sufficient to meet the ends of justice

Facts of the case:

These two appeals have been filed challenging the adjudication order of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated 28th February, 2020. By the said order a penalty of Rs.5 lakhs each has been imposed on the Appellants for violation of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) and (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') by the Appellants, among others. Since the order impugned in both the appeals is the same and the basic facts relating to the appeals are also similar, SAT have heard these appeals together and are disposed of by this common decision.

A group of 16 entities are held to be responsible for raising the price of the scrip of Mapro Industries Ltd. (hereinafter referred to as 'Mapro') during the investigation period from July 1, 2014 to November 30, 2014. It is noted that during this period the price of the scrip was raised from Rs.79.15 on July 1, 2014 to a high of Rs.493.40 on November 10, 2014 and thereafter closing at Rs.430 on November 28, 2014. Though only six entities were found to be suspected group entities the scope of the investigation was expanded to another ten entities who were found to be part of the top traders during the investigation period.

What is held in the impugned order is that though there is no connection/relationship of these ten entities to the six suspected entities by the very manipulative nature of their trades such as placing buy orders mostly at the beginning of trading hours and substantively above the Last Traded Price (hereinafter referred to as 'LTP') they have manipulated the trading system and disturbed the market equilibrium in the scrip of Mapro. Together these ten entities raised the price of the scrip by Rs.241.95 by trading a total quantity of 1174 shares in 43 trades. It was also held in the impugned order that the contribution of these ten entities was about 69% of the total net LTP which was achieved in 29 trades with a total quantity of just 234 shares.

Order:

SAT are of the considered view that the nature and pattern of trading of the Appellants are violative of the stated provisions of PFTUP Regulations, 2003 but in the given facts and circumstances of the matter and in the absence of any effort in the impugned order towards connecting the dots in terms of relationship/connection/money transfer/even some interaction between the Appellants and other suspected entities or to the promoters of Mapro SAT are unable to uphold the penalty imposed on the two Appellants. **A warning to the Appellants that repetition of trading of similar nature/pattern as the impugned ones will lead to penal consequences is sufficient to meet the ends of justice.**

Both the appeals are partly allowed with no order as to costs.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020160.PDF

6.	19.08.2020	***Jiban Mitra (Appellant) vs. SEBI (Respondent) and Recovery Officer, SEBI (Respondent)***	**Securities Appellate Tribunal (SAT)**

SAT are of the opinion that the Appellant had knowledge of the proceedings but chose not to file the appeal within the stipulated period. The Appellant has stated false facts on oath and has tried to mislead the Court by stating false facts

Facts of the case:

The present appeal has been filed against an order dated 8thNovember, 2017 directing the Appellant and other Directors to refund the money collected jointly and severally during the financial years 2009-2010, 2010-2011 and 2011- 2012 along with interest. The Appellant was also restrained from selling its assets till such time the amount collected was refunded and was further restrained from accessing the securities market for a period of four years.

The Appellant had earlier filed Appeal No.49 of 2020 on 29th January, 2020 along with an application for condonation of delay which was dismissed as withdrawn by an order of this Tribunal dated 13th July, 2020 with liberty to file afresh. Now a fresh appeal has been filed along with an application for condonation of delay of 776 days.

It is alleged that the Appellant was unaware of the interim order dated 14th January, 2016 or the final order dated 8thNovember, 2017 passed by the respondent and only came to know when the Appellant went to its bank on 15thNovember, 2019 when he found that his bank account was seized pursuant to the Recovery Certificate dated 25th October, 2019 issued by the Recovery Officer. The appellant immediately thereafter filed the appeal. It was contended that no summons were ever received nor the Appellant came to know about the pendency of the proceedings which were published in the newspapers 'The Times of India' and 'Anand Bazar Patrika' and that the Appellant only came to know when his bank account was seized pursuant to the Recovery Certificate.

Order:

SAT the opinion that the Appellant had knowledge of the proceedings but chose not to file the appeal within the stipulated period. The Appellant has stated false facts on oath and has tried to mislead the Court by stating false facts. No sufficient cause has been shown nor there is any legal ground to condone the inordinate delay in filing the appeal. The Appellant has shown that there is a delay of 776 days which is incorrect in as much as the delay has been calculated upto 29th January, 2020 whereas the delay till the filing of the appeal in August, 2020 have to be calculated.

For the reasons stated aforesaid, the application for condonation of delay lacks merit and is dismissed as a result of which the appeal as well as the Misc. Application No.235 of 2020 for stay are also dismissed with no order as to costs.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020193.PDF

7.	18.08.2020	***Nimain Charan Biswal (Appellant) vs. SEBI (Respondent)***	**Securities Appellate Tribunal (SAT)**

It was not open to the Whole Time Member of SEBI to implicate the appellant only on the sole ground that the appellant was the Managing Director and during his period Optionally Convertible Debentures were allotted

Facts of the case:

The present appeal has been filed against the order dated April 7, 2020 passed by the Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) directing the appellant to refund the amount collected through Optionally Convertible Debentures (OCD) jointly and severally along with other Directors together with interest @ 15% per annum. By the said order, the appellant was also restrained from accessing the

securities market for a period of four years from the date of refund of amount and was further restrained from associating with any public listed company.

Order:

In view of the fact that the appellant did not attend any meetings of the Board of Directors during the alleged period of his tenure as Managing Director coupled with the fact that the resolution of the Board of Directors for issuance and allotment of OCDs was passed on February 28, 2012 that is much before the alleged appointment of the appellant as Managing Director and in the absence of any finding that the OCDs were issued and allotted during the period when the appellant was the Managing Director, SAT are of the opinion that the impugned order insofar as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed.

In SAT view the appellant has been harassed since 2015 when an ex-parte interim order was passed against him in relation to the issuance and allotment of NCDs. The said order was set aside by the Tribunal in 2016 and thereafter SEBI exonerated him on September 7, 2016. In spite of the decision of the Gujarat High Court on February 3, 2018, a fresh show cause notice dated December 13, 2018 was issued against the appellant, which in SAT opinion, was issued without any application of mind. SAT also find that there was enough evidence to show that the appellant was not involved in the issuance and allotment of OCDs which the WTM has conveniently ignored and implicated the appellant on the basis of presumption. Further, from the date of the impugned order dated April 7, 2020 the appellant has been restrained from accessing the securities market or from being associated with any public listed company. In SAT opinion the appellant is entitle for costs which we compute at Rs. 50,000/- (Rupees Fifty Thousand Only) which the respondent shall pay to the appellant by means of a demand draft or bank transfer within four weeks from today (date of Order).

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020156.PDF

8.	**17.08.2020**	***Anugrah Stock & Broking Pvt. Ltd. (Appellant) vs. National Stock Exchange of India Ltd. (Respondent)***	**Securities Appellate Tribunal (SAT)**

There is no doubt that the National Stock Exchange of India Ltd. (NSE) has a right to pass an ex-parte order but such ex-parte orders are required to be passed in case of extreme urgency.

Facts of the case:

The present appeal has been filed against an ex-parte order dated August 3, 2020 restraining the appellant from taking any fresh position in Futures & Options segments, Currency Derivatives segment and Commodity Derivatives segment with immediate effect.

SAT find that prior to the passing of the impugned ex-parte order, the appellant was served with a show-cause notice dated July 17, 2020 directing the appellant to submit its reply by July 27, 2020. It also transpires that on July 26, 2020, the appellant prayed for further time to file a reply. Instead of considering the request of the appellant the impugned order dated August 3,

2020 was passed ex-parte in which apart from the restraint order the appellant was directed to file a reply to the show cause notice as well as objection, if any, to the impugned order.

The primary reason for passing the impugned order is, that the appellant was alleged to be dealing in unauthorized Derivatives Advisory Services (DAS) since May 2017 which was subsequently closed in 2019 and thereafter it was being operated through a sister agency Om Shri Sai Investments (OSSI). It is alleged that during this period approximately Rs. 165.10 crores have been collected from the investors and accordingly, in order to ensure no further damage was caused to the investors assets, the impugned order was passed.

SAT are of the opinion that once a show cause notice was given and a reply was called for, there was no tearing hurry / urgency for the respondent to pass an ex-parte interim order restraining the appellant from trading business on the stock exchange platform in all segments which, prima-facie, appears to be too harsh at this ex-parte stage especially when this unauthorized DAS, if any, has been continuing for quite a period of time.

There is no doubt that the respondent has a right to pass an ex-parte order but such ex-parte orders are required to be passed in case of extreme urgency as has been held in North End Foods Marketing Pvt. Ltd. vs. SEBI and in *Udayant Malhoutra* vs. *SEBI case*. In the instant case, the violation is alleged to be continuing since 2017.

Order:

SAT direct that the effect and operation of the impugned ex-parte order dated August 3, 2020 shall remain stayed with immediate effect subject to the following :-

(i) SAT restrain the appellant to continue with its business of DAS as well as in its sister concern OSSI with immediate effect during the pendency of the appeal.

(ii) SAT further restrain the appellant from enrolling any fresh client in the derivatives segment during the pendency of the appeal.

(iii) SAT direct the appellant to deposit a sum of Rs. 165 crores before the respondent within two weeks from today. The amount so deposited shall be kept in an interest bearing account by the respondent and shall be subject to the result of the appeal.

(iv) The appellant will file a reply to the show cause notice within three weeks from today (date of the order). The respondent will fix a date thereafter and, after giving an opportunity of hearing, will decide the matter in accordance with law.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020245_1.PDF

9.	23.07.2020	***Ms. Kalpana Gupta (Appellant) vs. Securities and Exchange Board of India (Respondent)***	**Securities Appellate Tribunal (SAT)**

SAT are of the considered view that without ascertaining that the monies actually belong to the appellant the Recovery Officer of SEBI could not have frozen the two joint bank

accounts in which the appellant was the second holder. The power of attachment has to be exercised with utmost care and circumspection.

Facts of the case:

This appeal has been filed aggrieved by the issuance of the recovery certificate, notice of attachment of bank accounts and notice of attachment of demat accounts by the Recovery Officer of Securities and Exchange Board of India ("SEBI" for short), all dated June 10, 2020.

By the said recovery certificate the appellant, along with other erstwhile directors of the Company MVL Limited, has been directed to deposit an amount of Rs. 65,93,37,925/- within 15 days from date of receipt of the recovery certificate. Similarly, by the impugned bank attachment notice, the bank accounts of the appellants as well as other erstwhile directors of the MVL Limited are frozen and by the demat attachment notice depositories have directed to attached the shares in the accounts of some of the erstwhile directors etc.

Order:

SAT directed the Recovery Officer of SEBI to de-freeze the two bank accounts of the appellant, Ms. Gupta forthwith wherein the appellant is only the second holder along with her mother and son respectively who are the primary holders of those two accounts. It will however be open to the Recovery Officer to proceed afresh with regard to the joint accounts in accordance with law. Accordingly appeal by M/s Kalpana Gupta is partly allowed.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020152.PDF

10.	**17.07.2020**	***Aurora UK Bidco Limited (Appellant) vs. Securities and Exchange Board of India (Respondent)***	**Securities Appellate Tribunal (SAT)**

The impugned decision conveys to the Manager of the Appellant the decision of the Respondent to appoint an independent valuer at the cost of the Appellant. This decision is based on the power drawn by Respondent SEBI from Regulations 8(16) of the SAST Regulation which provides that the Respondent SEBI "may" exercise the said discretion.

Facts of the case:

Aggrieved by the decision of Securities and Exchange Board of India (hereinafter referred to as "SEBI") dated 14th February, 2020 appointing an independent Chartered Accountant in terms of Regulation 8(16) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "SAST Regulations") for computation of offer price in accordance with Regulation 8(4) of the SAST Regulations the present appeal is filed.

Facts leading to the present appeal are as under:-

The Appellant is a private limited company subject to the jurisdiction of laws of Jersey, Channel Islands. On November 12, 2019 it entered into a Share Purchase Agreement (hereinafter referred to as "SPA") with various entities as detailed in the appeal. This transaction involved multiple jurisdictions across the world which includes subsidiaries of Accelya Topco Ltd. (hereinafter referred to as "TOPCO"). This resulted into acquiring 74.66% of voting share

capital of Accelya Solutions India Limited in India ("Target Company"). It triggered an open offer under Regulations 3(1) and 4 read with Regulation 5(1) of the SAST Regulations. The Appellant was therefore required to make the mandatory open offer to acquire at least 26% of the outstanding equity share capital of the target company from its public shareholders at a price as determined according to the provisions of the SEBI SAST Regulations. The equity shares of the Target Company are not "frequently traded shares" on the Stock Exchanges, therefore, the Appellant was required to make an open offer at a price which would be the fair price of the equity shares of the Target Company, as determined under Regulation 8(4) of the SAST Regulations.

As per the Regulations, the Manager of the Appellant appointed two independent Chartered Accountants, MSKA & Associates and Bansi S. Mehta & Co. to determine the fair price of the equity shares of the Target Company in accordance with Regulation 8(4) of the SEBI SAST Regulations. While MSKA & Associates determined the fair price at Rs.944.19, Bansi S. Mehta & Co. determined the same at Rs.939.07. In these circumstances, the Appellant accepted the higher price of the two valuation and as per the Regulations arrived at Rs.944.19/- as offer price for the open offer. Thereafter public announcement as required by the SAST Regulations was made. Some complaints were received upon publication of the public statement. Those complaints were forwarded to the Manager. Some shareholders complained that the price should be in the range of Rs.1250/- to Rs.3,400/-. They applied their own methodologies. The Manager dealt with those complaints. Ultimately a draft letter of offer as per Regulation 16 of the SAST Regulations was filed with Respondent SEBI on 7th January, 2020. Thereafter Respondent SEBI sought some clarifications and information from the Manager. After getting detailed response from the Manager, Respondent SEBI conveyed its impugned decision dated 14th February, 2020 to the Manager. It conveyed the decision of appointing M/s. Varma & Varma for computing the fair price of the equity shares of the Target Company in accordance with the parameters specified under SAST Regulations. Appellant was directed to pay a fees of Rs 300,000/- to the valuer. Aggrieved by the said communication the present appeal is preferred.

Order:

In the result SAT find that the appeal is devoid of merit. Hence the appeal as well as the Misc. Application was dismissed with no order as to costs.

Before parting, SAT find that a number of appeals are being filed before the Tribunal praying for the quashing of the communication to appoint a Chartered Accountant under Regulation 8(16) of the SAST Regulations on the ground of non-application of mind or that no reasoned order was passed. Whereas the Supreme Court in Sultania's case (supra) has held that a regulator is not required to give a reasoned order, SAT observe that a regulator while communicating its decision to appoint a Chartered Accountant under Regulation 8(16) of the SAST Regulations may indicate the application of mind while considering the issue at hand.

For more details:
http://sat.gov.in/english/pdf/E2020_JO2020149_1.PDF

DIRECT TAX

1.	September 29, 2020	*National Co-Operative Development Corporation (Appellant) vs. Commissioner of Income Tax, (Respondent)*	Supreme Court

Deduction - Refund of grants - Section 13(1) of Income Tax Act, 1961

Fact of the Case:

The Assessing Officer opined that the non-refundable grants were in the nature of capital expense and not a revenue expense and, thus, disallowed the same as a deduction. An appeal was preferred before the Commissioner which opined that the grants made by the Appellant undisputedly fall within its authorised activities, which were interlinked and interconnected with its main business of advancing loans on interest to State Governments and cooperative societies. These grants were intended to be utilised for various projects which were admittedly of capital nature and resulted in the acquisition of capital assets, but not by the Appellant itself. The Commissioner found that the approach adopted by the AO was fallacious as the functions and activities of the Appellant-Corporation included giving loans and grants which, in fact, was the very purpose for which it had been set up. The net deduction, however, allowed was limited on account of refund of the grants to the extent of amount which had remained unutilised.

The Revenue Department to prefer an appeal before the Income Tax Appellate Tribunal which, however, accepted the view taken by the AO and did not agree with the approach of the Commissioner, setting aside the order of the Commissioner. Thereafter, an appeal as preferred before the High Court. The High Court opined that since the business of the Appellant-Corporation was to receive funds and to then advance them as loans or grants, the interest income earned which was so applied would also fall under the head of profits and gains of business or profession being a part of its normal business activity. The High Court held that the monies which were advanced from the Fund cannot be distinctly identified as forming part of the interest income. The other aspect the High Court opined on was that in order to claim deduction as a revenue expenditure, the Appellant-Corporation had to first establish that it incurred an expenditure. The advancement of loans to the State Governments and cooperative societies could not be claimed as expenditure as the same did not leave the hands of the Appellant-Corporation irretrievably.

Order/ Judgement:

The functions of the Appellant-Corporation was to advance loans or grant subsidies to State Governments for financing cooperative societies, etc. There was no other function which the Appellant-Corporation carries out nor did it generate any funds of its own from any other business. In a sense the role is confined to receiving funds from the Central Government and appropriately advancing the same as loans, grants or subsidies. In a larger canvas the Appellant-Corporation plans, promotes and makes financial programmes for the benefit of these societies and other entities to which such loans, grants and subsidies were advanced. It

was really in the nature of an intermediary with expertise in the financial sector to carry forward the intent of the Central Government to assist State Governments, Cooperative Societies, etc. Since this was the business activity, that was what had persuaded to opine that the income generated in the form of interest on the unutilised capital was in the nature of business income. The objectives were wholly socio-economic and the amounts received including grants come with a prior stipulation for the funds received to be passed on to the downstream entities. This was the reason they have been treated as capital receipts. However, Since this is a pass-through entity on the basis of a statutory obligation, the advancement of loans and grants is not a business activity, when really it was the only business activity. Once it was business activity, the interest generated on the unutilised capital had been held to be the business income.

The contention of the Revenue Department that merely because the interest income received had merged with the monies in the common Fund it loses its revenue character and becomes a capital receipt is not correct. This line of argument was inconsistent with the position where interest money was received, it was held to be of revenue character, and chargeable to tax under the head Profits and Gains of Business or Profession. This amount while lying in the same fund could not acquire the character of a capital receipt. The interest having been treated as revenue receipt on which taxes were paid, it must continue to retain the character of revenue receipt. If the nature of receipt was treated as capital receipt then consistent with the aforesaid approach, no taxes would have been payable on the amount. The corollary was that all expenses incurred in connection with the business were deductible.

This court also find really no force in the submission of the Revenue Department that the direct nexus of monies given as outright grants from the taxable interest income could not be distinctly identified. This was a question of fact. The plea of the Respondents was based on a pure conjecture. It was the case of the Appellant-Corporation throughout that it could easily demonstrate the direct and proximate nexus of interest earned through grants made, as its accounts were duly audited. In fact, Commissioner allowed the business expenditure only to a certain amount on the basis of the facts and figures as emerged from the balance sheet. This was a burden which was to be discharged by the Appellant-Corporation and the Commissioner had been satisfied with the nexus of interest income with the disbursement of grants made, as having been established.

This court unable to agree with the findings arrived at by the AO, Appellate Tribunal and the High Court albeit for different reasons and concur with the view taken by the Commissioner.

2.	April 24, 2020	*Basir Ahmed Sisodiya (Appellant) v/s. Income Tax Officer (Respondent)*	Supreme Court

Cash credits - Deletion of addition - Section 68 of Income Tax Act, 1961

Facts of the Case:

The Appellant / Assessee was served with a notice under section 143(2) of the Income Tax Act, 1961 by the Assessing Officer pursuant to which an assessment order was passed. The Officer,

inter alia, while relying on the Balance Sheet and the books of account, took note of the credits. The Officer treated that amount as Cash credits under Section 68 of the Income tax Act, 1961 and added the same in declared income of the Assessee. The Officer then proceeded to compute the income of the Assessee for the concerned assessment year. Aggrieved, the Appellant / Assessee preferred an appeal before the Commissioner.

The Commissioner upheld addition as regards the Trading Account and Credits in question. The Appellant/Assessee then preferred further appeal to the Tribunal. Having noted the issues and objections raised by the Department and the Appellant/Assessee, the Tribunal upheld addition made towards cash credits. The Appellant/Assessee then filed an appeal before the High Court. The High Court dismissed the appeal vide impugned judgment and order, as being devoid of merits. The High Court opined that the amount shown as credits was nothing but bogus entries and was justly added to the income of the Appellant/Assessee.

Order/ Judgement:

It had now come on record that the Appellant/Assessee in penalty proceedings offered explanation and caused to produce affidavits and record statements of the concerned unregistered dealers and establish their credentials. That explanation had been accepted by the Commissioner. In the said decision, it had been noted that the Officer recorded statements of unregistered dealers and their identity was also duly established. After analysing the evidence so produced by the Appellant/Assessee, the appellate authority noted that the Officer had neither doubted the identity of those dealers nor any adverse comments were offered in reference to their version regarding sale of marble slabs by them to the Appellant/Assessee in the financial year relevant to assessment year and receipt of payments after two to three years. Further, there was no denial of purchase of marbles by the Assessee and sale with closing stock as disclosed in the trading account. The appellate authority thus found that without purchases of marbles, there could be no sale and disclosure of closing stock in the trading account. In other words, the materials on record would clearly suggest that the concerned unregistered dealers had sold marble slabs on credit to the Appellant/Assessee, as claimed. As a consequence of this finding, the appellate authority concluded that there was neither any concealment of income nor furnishing of inaccurate particulars of income by the Assessee. These observations were made by the competent forum (appellate authority) in penalty proceedings under Section 271 of the Income Tax Act, 1961 in favour of the Assessee. However, what needs to be noted was that the stated penalty proceedings were the outcome of the assessment order in question concerning assessment year. Indeed, at the time of assessment, the Appellant/Assessee had failed to produce any explanation or evidence in support of the entries regarding purchases made from unregistered dealers. In the penalty proceedings, however, the Appellant/Assessee produced affidavits of thirteen unregistered dealers out of whom twelve were examined by the Officer. The Officer recorded their statements and did not find any infirmity therein including about their credentials. The dealers stood by the assertion made by the Appellant/Assessee about the purchases on credit from them and which explanation had been accepted by the appellate authority.

The factual basis on which the Officer formed his opinion in the assessment order in regard to addition stands dispelled by the affidavits and statements of the concerned unregistered dealers in penalty proceedings. That evidence fully supports the claim of the Appellant/Assessee. The appellate authority had not only accepted the explanation offered by the Appellant/Assessee but also recorded a clear finding of fact that there was no concealment

of income or furnishing of any inaccurate particulars of income by the Appellant/Assessee. That now being the indisputable position and therefore the addition of amount could not be justified.

3.	July 29, 2020	*Medley Pharmaceuticals Ltd (Appellant) vs. CIT (Respondent)*	ITAT Mumbai

The disallowance under the Explanation to section 37(1) of the Income Tax Act, 1961 "the Act" of "freebies" to doctors by relying on CBDT Circular No. 5 dated 01.08.2012 & the IMC (Professional Conduct, Etiquettes & Ethics) Regulation, 2002 is not justified.

Facts of the Case:

The assessee company were engaged in the business of manufacturing and trading of pharmaceutical products had filed its Return of Income for A.Y. 2012-13 on 27.09.2012, declaring its total income of Rs.29,29,14,990. Original assessment in the case of the assessee was framed by the A.O, vide his order passed under Section 143(3), dated 27.03.2015, and the income of the assessee was assessed at Rs.49,23,59,750. Subsequently, the case of the assessee was reopened under Section 147 of the Act. In compliance to the notice issued under Section 148 of the Act, the assessee filed its return of income on 20.04.2017, declaring a total income of Rs. 29,29,14,990.

In the course of the assessment proceedings the assessee was supplied the copy of the "reasons to believe" on the basis of which its case was reopened under Section 147 of the Act for the reason, that sales promotion expenses booked by the assessee company revealed that it had inter alia claimed deduction for various expenses which were clearly prohibited as per the MCI guidelines, and thus, disallowable as per the Explanation to Section 37(1) of the Act and therefore disallowed the same.

Order/Judgement:

The code of conduct prescribed by the Medical Council is applicable only to medical practitioners/ doctors registered with the Medical Council of India and does not apply to pharmaceutical companies & the healthcare sector in any manner. The CBDT has no power to extend the scope of the MCI regulation to pharmaceutical companies without any enabling provision either under the Income tax Act or the Indian Medical Regulations. The circulars which are issued by the Central Board of Direct Taxes must confirm to the tax laws and though are meant for the purpose of giving administrative relief or for clarifying the provisions of law, but the same cannot impose a burden on the assessee, leave alone creating a new burden by enlarging the scope of a regulation issued under a different act so as to impose any kind of hardship or liability on the assessee.

4.	April 24, 2018	*Income Tax Officer (Appellant) vs. M/s Techspan India Private (Respondent)*	Supreme Court

Whether an assessment could be reopened on the issue of excess deductions claimed under section 10A of the Income tax Act, 1961, where during the original assessment proceedings, the question of allocation of expenses was considered?

Facts of the Case:

The assessee was engaged in the business of development and export of computer software and human resource services. Assessee is also eligible for deduction under Section 10A of the Income Tax Act, 1961. Assessee filed its return declaring a loss after claiming deduction common expenses from its two sources of income, namely, software development and human resource development. The assessee also claimed deduction under section 10A for the income from software development. The return was selected for assessment under section 143(2) and a specific query was raised regarding the allocation of common expenses between the two heads, viz., software development and human resource development. The issue was duly explained and an order passed assessing the income as 'Nil'.

Subsequently a notice under section 148 was issued on the ground that an excess deduction under section 10A had been allowed. The assessee filed objections against the proposed reopening. The objections of the assessee were rejected. On writ, the High Court set aside reassessment notice.

Order/ Judgement:

Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either express or necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings.

In the present case, a bare perusal of the notice made it clear that the point on which the re-assessment proceedings were initiated, was well considered in the original proceedings. Initiation of the re-assessment proceedings under section 147, merely because of the fact that now the AO is of the view that the excess deduction was allowed, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings.

5.	December 14, 2006	*Kachwala Gems (Appellant) vs. Jt. CIT (Respondent)*	Supreme Court

Whether there is necessarily some estimation involved in a best judgment assessment?

Facts of the Case:

The assessee deals in precious and semi-precious stones. The assessee has not maintained and kept any quantitative details/stock register for the goods traded in by the assessee. There is no

evidence on record or document to verify the basis of the valuation of the closing stock shown by the assessee. The assessee is not able to prepare such details even with the help of books of accounts maintained, purchase bills & Sale Invoices.

The Assessing Officer 'AO' noticed various defects in the books of account of the assessee. The AO therefore rejected the books of account and proceeded to make a best judgement assessment under section 144 of the Income tax Act, 1961. The Assessing Officer in the assessment order mentioned some comparable cases and was of the view that the case of the assessee is more or less having similar facts as that of M/s. Gem Plaza where the Gross Profit has been taken as 35.48%. The Assessing Officer estimated the Gross Profit of the assessee as 40%.

In appeal, the Commissioner of Income Tax (Appeals) upheld most of the findings of the Assessing Officer, but reduced the Gross Profit from 40% to 35%. In further appeal, the Tribunal had given further relief to the assessee and reduced the Gross Profit rate to 30%.

Order/ Judgement:

The authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts.

Even though there is always a certain degree of guess work in a best judgment assessment, the authority should try to make an honest and fair estimate of the income and should not act totally arbitrarily.

Source:

- https://itatonline.org/archives/
- https://indiankanoon.org/doc/987467/
- https://itatonline.org/digest/ito-v-techspan-india-private-ltd-sc-www-itatonline-org/
- manupatra.com

INDIRECT TAX

1.	22.09.2020	*CIAL Duty Free and Retail Services Ltd. (CDRSL) (Appellant) vs. Union of India and others (Respondent)*	Kerala High Court

Refund should be claimed only after paying GST on Input services

Facts of the case:

In writ petition, a declaration had been sought to the effect that the CGST Act, 2017, the IGST Act, 2017, and the Kerala SGST Act, 2017 and the rules thereunder do not apply to the supply of goods and services effected by the Appellant in the arrival and departure Duty-Free Shops (DFS) at Calicut International Airport in terms of the Concession Agreement with a further prayer of issuance of direction to the respondents not to apply the aforementioned Acts to the DFS operated by the Appellant and to quash notices and invoices to the extent of levying CGST and IGST on the revenue sharing in terms of the Concession Agreement. The Appellant contended that refund of ITC pursuant to sale of duty free goods from Duty Free Shops at the departure area of airport, had been declined and GST towards the minimum guaranteed fees/concession fees for grant of rights and use of licensed premises of duty free in the departure or arrival area of international airport had been made accessible by the Bombay High Court.

Judgment:

The Kerala High Court ordered the Appellant to pay the GST on input services including Concession Fee to Respondent and claim Input Tax Credit (ITC) of the entire tax amount and thereafter claim refund of the same by following the procedure.

2.	31.08.2020	*Urbanclap Technologies India Pvt. Ltd. (Appellant) vs. State Tax Officer, Chennai (Respondent)*	Madras High Court

Opportunity of being heard, Assessing Officer should wait till end of the working day when personal hearing is fixed, before finalizing assessment

Facts of the case:

The Appellant urged that effective opportunity was not given to him by the Assessing Officer (AO) as personal hearing notice was issued on February 13, 2020 listing the matter for hearing, the very next day i.e. February 14, 2020 and the impugned orders have been passed on the same day. The Appellant argued that priniciples of natural justice was violated. The Appellant prayed before the court to call for the records relating to the impugned order passed by the AO and quash the consequential recovery notice in Form GST DRC-07 issued by the AO.

Judgment:

Madras High Court quashed the Assessment order passed by the GST State Tax Officer dated February 14, 2020 where the Personal Hearing intimation was issued on February 13, 2020 posting the hearing on February 14, 2020. The Court was of opinion that the Assessing Officer, in all fairness, should wait till the end of the working day when personal hearing was fixed, before finalizing the assessment.

3.	**24.08.2020**	***Rajive and Company (Chungath Jewellery) (Appellant) vs. Assistant Commissioner (Respondent)***	**Kerala High Court**

Appellant can demand copies of seized documents during search

Facts of the case:

The Appellant submitted that their request for copies of documents, seized by the Respondent had been turned down by the respondents. Further they have their business activities centred around Karunagappally, Thiruvananthapuram, Kollam and Ernakulam, the investigation has been based in Ernakulam, which causes inconvenience to the petitioners for participating in the investigation proceedings. The Appellant prayed for direction to issue copies of the seized documents and for transfer of the investigation to Kollam.

Judgment:

The Kerala High Court disposed the petition by rejecting the prayer of the Appellant for a transfer of the investigation to Kollam, and by directing the respondents to furnish copies of the documents seized from the appellant.

4.	**13.08.2020**	***Gaurav Yadav & Anr. (Appellants) vs. Union of India & Ors. (Respondent)***	**Delhi High Court**

Classification of Masks and Sanitizers as essential Commodities and their tax rate

Facts of the case:

A Public Interest Litigation (PIL) was filed by Gaurav Yadav, a social activist and Advocate Aarti Singh which challenged the order of Central Government "excluding Mask and sanitizer from essential commodities". They also challenged the levy of 18% on GST on sanitizers. The Appellants had submitted that these commodities are an essential requirement during the Coronavirus pandemic. They also stated that the foremost purpose of the Essential Commodities Act 1955 is to provide benefit to the customers and not the trade industry. The legislation provides power to the government to take necessary steps for the benefit of the general public.

Judgment:

The court said face masks and alcohol-based sanitisers are now easily available, and hence there is no need to regulate their supplies. "Rate of tax cannot be challenged in a court of law unless it is abundantly confiscatory in nature. In the facts of the present case, nothing has been argued out about how the present rate of GST is confiscatory in law." Items to be included under Essential Commodities Act, 1955 as 'Essential Commodity', is a policy decision of respondent/Government and, therefore, unless such decision could be shown to be manifestly unreasonable, High Court would not interfere with policy decision of Government, hence, writ of mandamus to direct respondents to extend notification dated March 13, 2020 to include masks and sanitizers as 'Essential Commodities' under Essential Commodities Act, 1955 could not have been allowed.

5.	**10.08.2020**	***In re Hooghly Motors (P) Ltd.***	**West Bengal AAR**

Classification of Three-Wheeled electrically operated motor vehicle

Facts of the case:

M/s Hooghly Motors Pvt. Ltd. is a manufacturer of "three-wheeled motor vehicles", commonly known as "Toto". It submitted that the goods it manufactures are supplied with the battery pack and, therefore, should be classified under HSN (Harmonised System of Nomenclature) 8703 which prescribes a 'Nil' levy, being an electrically operated three-wheeled motor vehicle. It is different from the body of a three-wheeled motor vehicle supplied without the battery pack. The applicant sought advance ruling on the issue of whether such a three-wheeled vehicle is classifiable as an "electrically operated motor vehicle" under HSN 8703 when supplied with a battery pack. The ruling was further sought on the classification when supplied without the battery pack.

Judgment:

West Bengal Authority of Advanced Ruling (AAR) held that three-wheeled motor vehicle is classifiable under HSN 8703 as an electrically operated vehicle, provided it is fitted with the battery pack. Otherwise, it will be classifiable under HSN 8706.

6.	**10.08.2020**	***In re Enfield Apparels Ltd.***	**West Bengal AAR**

Taxability of Assignment of leasehold right on immovable property and admissibility of ITC

Facts of the case:

The National Company Law Tribunal (NCLT), Kolkata Bench, initiated the corporate insolvency resolution process (CIRP), admitting Enfield Apparels Ltd. as the corporate debtor, and appointed an Interim Resolution Professional (IRP). The Appellant one of the assets under liquidation was the leasehold factory unit along with car parking space. The West Bengal Industrial Development Corporation Ltd granted the appellant possession of the Demised Premises for 99 years. Another condition of lease was that it can be sub-leased after five years

from the date of signing of deed. The Liquidator sought advance ruling on the issue whether GST is payable on the consideration receivable on such assignment. If yes, then what will be rate and whether ITC can be claimed or not.

Judgment:

West Bengal AAR held that activity of assignment of asset — leasehold factory unit with car parking space leased by West Bengal Development Corporation (sub-lessor to corporate debtor) — is a service taxable as 'Other Miscellaneous Service' and therefore GST to be levied at 18 per cent. It observed that the sub-lessor has allowed possession of the demised premises for manufacture of garments and textiles.

According to AAR, activity of assignment is in the nature of agreeing to transfer one's leasehold rights which does not amount to further sub-leasing. "Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for agreeing to do the transfer of rights in favour of the assignee," it said.

7.	**24.07.2020**	***VKC Footsteps India (P) Ltd. (Appellant) vs. Union of India (Respondent)***	**Gujarat High Court**

Companies can claim refund using unutilized Input Tax Credit arising from input services under inverted duty structure

Facts of the case:

The Appellant was engaged in the business of manufacture and supply of footwear which attracts GST at the rate of 5%. The Appellant procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST for use in the course of business and avails ITC of the GST paid thereon. Majority of the inputs and input services attract GST at the rate of 12% or 18%. Thus, GST rate paid by the Appellant on procurement of input is higher than the rate of tax payable on their outward supply of footwear. As a result, in spite of utilization of credit for payment of GST on outward supply, there is accumulation of unutilized credit in electronic credit ledger of the Appellant. Respondents were allowing refund of accumulated ITC of tax paid on inputs such as synthetic leather, PU Polyol, etc. However, refund of accumulated credit of tax paid on procurement of input services such as job work service, goods transport agency service, etc. is being denied. The Appellant had therefore challenged validity of amended Rule 89(5) of the CGST Rule, 2017 to the extent it denies refund of ITC relatable to input services. As per Section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilized ITC at the end of any tax period. As the law includes the tax on goods as well as services within the definition of ITC, Rule 89 cannot make a contrary differentiation as it is subordinate to the act. The amendment results in a 'perpetual retention' or appropriation of tax credit by the government which is contrary to the legislative intent.

Judgment:

Gujarat High Court observed that disallowing refund of the tax paid on input services is contrary to the CGST Act. The respondents were, therefore, directed to allow the claim of the refund made by the appellant considering the unutilized ITC of "input services" as part of the "net input tax credit" (Net ITC) for the purpose of calculation of the refund of the claim as per Rule 89(5) of the CGST Rules, 2017 for claiming refund under Sub-section 3 of Section 54 CGST Act,2017. Businesses must be allowed to factor in the tax paid on input services for calculating the claim of refund under the inverted duty structure. The Court declared Rule 89(5) of CGST Rules ultra vires to the provisions of Section 54(3) of CGST Act. The definition of ITC includes credit in respect of both inputs and input services. The intent of the law is not to deny the refund of GST paid on input services as a part of accumulated ITC.

8.	**22.07.2020**	***Jian International (Appellant) vs. Commissioner of Delhi Goods and Services Tax (Respondent)***	**Delhi High Court**

Deficiency in Refund application can not be found beyond statutory time limit

Facts of the case:

This writ petition had been filed seeking a direction to Respondent to grant a refund of Rs.9,12,893/- claimed under Section 54 of the Delhi Goods and Services Tax Act, 2017 for the month of August 2019 as well as the grant of an interest on the amount in accordance with Section 56 of DGST/CGST Act.

Appellant stated that proper officer is required to refund at least 90% of the refund claimed on account of zero-rated supply of goods or services or both made by registered persons within 7 days from the date of acknowledgment issued under Rule 90. He stated that despite the period of 15 days from the date of filing of the refund application have expired, the respondent had till date neither pointed out any deficiency/discrepancy in FORM GST RFD-03 nor it had issued any acknowledgement in FORM GST RFD-02.

Respondent admitted that there was leniency on their part in processing the appellant's application. He, however, stated that a formal deficiency memo will have to be issued as certain documents though annexed with the writ petition had not been uploaded by the Appellant along with its refund application.

Judgment:

Delhi High Court said that Rule 90 and 91 of the CGST Rules have a strict timeline. Rules 90 states that within 15 days from the date of filing of the refund application, the respondent has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02. In the event deficiencies are noted and communicated to the applicant, then the applicant would have to file a fresh refund application after rectifying the deficiencies. In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST Act.

The Appellant's refund application had been delayed beyond the statutory time limit. Neither any acknowledgment in FORM GST RFD-02 had been issued nor any deficiency memo had been issued in RFD-03 within 15 days. Therefore, the refund application would be presumed to be

complete in all respects in accordance with Rule 89 of CGST Rules. Hence, Delhi High Court directed the respondent to pay the refund amount along with interest.

9.	5.06.2020	*Uma Shankar Aggarwal (Appellant) vs. Union of India (Respondent)*	**Rajasthan High Court**

Fraudulent claim of Input Tax Credit (ITC) and rejection of bail application

Facts of the case:

The Appellant had filed an application for bail under section 439 of The Code of Criminal Procedure, 1973 against the registration of case for alleged offence under section 132 of CGST Act, 2017. Allegedly, the appellant had claimed ITC to the tune of Rs. 11.6 Crores without there being any transaction. The maximum sentence under the Act is five years. The Appellant had already been in custody for five months. The Authority contended that the vehicles in which products stated to have been send to the appellant are pick-up, scooty and motorcycle etc. which clearly goes to show that fake bill entries were manipulated to claim ITC.

Judgment:

Rajasthan High Court observed that claim of input tax credit without there being any transaction directly affects the economy of the country, Appellant had claimed ITC to the tune of Rs.11.6 crores. Hence, the bail application cannot be entertained.

10.	04.03.2020	*Daily Fresh Fruits India (P) Limited (Appellant) vs. Assistant States Tax Officer (Respondent)*	**Kerala High Court**

Release of goods in case of dispute on classification of goods

Facts of the case:

According to the Appellant, the carbonated fruit drinks manufactured by them was classified under HSN 2202 9920 under GST and discharging GST @ 12% on all intra State and inter-State supplies. The codes have been specified under the Chapter XXII of GST Tariff Codes. In the aforementioned code in respect of fruit-based drinks the tax is @ 12%. On earlier occasions, the Appellant had also brought the aforementioned drinks within the jurisdiction of Kerala and the vehicles carrying the aforementioned goods were intercepted on the premise that the aforementioned goods were wrongly classified, in fact they would be falling under the head 2202 10, for which the GST rate is 28%. Though against the aforementioned detention, the appellant after paying the tax and penalties, obtained the release of the vehicles, this time again on January 31, 2020, the goods of similar nature being brought within the jurisdiction of the Kerala State were intercepted and detained on the same premise. It is in this background, the action of the authorities in detention has been assailed in the present writ petition.

Judgment:

The Kerala High Court quashed detention order on the ground that this was a bona-fide case of dispute in the classification of goods and directed release of goods.

LABOUR LAWS

1.	11.07.2019	*Chief Regional Manager, United India Insurance Company Limited (Appellant) vs. Siraj Uddin Khan (Respondent)*	Supreme Court of India

Clarification on No-work No-Pay Principle: In this case SC has reiterated that no individual can claim wages for the period that he/she remained absent without leave or justification.

Facts of the case:

In the present case, the Respondent was relieved from the Allahabad branch of the Appellant to join the Jaunpur branch of the Appellant. However, the Respondent did not join the Jaunpur branch on the assigned date and was unauthorizedly absent from work for four months. Disciplinary enquiry was conducted against the Respondent and an order for reduction of basic pay by two steps was passed in May 2009. However, the Respondent continued to be absent from work until 2012. Consequently, the Appellant passed an order in June 2012, terminating the services of the Respondent. The Respondent preferred a series of writ petitions before the High Court of Allahabad against the above-mentioned orders. The High Court of Allahabad quashed the above-mentioned orders citing procedural lapses in the conduct of disciplinary enquiry, without specially directing the Appellant to provide back wages to the Respondent from 2009-2012. Upon refusal of the Appellant to pay back wages from 2009 - 2012, the Respondent filed another writ petition before the High Court of Allahabad. The High Court of Allahabad directed the Appellant to pay salary for the period 2009 - 2012, along with 18% interest. The Appellant preferred the present appeal before the SC against this order of the High Court of Allahabad.

Judgement:

The two-judge bench of the SC held that, setting aside of the termination order does not automatically entitle the Respondent to the salary for the period 2009 - 2012. The SC differentiated the present case from a situation where an employee was dismissed from service and when such dismissal was set aside, he would automatically be entitled for back wages. The SC noted that since the Respondent was not kept away from the work on account of dismissal or by any order of the Appellant, the Respondent was not eligible to claim arrears of wages. Therefore, the SC partly allowed the appeal and directed the Appellant to consider the claim of back wages of the Respondent and pass appropriate orders with reasons.

Comment: While the SC in this case did not conclusively determine whether the Respondent was eligible for wages or not, it referred to judicial precedents dealing with the principle of 'no work no pay'. The SC referred to the decision of the SC in *Airports Authority of India and Others* v. *Shambhu Nath Das* [(2008) 11 SCC 498] wherein it was held that if a person was absent from work without authorized leave or valid justification, he would not be eligible for wages for that period. On the other hand, the SC has also referred to the judgement of Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and Others [(2016) 16 SCC 663] wherein the SC held that where an employer has restrained the employee from working, the employer cannot plead

'no work no pay'. Therefore, the SC has attempted to reiterate that the principle of 'no work no pay' applies only in instances where the employee has voluntarily absented himself from work, and not where the employer has restrained the employee from attending work.

2.	10.07.2019	***Pankaj Prakash (Appellant) vs. United India Insurance Company Limited and Another (Respondent)***	**Supreme Court of India**

Mandatory Communication of Annual Performance Appraisal Reports to Public Servants: All public servants are entitled to know their grades in an annual performance appraisal report (APAR).

Facts of the case:

The Appellant was aggrieved by the fact that the entries in his APAR for two years were not disclosed, as a result of which he was unable to submit a representation for promotion at the particular time. The Appellant filled a writ petition before the High Court of Allahabad against such action of the employer i.e. Respondent. The High Court of Allahabad held that in the absence of an adverse entry or an entry below the benchmark, the failure to communicate the grade in an APAR did not result in an actionable grievance. The Appellant preferred an appeal against this judgment of the High Court of Allahabad.

Judgement:

The SC held that as per the decisions of the SC in Dev Dutt v. Union of India [(2008) 8 SCC 725] and Sukhdev Singh v. Union of India [(2013) 9 SCC 566], it is mandatory that every entry in the APAR of a public servant must be communicated to him/her within a reasonable period. Apart from ensuring transparency in the system, such disclosures also ensure that a public servant is given reasonable opportunity to make representations against the gradings if he / she is dissatisfied with the results. Further, the Union of India had also issued Office Memoranda on 14 May 2009 and 13 April 2010 seeking compliance by all ministries and departments. Moreover, on 19 October 2012, a specific communication was also addressed to public sector insurance companies.

Therefore, the SC disagreed with the reasoning given by the High Court of Allahabad and held that non-communication of the entries in an APAR, whether good or bad grades, is a matter in respect of which a legitimate grievance can be made by the Appellant. Accordingly, the SC directed the Appellant to communicate the details of the APAR to the Respondent within a period of one month from the date of receipt of this order.

Comment: While performance appraisals are essential for every organisation to function efficiently, different mechanisms are adopted by the public and private sector, respectively. Performance appraisals in the public sector are guided by specific procedures and directions issued by the appropriate government and concerned departments, which are not applicable to private sector establishments. While there have not been judicial precedents dealing with similar issues in case of private sector employers, private establishments may adopt

performance appraisal procedures to ensure transparency in recording and communicating the remarks relating to an employee and conformity to the principles of natural justice.

3.	03.07.2019	*Dr Pooja Jignesh Doshi (Appellant) vs. The State of Maharashtra and Another (Respondent)*	Supreme Court of India

Surrogate Parents are entitled to Maternity and Paternity Leave

Facts of the Case:

The above cases dealt with matters arising prior to 1 April 2017, at which time the government, by way of Maternity Benefit (Amendment) Act, 2017 (effective from 1 April 2017), introduced an explicit provision in the Maternity Benefit Act,1961, providing that even a commissioning mother (i.e. a biological mother who uses her egg to create an embryo implanted in any other woman) shall be entitled to paid maternity leave of 12 weeks from the date the child is handed over to the commissioning mother. Further, the High Court of Bombay has also held that a commissioning father is also entitled to paternity leave. As of date, paternity leave is not statutorily provided in India, and is largely discretionary.

Judgement:

In this matter the division bench of High Court of Bombay (Court) reiterated that even in case of birth of a child by surrogacy, the parents who have lent the ova and sperm, would be entitled to maternity leave and paternity leave, respectively. The Court reiterated the law laid down by the division bench of the Court in Dr Mrs Hema Vijay Menon v. State of Maharashtra [Writ Petition No.3288, decided on 22 July 2015].

4	09.10.2020	*New Delhi Municipal Council (Petitioner) vs. Hari Ram Tiwari (Respondent)*	High Court of Delhi

The evidence before the IO was present on record, and the inquiry has been held in a fair and transparent manner, in compliance with the principles of natural justice

Facts of the case:

The brief background to this petition is that the Respondent - Mr. Hari Ram Tiwari (hereinafter, "workman") was working as a Pharmacist in the NDMC. A daily diary entry (hereinafter, "DD entry") was made on 3rd April, 2007 by Mr. Satish Singh, Sub-Inspector, PS, Moti Nagar, who was part of the police patrol party, that the workman was seen participating in an election campaign for his wife - Mrs. Raj Laxmi, a candidate of ward no.97, Kirti Signature Not Verified Digitally Signed By: PRATHIBA M SINGH Signing Date:09.10.2020 16:20 Digitally Signed By:SINDHU KRISHNAKUMAR Signing Date:09.10.2020 16:50:02 Nagar from Political Party "All India Forward Block". The workman was accompanied by one Mr. P.N. Dwivedi who claims to be an advocate. Pursuant to the DD entry, photographs were allegedly taken of Mr. Tiwari making a speech at his wife's campaign. An intimation letter was sent by SI Satish Singh on 6th April, 2007 to the Secretary, NDMC requesting disciplinary action against the workman. The said intimation letter informed the NDMC that Mr. Tiwari was addressing a public meeting by

wearing a party logo on his clothes and was actively participating in the electioneering process. According to the police report, since Mr. Tiwari was a government servant, the incident was reported.

Pursuant to this intimation by the police, a charge memo was issued on 24th July, 2007 against Mr. Tiwari. In the said charge memo, attention was drawn to Rule 14 of the CCS (CCA) Rules, 1965 and Rule 20 of the CCS (Conduct) Rules, 1964 and the workman was asked to respond to the same. Along with the charge memo, the documents forwarded by the police were also given to the workman. Thereafter, the inquiry commenced.

The inquiry culminated in the inquiry report dated 5th September, 2008 by which the Inquiry Officer held that the charges against the workman stood proved beyond doubt. After the inquiry report was submitted, the workman was provided with a copy of the same. The workman then submitted his reply and was also given a hearing on 18th November, 2008. The Disciplinary Authority i.e. the Chairman, NDMC compulsorily retired the workman on 16th December, 2008 and an office order to this effect was issued on 23 rd December, 2008. The office order reads as under:

"Under orders of the Chairman/Disciplinary Authority, NDMC dated 16.12.2008, a major Signature Not Verified Digitally Signed By: PRATHIBA M SINGH Signing Date:09.10.2020 16:20 Digitally Signed By: SINDHU KRISHNAKUMAR Signing Date:09.10.2020 16:50:02 penalty of 'compulsory retirement from Municipal Service' is imposed upon Sh. Hari Ram Tiwari, Pharmacist.

This is with reference to the major penalty proceedings initiated against him vide Memorandum No. 29/CH/Vig./Imp./IOV-II (M)/2007 dated 24.7.2007, his defence statement dated 1.9.2007, finding of the Inquiring Authority, his submission dated 25.10.2008 against the findings of the Inquiring Authority and the submissions made by him during the course of the personal hearing before the Chairman on 18.11.2008 in the matter.

On 13th January, 2009, the workman filed a statement of claim under S.10 (4A) of the Industrial Disputes Act, 1947 before the Labour Court, challenging the order dated 16th December, 2008 as well as the office order dated 23rd December, 2008. On 27th April, 2019, the departmental inquiry initiated by NDMC against the workman was held as being vitiated, by the Labour Court, on the ground that no fair and proper inquiry was conducted. During arguments, the authorized representative of NDMC prayed that NDMC be permitted to prove the charges against the workman before Court and a date to argue the same was provided. However, on 12th September, 2019, the Labour Court held that NDMC cannot be granted an opportunity to lead evidence to prove the charges against the workman after the preliminary issue of domestic enquiry has been held against the NDMC. Furthermore, the punishment of termination of services of the workman with effect from 23 rd December, 2008 was set aside with grant of all the service benefits consisting of pay and other allowances from the date of termination till date of Signature Not Verified Digitally Signed By:PRATHIBA M SINGH Signing Date:09.10.2020 16:20 Digitally Signed By: SINDHU KRISHNAKUMAR Signing Date:09.10.2020 16:50:02 superannuation and compensation of Rs. 5 lakhs towards harassment, illegal termination and legal cost. Vide order dated 9th October, 2019, typographical errors were corrected in order dated 12th September, 2019.

The present petition has been filed on 3rd December, 2019, seeking the setting aside of orders dated 27th April, 2019 and 12th September, 2019 and for order dated 16th December, 2008 to be upheld.

Judgement :

The present petition has been filed under Article 226 of the Constitution of India challenging two orders passed by the Labour Court dated 27 th April, 2019 and 12th September, 2019, updated on 9th October, 2019. Mr. Nirvikar Verma, ld. counsel appears for the New Delhi Municipal Council (hereinafter, "NDMC") and the Respondent appears in person along with Ms. Sandhya, his daughter and Mr. Mohan, his neighbor.

Court held that insofar as the merits of this case are concerned, since the evidence before the IO was present on record, and the inquiry has been held in a fair and transparent manner, in compliance with the principles of natural justice, this Court is of the opinion that the impugned orders deserve to be set- aside. The action taken by the NDMC is completely in accordance with law and the punishment of compulsory retirement imposed vide order dated 16th December, 2008 is accordingly upheld.

The orders passed by the Labour Court dated 27th April, 2019 and 12th September, 2019, updated on 9th October, 2019 are accordingly set aside and the petition is allowed in the above terms. All pending applications are disposed of.

5.	**12.02.2019**	***Judgment Regional Provident Fund Commissioner (II) West Bengal (Appellant) vs. Vivekananda Vidyamandir and Others (Respondents)***	**Supreme Court of India**

Computation of Provident Fund ("PF") Contribution

Facts of the Case

Various PF judgments of the courts did force employers to revisit the manner of calculation of PF contributions. The authorities also became vigilant and conducted suo moto inspections on employers. However, the Employees Provident Fund Organisation (EPFO) issued a notification to quell the aggressiveness from the department by requiring prior permission of the appropriate authority, i.e. the Central Analysis Intelligence Unit and prohibiting roving inquiries just on the surmise that certain allowances may have been omitted in the calculation of PF contributions.

Judgement:

In February, 2019, the Supreme Court in its PF Judgment reaffirmed the principles laid down by the SC in the landmark decision of Bridge and Roof Co. (India) Limited vs. Union of India, and held that allowances which are universally, necessarily and ordinarily paid to employees across the board would be considered as part of 'basic wages' ("Basic Wages") under the EPF Act on which PF contribution has to be calculated. While this Judgment did not establish any new principle, in view of the stay orders passed by various courts, it nonetheless offered clarity on the components that must be included to calculate PF contributions.

It is recommended that employers regularize the manner of calculation of PF contributions in the coming year to avoid running into regulatory issues or issues with the employees who are increasingly becoming aware of the nuances in this regard.

BANKING LAWS

1.	28.09.2020	*HDFC Bank Ltd vs. Deepa Revankar*	Bangalore District Court

Dishonor of cheque due to insufficiency of funds

Facts of the case:

This complaint is filed by the Complainant bank against the Accused for the offence punishable u/s 138 of Negotiable Instruments Act (N.I. Act). The brief facts of Complainant case is that, complainant is a banking company incorporated and registered under the Companies Act. The complainant bank represented by its authorized representative. It is stated that the accused had borrowed personal loan bearing loan No.37021112 and she had executed all necessary documents. The accused had agreed to abide by the terms and conditions. After availing the personal loan the accused has not paid the installments regularly and towards due installments of loan amount, the accused had issued the cheque and assured the complainant that she will maintain sufficient balance in her account and cheque will be duly honoured on the due date. But on the contrary when the cheque bearing No.000057 dated 07.11.2017 drawn on HDFC Bank, East Wing, KHB Building, K. G. Road, branch, Bangalore for Rs. 40,725/-was presented, the same was dishonoured for "funds Insufficient " with bankers memo dated 09.11.2017. After receiving the endorsement, the Complainant issued legal notice on 13.11.2017 through RPAD the same has been returned as 'addressee left' at address No.1 and another notice issued to 2nd address has been returned as 'refused' on 17.11.2017.

Judgement:

On total reading of entire evidence and documents, it appears that the accused failed to rebut the presumption which was available in favor of Complainant. Therefore the Complainant bank has clearly established that the alleged cheque was given by accused to discharge her liability. Therefore the Honorable court is of the opinion that the Complainant has proved its case that the accused has committed an offence punishable under section 138 of N.I. Act.

2.	25.09.2020	*Canara Bank (Appellant) vs. A. Venkataraman (Respondent)*	Madras High Court

Rights of a bank employee

Facts of the case:

The respondent/petitioner had been transferred to the post of Assistant Manager in the Zonal Office at Calcutta from Madras. The respondent petitioner did not comply with the same and having failed to report for duty at Calcutta, a charge sheet was issued to him on 22.05.1995 calling upon him to answer the charges of absence, of exercising undue influence, of not maintaining good conduct and discipline, and ultimately acting in a manner prejudicial to the

interest of the bank. The said proceedings culminated in an order of removal dated 23.09.1996 passed by the Disciplinary Authority, against which the respondent petitioner filed an appeal. The Appellate Authority, vide proceedings dated 13.06.1998, found that the charges had been rightly proved and upheld the same, but while considering the proportionality of the punishment, the Appellate Authority passed the order.

Judgement:

The respondent petitioner deemed to be continuing to be in service as per court's findings recorded till 31.10.2012, he will be entitled to 50% of his salary and other emoluments as if he was in service till 31.10.2012 on the balanced principle of no work no pay. The respondent petitioner has admittedly not worked with the bank after the appellate order dated 13.06.1998 and correspondingly, the bank has not indicated any evidence of gainful employment of the respondent petitioner.

3.	**16.09.2020**	***Kirti Arora (Petitioner) vs. Reserve Bank of India (Respondent)***	**Delhi High Court**

Facts of the case:

Petitioner herein, an academically bright student has filed the present petition seeking direction to re-evaluate the subjects in the Degree possessed by her and re-consider her candidature for interview to the post of Officer Grade 'B' (DR) - DSIM. An advertisement No.1A/2019-20 was issued by the Respondent for direct recruitment to the post of Officer Grade 'B' (DR) - DSIM in the Combined Seniority Group (CSG) Streams - Panel Year 2019, in September 2019. Petitioner applied for the said post on 23.09.2019 choosing the subject criteria as Mathematical Science. Petitioner cleared the written examination for Phase-I on 18.11.2019 and for Phase-II on 26.12.2019. In the meantime she joined as Operational Analyst in a private Company on 09.12.2019. However, after receiving the result of the Phase-II Examination, she resigned from the said job on 04.01.2020. Petitioner received an e-mail from the Respondent on 27.01.2020 directing her to furnish certain documents for document verification procedure, within 5 days, so as to be eligible to appear in the interview on 22.04.2020. Petitioner sent all the requisite documents following the instructions provided in the e-mail through post. On 18.03.2020, an e- mail was received from RBI-SM regarding some confusion in the Master's Degree and the subjects thereunder, discovered/ revealed during the scrutiny of her documents. On 18.03.2020 itself, Petitioner through an e-mail replied to the queries raised and clarified the doubts. On 30.03.2020, the interview was deferred on account of Pandemic COVID-19. On 07.04.2020, Petitioner received an e-mail communicating the rejection of her candidature for interview on account of alleged non- fulfillment of the Essential Educational Qualifications based on her Master's Degree. Petitioner on the said day itself sent an e-mail clarifying the minor error in the application form and the subject module of the Master's Degree of the Petitioner. Petitioner thereafter sent another e- mail on 03.05.2020 to the Respondent clarifying her stand on the Master's Degree, but on getting no response, she approached this Court by way of the present writ petition.

Judgement :

The Petition was dismissed with no order as to costs.

INSURANCE LAW

1.	18.06.2020	*Surendra Kumar Bhiwale (Appelant) vs. The New India Assurance Company Limited (Respondent)*	**Supreme Court of India**

Claim cannot be denied to the seller of the vehicle on the fact that the vehicle is sold to another person unless the sale is complete and ownership of the vehicle is transferred to buyer.

Facts of the case:

The Appellant was the owner of truck which was covered by a Policy of Insurance. The said lorry, which was loaded with Ammonia Nitrate and met with an accident on journey. The accident was reported to the Police Station and the Appellant lodged a claim with the Insurer, through one person. On receipt of information regarding the accident, and the claim, the Insurer appointed an independent Surveyor and Loss Assessor to conduct a spot survey. The independent Surveyor and Loss Assessor appointed by the Insurer, conducted a spot survey and submitted his report. However, instead of reimbursing the loss, the Insurer issued a show cause Letter to the Appellant requiring the Appellant to show cause why the claim of the Appellant should not be repudiated, on the allegation that, he had already sold the said truck to the other person. It was, however, not in dispute that the Appellant continued to be the registered owner of the said truck, on the date of the accident. The Appellant himself submitted a motor claim again but the Insurer refused to accept the same. Aggrieved by the action of the Insurer company in not releasing the claim of the Appellant, towards reimbursement of losses on account of the accident, the Appellant approached the District Forum. The District Forum allowed the complaint filed by the Appellant and directed the Insurer to pay sum to the Appellant within a month along with interest. The Insurer appealed to the State Commission. The said appeal, was dismissed by the State Commission which was challenged by the Insurer before the National Commission by filing the Revision Petition. The National Commission set aside the orders of the District Forum and the State Commission, thereby rejecting the concurrent factual finding of both the forum, and dismissed the complaint on the ground that the Appellant had sold his vehicle to other person.

Held, while allowing the appeal:

(i) The FIR was lodged within three days of the accident. In the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatized driver to lodge an FIR, could not defeat the legitimate claim of the Insured of course, there was no delay at all in lodging the FIR. In case of a serious accident in course of inter-state transportation of goods, delay of twenty days in lodging a claim was also no delay at all. It was nobody's case that the claim application filed by the Appellant was time barred. Moreover, the Insurer had, in any case, duly sent its Surveyors/Assessors to assess the loss. The claim of the Appellant could not have, in this case, been resisted, either on the ground of delay in lodging the

FIR, or on the ground of delay in lodging an Accident Information Report, or on the ground of delay in making a claim.

(ii) The National Commission erred in law in reversing the concurrent factual findings of the District Forum and the National Commission ignoring vital admitted facts including registration of the said truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of No Objection from the financier bank etc. and also overlooking the definition of owner in Section 2(30) of the Motor Vehicles Act, as also other relevant provisions of the Motor Vehicles Act and the Rules framed thereunder, including in particular the transferability of a policy of insurance under Section 157.

(iii) In view of the definition of owner in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership.

Judgement:

The judgment and order of the National Commission is unsustainable. The appeal is, therefore, allowed. The impugned order of the National Commission under appeal is set aside and the order of the District Forum is restored. The Insurer shall pay to the Appellant a sum of Rs. 4,93,500/- as directed by the District Forum with interest as enhanced by the Supreme Court to 9% per annum from the date of claim till the date of payment. The sum of Rs. 5,000/- awarded by the District Forum towards compensation for mental agony and Rs. 2,000/- awarded towards the cost of litigation, is in the view of Supreme Court is grossly inadequate. The Insurer shall pay a composite sum of Rs. 1,00,000/- to the Appellant towards costs and compensation for the agony caused to the Appellant by withholding his legitimate dues. The amounts as directed above shall be paid to the Appellant within six weeks from date of the judgment and order.

Sources:

- Manupatra
  https://www.manupatrafast.com/pers/Personalized.aspx
- Advocatekhoj.com
  https://www.advocatekhoj.com/library/judgments/announcement.php?WID=13002

2.	18.06.2020	***Rajendra Singh and Ors (Appelant) Vs. National Insurance Company Limited and Ors (Respondent)***	**Supreme Court of India**

Passengers travelling in vehicle cannot be held responsible for contributory negligence of the driver of the vehicle and claim cannot be reduced on the same ground.

Facts of the case:

The two deceased were travelling in a horse cart along with some others to a religious congregation. The horse cart was hit by a bus resulting in their death. The Tribunal assessed

the notional income of the first deceased and after one fourth deduction towards personal expenses, with a multiplier of seventeen awarded a compensation. The Tribunal then deducted fifty on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum was then added as loss of consortium and towards funeral expenses leading to an award with interest. In so far as the minor child was concerned, the notional income was assessed, applying a fifty percent deduction towards personal expenses with a multiplier of fifteen, the compensation was awarded out of which fifty percent was again deducted towards contributory negligence. A sum - was added towards funeral expenses, leading to an award with interest. The appeal for enhancement of compensation was dismissed by the High Court.

Held, while allowing the appeal:

(i) No evidence had been led by the Appellant with regard to any income of the first deceased from dairy business. The deceased were travelling in a horse cart along with others to a religious congregation. It was not the case of the Respondents that the first deceased was driving the horse cart or was the owner of the same, much less that it was being driven under her supervision. The deceased were travelling as passengers along with others. The fact that the horse cart may have been in middle of the road at the time of the accident, no fault could be attributed to the deceased holding them liable to contributory negligence and denial of full compensation. The deduction of fifty percent towards contributory negligence in both the appeals was therefore held to be totally unjustified and unsustainable. The finding with regard to contributory negligence against both the deceased were therefore set aside.

(ii) The second deceased was a school going child aged about twelve years. She had a whole future to look forward in life with all normal human aspirations. She died prematurely due to the accident at a very tender age for no fault of hers even before she could start to understand the beauty and joys of life with all its ups and downs. The loss of a human life untimely at childhood can never be measured in terms of loss of earning or monetary loss alone. The emotional attachments involved to the loss of the child can have a devastating effect on the family which needs to be visualised and understood. Grant of non-pecuniary damages for the wrong done by awarding compensation for loss of expectation in life was therefore called for. Undoubtedly the injury inflicted by deprivation of the life of the child was very difficult to quantify. The future also abounds with uncertainties. Therefore, the courts have used the expression just compensation to get over the difficulties in quantifying the figure to ensure consistency and uniformity in awarding compensation. This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation was for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to future prospects. It could safely be presumed that education would have only led to her better growth and maturity with

better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages.

(iii) The deduction on account of contributory negligence had already been held to be unsustainable. The determination of a just and proper compensation to the Appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case did not persuade to enhance the same any further by granting any further compensation under the separate head of future prospects.

Judgement:

The Civil Appeal arising out of SLP (C) No. 13964 of 2018 is allowed and the Civil Appeal arising out of SLP (C) No. 16261 of 2018 is allowed to the extent indicated in the order only.

Sources:

- Manupatra

  https://www.manupatrafast.com/pers/Personalized.aspx

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Part B

Case Studies

WINDING UP OF SIX YIELD-ORIENTED FIXED INCOME SCHEMES OF FRANKLIN TEMPLET ON INDIA AMID COVID-19 - A CASE STUDY*

INTRODUCTION

COVID-19 has started showing its impact on the mutual fund industry. Though we could attribute most of that outflow to corporates redeeming funds to meet their quarter end obligations, high volatility and uncertainty as consequences of the pandemic could have also played a major hand in the redemption pressure for debt schemes. FIIs have been redeeming investments heavily in equity and debt segment ever since WHO declared COVID-19 a pandemic. In March 2020, FIIs pulled out Rs. 60,375 crore from the debt market.

High redemption and lack of buying interest has made debt mutual fund schemes vulnerable, especially those with higher exposure to low rated instruments. This instability has claimed its first casualty in debt mutual funds.

ABOUT FRANKLIN TEMPLETON (INDIA)

Franklin Templeton's association with India dates back to over 2 decades as an investor. As part of the group's major thrust on investing in markets around the world, the India office was set up in 1996 as Templeton Asset Management India Pvt. Limited. It flagged off the mutual fund business with the launch of Templeton India Growth Fund in September 1996, and since then the business has grown at a steady pace.

Franklin Templeton (India) is one of the largest foreign fund houses in the country. It manages one of the most comprehensive ranges of mutual funds catering to varied investor requirements and offering different investment styles to choose from.

WINDING-UP OF SPECIFIC SCHEMES

The Trustees of Franklin Templeton Mutual Fund (FTMF) in India announced that they have, after careful analysis and review of the recommendations submitted by Franklin Templeton AMC, and in close consultation with the investment team, voluntarily decided to wind up their suite of six yield oriented, managed credit funds effective from April 23, 2020.

In light of the severe market dislocation and illiquidity caused by the COVID-19 pandemic, this decision has been taken in order to protect value for investors via a managed sale of the portfolio. This action is limited to the below-mentioned funds, which have material direct exposure to the higher yielding, lower rated credit securities in India that have been most impacted by the ongoing liquidity crisis in the market.

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* *Case Study written by CS Puneeta Ahuja, Consultant and reviewed by Mahesh Airan, Assistant Director, The ICSI. Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.*

Details of schemes being wound up

S. No.	*Name of the Scheme*	*Scheme Characteristic (based on Macaulay duration or credit rating) as stated in the scheme information document*	*Macaulay duration* in years as on 22 April 2020*
1.	Franklin India Ultra Short Bond Fund	Investing in Instruments with Macaulay duration between 3-6 months	0.38
2.	Franklin India Short term Income Fund	Investing in Instruments with Macaulay duration between 1-3 years	2.41
3.	Franklin India credit Risk Fund	A bond fund focusing on AA and below rated corporate bonds (excluding AA+ rated corporate bonds)	2.37
4.	Franklin India Low Duration Fund	Investing in Instruments with Macaulay duration between 6-12 months	1.17
5.	Franklin India Dynamic Accrual Fund	Investing across duration	1.95
6.	Franklin India Income Opportunity Fund	Investing in Instruments with Macaulay duration between 3-4 years	3.94

****Macaulay duration is the weighted average of the time to receive the cash flows from a bond. It is measured in units of years. Macaulay duration tells the weighted average time that a bond needs to be held so that the total present value of the cash flows received is equal to the current market price paid for the bond.***

CAUSES FOR WINDING UP THESE SCHEMES

According to a statement to investors from FTMF, Franklin Templeton (India) winding up these schemes in order to preserve value and secure an orderly and equitable exit for investors in these yield-oriented schemes. The credit climate was extremely challenging over the last quarter or so, and Covid-19 severely heightened the pressure resulting in a spike in yields and sharply reduced liquidity. The ongoing global pandemic has impacted business activity across a wide range of sectors and diminished portfolio companies' ability to access funds and service existing debt. Mutual funds are facing unprecedented liquidity challenges during the lockdown which was necessary to address the Covid-19 pandemic.

Factors like rising redemption pressures, mark to market losses, following spike in yields and rising illiquidity in portfolios, following lower trading volumes have together caused severe and worsening liquidity crunch for open-end mutual fund schemes. This impact will be long-lasting, and bond market conditions are unlikely to return to normalcy in the immediate future.

The schemes had to resort to continuous borrowing to fund redemptions during this time, and were unable to repay the borrowings through sale of portfolio securities due to the prevailing market environment. The Investment manager did not believe it was prudent to continue funding redemptions through potentially increasing levels of borrowings.

FTMF follows a high-risk high-return strategy for the above mentioned funds - Meaning a major part of its portfolio is exposed to lower rated securities (rating below AAA). The market disruption due to the virus outbreak has impacted these securities the most. Under conditions of high redemption pressure, mutual funds sell their liquid assets to meet the demand, leaving the portfolio highly exposed to illiquid assets. Thus, investors who choose to stay invested are at a disadvantage here.

Anticipating continued liquidity stress to the funds, the fund house thought winding up the scheme is the only viable option for the unit holders to minimize erosion of value.

KEY IMPLICATIONS FOR INVESTORS ON SUCH WINDING UP

a) **Suspension of Purchase and Redemption :** The six wound up schemes are no longer available for subscription or redemption, post cut-off time on 23 April 2020. All Systematic Investment Plans (SIP), Systematic Transfer Plans (STP) and Systematic Withdrawal Plans (SWP) into and from the abovementioned schemes stand cancelled post cut-off time on 23 April 2020.

b) **Distribution of monies from Scheme Assets :** Following the decision to wind-up the schemes, Franklin Templeton (India) will proceed to assist the Trustees with orderly realization and liquidation of the underlying assets with the objective of preserving value for unit holders, and with distribution of the proceeds thereof to the unit holders after discharging the liabilities of the schemes.

c) **Tax Implications :** The amount received by investors are in the form of redemption of units and would, where such amount or part thereof represents a gain for the investor, be taxed as capital gain in the hands of investors depending on inter alia the period of their investment in the scheme. Investors can take advice from a tax expert as impact could vary depending on their status and income.

APPOINTMENT OF AN INDEPENDENT ADVISOR

Franklin Templeton Trustee Services Pvt. Ltd., as advised by SEBI pending unitholder vote, and as desired by the Trustees for the duration of the winding up period, appointed an independent advisor to work together with Franklin Templeton Asset Management (India) Pvt. Ltd (the AMC), to assist the Trustees in monetizing portfolios of the six schemes that are being wound up.

The Trustees have appointed Kotak Mahindra Bank, who, through its Debt Capital Markets team, will work closely with the Franklin Templeton Trustees, to assist with all portfolio actions in these six schemes that are being wound up.

"The decision to wind up these funds was an extremely difficult one, but we believe, it is necessary to protect value for our investors and presented the only viable means to secure an orderly realization of portfolio assets. Significantly reduced liquidity in the Indian bond markets for most debt securities and unprecedented levels of redemptions following the COVID-19 outbreak and lockdown has compelled us to take this decision. We remain fully committed and aligned with the interests of our investors and aim to assist the Trustees to fully exit the managed credit strategy funds at the best possible value"

-President, Franklin Templeton (India)

STEPS TAKEN BY SEBI TO AVERT FRANKLIN-LIKE CASES

To ensure better transparency and disclosure pertaining to debt schemes, SEBI has introduced new norms to curb similar meltdowns. These norms are-

1. **Listing of Mutual Fund schemes that are in the process of winding up (SEBI Circular dated May 20, 2020)**

   As per SEBI (Mutual Funds) Regulations, 1996 ("MF Regulations"), there are several steps envisaged with respect to winding up of Mutual Fund schemes before the scheme ceases to exist. During this process, such units can be listed and traded on a recognized stock exchange, which may provide an exit to investors.

   In terms of Regulation 31B (1) of the MF Regulations, the units of Mutual Fund schemes can be listed in the recognized stock exchange. Accordingly, the units of Mutual Fund schemes which are in the process of winding-up in terms of Regulation 39(2)(a) of MF Regulations, shall be listed on recognized stock exchange, subject to compliance with listing formalities as stipulated by the stock exchange.

However, pursuant to listing, trading on stock exchange mechanism will not be mandatory for investors, rather, if they so desire, may avail an optional channel to exit provided to them.

2. **Transaction in Corporate Bonds/Commercial Papers through RFQ platform and enhancing transparency pertaining to debt schemes (SEBI Circular dated July 22, 2020)**

In order to enhance the transparency and disclosure pertaining to debt schemes and investments by mutual funds in Corporate Bonds/Commercial Papers, SEBI based on the recommendation of Mutual Fund Advisory Committee (MFAC) has decided the following:

- In order to increase the liquidity on exchange platform, on monthly basis, Mutual Funds shall undertake at least 10% of their total secondary market trades by value (excluding Inter Scheme Transfer trades) in the Corporate Bonds by placing/seeking quotes through one-to-many mode on the Request for Quote (RFQ) platform of stock exchanges. The percentage as specified shall be reckoned on the average of secondary trades by value in immediate preceding three months on rolling basis.

  For example, for the month of October 2020, Mutual Funds shall undertake 10% (by value) of their average secondary market trades (excluding IST) done in immediate preceding three months i.e. July 2020, August 2020 and September 2020 for Corporate Bonds by placing / seeking quotes through RFQ platform of stock exchanges.

  *Notably, mutual funds are one of the major active players in the corporate bond segment.

- All transactions in Corporate Bonds and Commercial Papers wherein Mutual Fund is on both sides of the trade shall be executed through RFQ platform of stock exchanges in one-to one mode.

- Any transaction entered by mutual fund in Corporate Bonds in one to many mode and gets executed with another mutual fund shall also be counted for the aforesaid 10% requirement.

At present, corporate bond transactions in secondary market takes place over the counter via brokers. However, since these deals take place on a private placement basis, it can lead to opacity in pricing. Trading through RFQ platforms is expected to bring in better price discovery and transparency for corporate bonds as well as increase liquidity on the exchange platforms.

RFQ is a platform for the execution and settlement of trades in debt securities and National Stock Exchange (NSE) manages it. The platform enables interaction amongst the market participants who wish to negotiate transactions amongst themselves.

- In another move, all debt schemes will have to disclose portfolio on fortnightly basis within five days of every fortnight. Additionally, the portfolio disclosure should mention yields of the underlying instruments, which would give investors a better sense of the risk factor.

  Though funds currently disclose portfolio on a monthly basis, it may not reveal the complete picture of the portfolio quality, especially in case of shorter duration funds which invest in securities with short-term maturity.

  For example, the six shuttered debt schemes of Franklin Templeton faced heightened redemption pressure and increased borrowings in the days leading up to winding-up. If there was norm for mandatory fortnightly disclosure at that time, it would have made the investors/financial advisers aware about the pressure the fund had been dealing with and they could have taken necessary action.

  The move could also prevent funds from taking higher credit risk through short-term transactions in a bid to earn high yield. Thus, it would help investors to keep an eye on any early warning signs and save themselves from any potential risk the fund may be exposing them to.

3. **Review of debt and money market securities transactions disclosure (SEBI Circular dated September 01, 2020)**

   In order to further enhance transparency, it is now decided that the details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio shall be disclosed on daily basis with a time lag of 15 days (earlier 30 days) in revised format as prescribed by SEBI.

SEBI' S DIRECTION TO FRANKLIN TEMPLETON MUTUAL FUND

SEBI vide its press release dated May 7, 2020 has advised Franklin Templeton mutual fund (FT) to focus on returning money to investors, in the context of their winding up six of their debt schemes.

CONCLUSION

While the fund house has come out with this decision to protect investors' interest, it has made the funds illiquid from the investors' point of view. Many investors may lose faith in debt funds for their short-term goals. Going further, investors may have to consider liquidity risk due to sudden AMC action, while investing in any high credit risk oriented debt funds.

It is time for the regulator to provide a framework of strict guidelines to restrict fund managers from putting investors' hard-earned money at risk by exposing them to low rated securities for higher yield. Meanwhile, AMFI has assured investors that a majority of the fixed income fund assets is invested in superior credit quality securities, and the schemes have appropriate liquidity to ensure normal operations. It further stated that the industry remains fully committed to the investors' interests and there is no need for them to panic and redeem investments.

Source:

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- https://www.sebi.gov.in/
- https://www.personalfn.com/dwl/sebi-brings-in-new-norms-to-improve-transparency-in-debt-mutual-funds
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