CASE DIGEST -SERIES 8

(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 8

"We don't receive wisdom; we must discover it for ourselves after a journey that no one can take for us or spare us."
- Marcel Proust

Acquiring wisdom is an eternal phenomenon given that the business world which is influenced by various political, economical, social, technological and legal factors is always in a state of flux. Moreover, with globalisation being the norm, both volumes and value of businesses across the globe have soared, thereby giving birth to enormous opportunities and almost never ending complexities. For a firm to accomplish success and even so to make its place in the global space, the management as well as those being its pillars of support are required to be well conversant with the every now and again happenings and occurrences in all these arenas, not only within but beyond the territorial boundaries of the nation they are serving or placed in.

In nutshell, it may be opined that for a business organisation to survive and thrive, acquisition of relevant knowledge by the professionals is indispensable for it is them who are entrusted with the task of planning, organising and smooth operations of the business.

In order to sensitize the readers with contemporary knowledge of the aspects exerting an impact on economy, industry and business organisations from a through and through practical perspective, a unique and innovative academic initiative in the form of Case Digest Series was initiated. The Case Digest Series is a compilation of the famous, significant and even law altering case laws relating to the areas of Company Law, Securities Laws, Tax Laws, Economic, Business and Commercial Laws, Corporate Governance, etc.

I extol the academic endeavours and commend the efforts of the Directorate of Academics in bringing out the **Case Digest Series-8** for the purpose of sensitizing the readers with most recent case laws. I sincerely hope that the professionals shall reap maximum benefit from the same.

I wish all the readers a very happy reading !!!

With warm regards,

(CS Nagendra D. Rao)
President
The Institute of Company Secretaries of India

CASE DIGEST – SERIES 8

(Case Snippets and Case Studies)

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Part A
Case Snippets

COMPANY LAW

1.	**19.04.2021**	***Brillio Technologies Pvt. Ltd. (Appellant)* vs. *Registrar of Companies, Karnataka & Ors. (Respondents)***	**NCLAT**

Security Premium Account can be utilized for making payment to non-promoter shareholders.

Fact of the case :

The Appellant 'Brillio Technologies Pvt. Ltd.' filed this Appeal against the order dated August 28, 2019 passed by the National Company Law Tribunal, Bengaluru whereby Appellant's Application under Section 66 of the Companies Act, 2013 (In brief 'the Act') read with Rule 2 of National Company Law Tribunal (NCLT) (Procedure for Reduction of Share Capital of the Company) Rules, 2016 (In brief 'Rules') has been dismissed with the liberty to file a fresh Company Petition in accordance with law.

The Tribunal held that as per Section 52 (2) of the Companies Act, 2013, Security Premium Account may be used only for the purpose specifically provided under Section 52 (2) of the Companies Act, 2013. Further, selective reduction in equity share capital to a particular group involving non-promoter shareholders and bringing the company as a wholly owned subsidiary of its current holding company and also return excess of capital to them is an arrangement between the company and shareholders or a class of them and hence, it is not covered under Section 66 of the Companies Act, 2013. However, the case may be covered under Sections 230-232 of the Companies Act, 2013, wherein compromise or arrangement between the Company and its creditors or any class of them or between a Company and its members or any class of them is permissible. Therefore, the Company failed to make out any case under Section 66 of the Act and thus, the petition is dismissed. Being aggrieved with this order, the Appellant has filed this Appeal.

Judgment :

The NCLAT observed that Security Premium Account can be utilized for making payment to non-promoter shareholders. W.r.t. the submissions made by the Respondents that the amount laying in the Security Premium Account can be applied by the company, only for the purposes which are specifically provided in Section 52 (2) of the Companies Act, 2013 and for no other purpose is not convincible. Further, it can be held that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares.

In the present case, none of the non-promoter shareholders of the Company have raised objection about the valuation of their shares. It is nobody's case that the proposed reduction is unfair or inequitable. It is also made clear that the proposed reduction is for whole non-promoter shareholders of the company.

Furthermore, Section 66 of the Companies Act, 2013 makes provision for reduction of share capital simpliciter without it being part of any scheme of compromise and arrangement. Therefore, the Tribunal has erroneously held that the Application for reduction of share is not maintainable under Section 66 of the Companies Act, 2013, consent affidavits from the creditors is mandatory for reduction of share capital, Security Premium Account cannot be utilized for making payment to non-promoter shareholders, selective reduction of shareholders of non-promoter shareholders is not permissible and has dismissed the Application on untenable grounds. Therefore, the impugned order passed by the Tribunal is set aside.

Thus, the reduction of equity share capital resolved on 04.02.2019 by the special resolution is hereby confirmed.

2.	**08.04.2021**	***Jayamma Xavier (Petitioner)* vs. *Registrar of Firms (Respondent)***	**Kerela High Court**

LLP cannot be disqualified from entering into a partnership with an individual or other person.

Fact of the case :

Petitioner claims to be the designated partner of Sleeplock LLP which is a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (for short "LLP Act"). The Sleeplock LLP formed a partnership firm along with one Gourav Raj in the name and style of M/s. Morning Owl Sleep Solutions. A partnership deed was executed accordingly on 18.09.2020. The said deed was submitted for registration before the respondent. The respondent rejected the same on the ground that LLP cannot be a partner of a firm. This was challenged before the Kerala High Court contending that the LLP is liable to be treated as a person and there cannot be any objection for registering a partnership with an LLP which is a person.

The Respondent has submitted that some of the provisions of the Limited Liability Partnership Act, 2008 are inconsistent with that of the Indian Partnership Act, 1932, pertaining to the liability. According to the respondent, Section 25, 26 and 49 of the Indian Partnership Act, 1932 makes the partners to be jointly and severally liable with all the other partners and also severally liable for the acts of the firm, of which such person is a partner. At the same time, it is stated that under Section 28 of the LLP Act, 2008 the provisions regarding the liability of the partnership firm are restricted to the contents to the LLP agreement i.e., under the LLP Act, the liability of the partner is restricted only to the extent provided in the agreement; such a provision runs contrary to Section 25 and 49 of the Indian Partnership Act, 1932. It is also pointed out that under LLP foreign investment is permissible whereas it is not permissible under the Partnership Act.

Issues :

The question to be considered is whether LLP can be treated as a person which can be permitted to form a partnership with an individual?

Judgment :

The Kerala High Court observed that the partnership deed was executed between an individual and an LLP which is a body corporate having a legal entity and coming within the definition of "person". The individual liability of the partners of LLP would not be relevant when the LLP itself would have liability independent of the liability of the partners. Therefore, the difference in the provisions under the Partnership Act relating to liability of the firm or the individual partners would not stand in the way of constitution of a partnership with an LLP. Hence, LLP cannot have a disqualification from entering into a partnership with an individual or other person.

3.	**06.04.2021**	**In the Matter of : Ambuja Cements Limited (Appellant)**	**NCLAT**

In the scheme of Merger, when the Transferee Company is a 100% holding of its Subsidiary Company (Transferor Company) and there is no issuance of any new shares or reorganisation of share capital, then the meeting of members and creditors can be waived off.

Fact of the case :

A scheme of Merger of 'DIRK India Pvt. Ltd.' (Amalgamating Company) with the Appellant Company (Amalgamated Company) under Section 230 of the Companies Act, 2013 was approved by the Board of Directors. As per the said Scheme the 'DIRK India Pvt. Ltd'. (Amalgamating Company) i.e., Transferor Company amalgamates with Appellant Company i.e., Transferee Company.

The present appeal arises against the order passed by the NCLT, Ahmedabad Bench, whereby the NCLT did not allow dispensation of the meeting of the Equity Shareholders and Creditors of the Appellant Company due to the reason that it has large number of shareholders and creditors and none of them have filed their consent and no objection towards the scheme of merger/amalgamation.

The Appellant submitted that the basis on which the dispensation was sought is that the Transferor Company is a 100% wholly owned Subsidiary of the Appellant Company. It need not issue any shares to the shareholders. Hence, the scheme would not result in any dilution in the shareholding of the Appellant Company. It was further submitted that there is no reorganisation of the share capital of the Transferee Company that since 100% share capital of the Transferor Company is held by the Appellant and there is no reorganisation in either its shareholding or its debt position. Because shareholders of the holding Company are nothing but the shareholders of the Subsidiary Company. The Appellant being the Transferee Company, its existence will remain as before without any change, either to its shareholding pattern or to its debt position.

Further, it was submitted that under the scheme there is no compromise or arrangement with the shareholders or creditors and no sacrifice of any amounts due to the Creditors. Hence, the Scheme would not prejudicially affect the creditors or shareholders of the Appellant Company.

Judgment :

The NCLAT observed that the Transferor Company (amalgamating Company) is 100% Subsidiary of the amalgamated Company /transferee Company and there is no change in the structure of the transferee Company. Further, it is clear from the scheme that all the liabilities of the amalgamating Company immediately before the amalgamation become the liabilities of the amalgamated Company by virtue of the amalgamation.

Further, as held by the Hon'ble Supreme Court that a Coordinate Bench of a court cannot pronounce Judgement contrary to declaration of law by another Bench. In the Present case, the NCLT, Ahmedabad Bench erred in not following its own order passed in '*Vodafone Idea Ltd.'*, wherein similar facts are involved. Hence, in view of the forgoing reasons the order of the NCLT, Ahmedabad bench is set aside. Accordingly, the meetings of the Equity shareholder, Secured and Unsecured Creditors of the Appellant Company has been dispensed with and the matter is remanded back to the NCLT, Ahmedabad for further Consideration.

4.	**24.03.2021**	***Accelyst Solutions Pvt. Ltd. (Appellant)* vs. *Freecharge Payment Technologies Pvt. Ltd. (Respondent)***	**NCLAT**

The Tribunal would not sit in Appeal over the commercial wisdom of the parties who proposed and approved the scheme if the scheme is otherwise in accordance with statutory requirements.

Fact of the case :

Accelyst Solutions Pvt. Ltd. (Petitioner / Transferor Company) and Freecharge Payment Technologies Pvt. Ltd. (Respondent / Transferee Company) under Sections 230 to 232 of the Companies Act, 2013 submitted a scheme for amalgamation. The NCLT, Delhi has approved the scheme of amalgamation with Appointed date 7.10.2017 vide order dated 22.10.2019. The NCLT, Mumbai has also approved the scheme vide impugned order but modified the Appointed date from 07.10.2017 to 01.04.2018 on the ground that considerable time has lapsed from the Appointed date as mentioned in scheme and the Board Resolution of the Scheme is dated 27.03.2018 and Valuation Report is dated 22.03.2018. Being aggrieved with this order, the Appellant has filed this appeal.

Judgment :

The NCLAT observed that, while exercising its power in sanctioning a scheme of amalgamation, the Court/Tribunal has to examine as to whether the provision of statute have been complied with. The Court/Tribunal would have no further jurisdiction to sit in Appeal over the commercial wisdom of shareholders of the Company. Hence, the jurisdiction exercised by the NCLT Mumbai to modify the Appointed date in the given facts of this case was unwarranted. Thus, the impugned order so far as the modification of Appointed date is

concerned was set aside and the date which was approved by the shareholder of the Appellant company was fixed.

5.	**05.03.2021**	***Piyush Dilipbhai Shah & Ors. (Appellants)* vs. *Syngenta India Limited (Respondent)***	**NCLAT**

Section 66(1) of the Companies Act, 2013 permit the Company to reduce its share capital in any manner subject to compliance of prescribed procedural requirements, while protecting economic interest of Public Shareholders.

Fact of the case :

In this case the Respondent Company was converted into a Public Company and its shares were listed on Bombay Stock Exchange (BSE). However, subsequently its shares were delisted and after delisting, its shares have public shareholders compromising of 11,81,036 shares, which comes to 3.59% of total paid up share capital of the company. Appellants herein are the minority/non-promotor shareholders of the Respondent Company. Further, the Respondent Company intend to reduce its equity-share capital under Section 66 of the Companies Act, 2013 thereby extinguishing all the non-promotor shareholding. The Appellants submitted that the Respondent Company is making good profits and therefore the reduction of share capital especially extinguishing the public shares of the Company is unjustified.

The Respondent submitted that Section 66(1) of the Companies Act, 2013 expressly permit the Company to reduce its share capital in any manner including by way of selective reduction subject to compliance of prescribed procedural requirements. Further, it is submitted that it is a settled principle of law that reduction of share capital of a Company is a matter of domestic concern and commercial wisdom of the Company and while reducing the share capital, the Company can decide to extinguish the some of its shares without dealing with the same manner as with all other shares of the same class.

Judgment :

The NCLAT has observed that w.r.t. the contention of the Appellants, that the Company adopted a selective method for the reduction of the share capital is concerned, Section 66(1) of the Companies Act, 2013 permits the Company to reduce the share capital in any manner and held that the reduction of the share capital is in accordance with law but it is unfair and unjust depriving the fruits of the company to its shareholders. So to protect the economic interest of public shareholders/non-Promotor shareholders, the company is directed to revalue the shares by a registered/independent valuers and pay the fair price arrived at by the valuer based on the latest audited accounts of the Company.

6.	**06.01.2021**	***Anjali Bhargava & Anr. (Petitioners)* vs. *Union of India & Anr. (Respondents)***	**Delhi High Court**

High Court explains category of Directors who are seeking setting aside of disqualification & activation of DIN/DSC

Fact of the case :

The Petitioners in this case are directors of two Companies - Bhargava Films Pvt. Ltd. and Talent Scanner Pvt. Ltd. The Petitioners were disqualified as directors in respect of Bhargava Films Pvt. Ltd. due to non-filing of balance-sheet and other returns with the Registrar of Companies (hereinafter, "ROC"). The said company was also struck off from the Register of Companies. The disqualification occurred on 01.11.2016. The prayer of the Petitioners is that their Director Identification Number (hereinafter, "DIN") and Digital Signature Certificate (hereinafter, "DSC") be reactivated to permit them to avail of the Companies Fresh Start Scheme, 2020 (hereinafter, "CFSS-2020").

There are four categories of Directors that are approaching Courts seeking setting aside of disqualification and activation of DIN/DSC numbers.

Firstly, directors who have been disqualified prior to 07.05.2018, qua other companies in addition to the defaulting company.

As per the proviso to Section 167 (1) (a) of the Companies Act, 2013, once a director is disqualified qua one company i.e., the defaulting company, the office of the said director would become vacant in all companies. The said proviso, has, however, come into effect only on 7th May, 2018. In *Mukut Pathak (supra)* it was held that this proviso cannot have retrospective effect and would only apply if the disqualification took place after 7th May 2018.

Thus, in cases where directors have been disqualified prior to 7th May, 2018, the proviso to Section 167(1)(a) would not apply and the directors would continue to be directors in companies other than the defaulting company. The disqualification of such directors qua active companies would therefore be liable to be set aside and their DIN and DSC's reactivated.

Secondly, directors who have been disqualified post 07.05.2018, qua other `active' companies.

As held in *Mukut Pathak (supra),* in all cases where the directors have been disqualified on or after 7th May, 2018, the proviso to Section 167 (1) (a) would apply and such directors would cease to be directors in all companies including the defaulting company.

In March, 2020, in light of the COVID- 19 pandemic, the Ministry of Corporate Affairs vide General Circular No. 12/2020 introduced CFSS-2020 to allow a fresh start for defaulting companies and directors of such companies. This Court, in *Sandeep Agarwal (supra)* has analyzed CFSS-2020 to conclude that the purpose of the scheme is to provide an opportunity for 'active' companies i.e., companies whose names have not been struck off, who may have defaulted in filing of documents, to put their affairs in order.

Thirdly, directors of 'active' companies who have been disqualified.

Lastly, Disqualified directors of struck off companies seeking appointment as directors in other/new companies. The CFSS 2020 has been introduced in view of the COVID-19 pandemic with the aim to enable a fresh start to defaulting companies and directors of such companies.

The CFSS-2020 was last extended till 31st December 2020. If the scheme is extended beyond 30.12. 2020, directors who fall in any of the categories mentioned above ought to be given an opportunity to avail of the same.

Judgment :

The Delhi High Court observed that the Petitioners in the present petition fall in category in respect of directors who have been disqualified prior to 07.05.2018, qua other companies in addition to the defaulting company.

The court held that the Petitioners' DIN or DSC in respect of Talent Scanner Pvt. Ltd., would be liable to be reactivated and the Petitioners would not be treated as suspended from the position of directors in Talent Scanner Pvt. Ltd.

However, the court said that in respect of Bhargava Films Pvt. Ltd. is concerned, the Petitioners are permitted to file the relevant documents and seek condonation of delay in accordance with the applicable laws and regulations, if the same is permissible.

SECURITIES LAWS

1.	**30.03.2021**	**Ozone Projects Pvt. Ltd. (Noticee)**	**SEBI (LODR) Regulations, 2015**	**Adjudication Officer, SEBI**

Timely disclosure of financial results is essential for investors to be adequately informed regarding the status of investments in terms of performance of the company, its repayment capability, credit rating, timely payment of interest etc. Delay in such disclosures is detrimental to the interest of investors and debenture holders and vitiates confidence in the securities market.

Facts of the case :

The case pertains to the non-filing of financial results by Noticee for year ended March 31, 2019 within the time prescribed under Regulation 52 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) i.e., within a period of 45 days from the end of the half year and thus Noticee violated the provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.

The Noticee submitted that the non-submission of the aforesaid financial results was not intentional, and the Noticee had been unable to file its financial results for year ended March 31, 2019 as prescribed under Regulation 52 of the LODR Regulations due to factors which were beyond the control of the Noticee. The Noticee had been unable to submit its financial results due to unforeseen and extenuating circumstances.

Regulation 52(1) of the LODR Regulations states that-

''The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the SEBI within forty five days from the end of the half year to the recognized stock exchange(s)''.

Regulation 52(4) of the LODR Regulations states that –

''The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results''.

Regulation 52(5) of the LODR Regulations states that –

''the listed entity shall, within seven working days from the date of submission of the information required under sub-regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents''.

SEBI Order :

SEBI imposed a penalty of Rs. 2 lakh on the Noticee viz. Ozone Projects Pvt. Ltd. for not filing the financial results with the stock exchange and delay in finalising the results. The allegation of violation of provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations was established against the Noticee as per SEBI's order.

For details:
https://www.sebi.gov.in/enforcement/orders/mar-2021/adjudication-order-in-respect-of-ozone-projects-pvt-ltd-in-the-matter-of-delayed-submission-non-submission-of-financial-results-for-financial-year-ended-march-31-2019_49692.html

2.	**22.03.2021**	***Shruti Vora, Neeraj Kumar Agarwal, Parthiv Dalal and Aditya Omprakash Gaggar (Appellants)* vs. *Securities and Exchange Board of India (SEBI) (Respondent)***	**SEBI (Prohibition of Insider Trading) Regulations, 2015**	**Securities Appellate Tribunal (SAT)**

A "forwarded as received" WhatsApp message circulated on a group regarding quarterly financial results of a Company closely matching with the vital statistics, shortly after the in-house finalization of the financial results by the Company and some time before the publication/disclosure of the same by the concerned Company, would not amount to an UPSI under the provisions of SEBI (Prohibition of Insider Trading) Regulations.

Facts of the case :

The case pertains to the circulation of Unpublished Price Sensitive Information (UPSI) in various private WhatsApp groups about certain companies including Bajaj Auto Ltd., Bata India Ltd., Ambuja Cements Ltd., Asian Paints Ltd., Wipro Ltd. and Mindtree Ltd. As a result, SEBI vide its orders imposed a penalty of Rs. 15 Lakh each on Shruti Vora, Neeraj Kumar Agarwal, Parthiv Dalal and Aditya Omprakash Gaggar for violating the Sections 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations).

Hence, the appeals were filed by the appellants to SAT.

The SEBI orders show that numerous messages were retrieved from the devices of the appellants Quarterly financial results of the above six companies for different period of time say December, 2016, March, 2017 were finalized after about 15 days of closure of the quarter by the respective finance team, tax team, auditor's team etc. All those were finalized around 15 days prior to respective disclosure of the same on the platform of the stock exchange. However, within a day or two of the finalization of the financial results, one liner WhatsApp messages in the present group were circulated which closely matched with the respective later on published financial results.

For instance the WhatsApp message was "Wipro revenue 13700 PBIT 2323 PBT 2758". Actual figure of the financial results published later on in details disclosed the essence as revenue 13764 crores PBIT 2323.6 ("PBIT – Profit before Interest and Tax") and PBT 2758.9 ("PBT – Profit before Tax").

Thus, the deviation between the figures given in the WhatsApp message and actual result was 0.47% regarding revenue, 0.03% in the case of PBIT and 0.03% in the case of PBT. Similar pattern was observed regarding the other WhatsApp messages regarding other companies for different quarterly period.

The SEBI in its orders reasoned that though the appellants were involved as employees or otherwise in the securities market, their duties did not involve sending any such messages to any of the clients and some of the entities to whom the messages were forwarded were not even clients.

Further the proximity of the circulation of the WhatsApp messages with publication of financial results, striking resemblances between the figures circulated via messages and actual results declared by the respective companies, also weighed with the learned AO in each of the case to come to the conclusion that the message was nothing but circulation of unpublished price sensitive information in violation of PIT Regulations.

Each of the appellant raised similar defenses. They submitted that the messages mined by the respondent SEBI from the devices admittedly would show that none of the appellants were the originator of the messages but they had simply forwarded the messages as received from some other sources.

SAT Order :

The SAT set aside the penalty imposed by the SEBI for forwarding allegedly UPSI of six companies on WhatsApp.

Further, the SAT said that AO of the SEBI failed –

- to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain.
- to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the published financial results.

  Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message, a similar message regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case, however, were widely different. The AO did not give any weightage to the same, SAT said.
- to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties.

For details:
http://sat.gov.in/english/pdf/E2021_JO2020313_25.PDF

3.	**07.04.2021**	**In the matter of Reliance Industries Ltd. – Shri Mukesh D Ambani, Shri Anil D Ambani and Others (Noticees)**	**SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011***	**Adjudication Officer, SEBI**

The promoters and persons acting in concert who are in acquisition of 15% or more but less than 75% of the shares or voting rights in a company, if acquires more than 5 per cent of the voting rights, in any financial year ending March 31, needs to make a public announcement for acquiring such shares.

Facts of the case :

- On January 12, 1994, Reliance Industries Limited ("RIL") allotted 6,00,00,000 - 14% Non-Convertible Secured Redeemable Debentures ("NCDs") of Rs. 50 each aggregating to Rs. 300 crore, having warrants* attached to it ("Warrants"), to 34 allottee entities. The Warrants were detachable and each Warrant entitled its holder to apply for equity shares of RIL. The NCDs and Warrants were issued after due approval from the shareholders and board of directors of RIL and the NCDs and Warrants were listed on the stock exchanges.

- The issuance and allotment of NCDs and the Warrants (including the approval of the board and shareholders of RIL) was completed in January 1994, i.e. before the Securities and Exchange Board of India ("SEBI") notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("1997 Takeover Regulations"). In fact, the issue and allotment of the NCDs and Warrants was completed even before SEBI had notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 (the regulations which were replaced by the 1997 Takeover Regulations).

- On January 7, 2000, pursuant to the exercise of the option on the Warrants, the Board of Directors of RIL approved the allotment of 12 crore equity shares of RIL to the 38 holders of the Warrants.

- On April 28, 2000, RIL filed the disclosure under Regulation 8(3) of the 1997 Takeover Regulations and intimated stock exchanges that the holders of the Warrants were persons acting in concert ("PAC") with the promoters of RIL.

- On April 16, 2010, the Noticees received a letter from SEBI stating that pursuant to a complaint, SEBI had conducted an investigation into alleged irregularities in the issue of 12 crore equity shares by RIL to 38 allottee entities in January 2000, consequent to

the exercise of the option on Warrants. The letter inter alia alleged that promoters and persons having control over RIL and 38 allottee entities that were PAC during 1999-2000, had violated Regulation 11(1) of the 1997 Takeover Regulations.

Regulation 11(1) of the Takeover Regulations states that-

"No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than seventy five per cent (75%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

- Further, SEBI noted that acquisition by the Noticees was not exempted under Regulation 3(1)(c) of the Takeover Regulations and compliance with Regulations 3(1)(c), 3(3) and 3(4) of Takeover Regulations are necessary to avail of exemption from open offer obligation under provisions of Regulation 11(1) of the Takeover Regulations.
- Since the promoters and PACs have not made any public announcement for acquiring shares, it was alleged that they have violated the provisions of regulation 11(1) of Takeover Regulations.

**Warrants are a derivative that give the right, but not the obligation, to buy or sell a security—most commonly an equity—at a certain price before expiration.*

SEBI Order :

In the instant matter the noticees have been alleged to fail in making public announcement to acquire shares of RIL and deprived the shareholders of their statutory rights/opportunity to exit from the target company and therefore they breached the provisions of takeover regulations. Thus SEBI imposed a penalty of Rs 25 crore, to be paid jointly and severally, on Mukesh Ambani, Anil Ambani, and other individuals and entities.

** Erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997*

For details:
https://www.sebi.gov.in/enforcement/orders/apr-2021/adjudication-order-in-the-matter-of-reliance-industries-ltd_49787.html

4.	**15.03.2021**	**In the matter of United Textiles Ltd. - Chhotalal Ramjibhai Bhanderi (Noticee)**	**SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011***	**Adjudication Officer, SEBI**

The disclosure requirements as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the changes in the substantial shareholding of persons enabling them to take informed investment decisions. Thus, the disclosures requirements prescribed in the provisions in question cannot be termed as non-consequential.

Facts of the case :

SEBI conducted examination in the scrip of United Textiles Ltd. ("UTL" or "the Target company, for the period November 2016 – February 2017) (hereinafter referred to as the examination period/EP), a company listed on BSE limited ("BSE"), wherein violations were observed by the entity namely; Mr. Chhotalal Ramjibhai Bhanderi (Noticee) under Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations).

During the period of examination, following was noted: -

1. Equity share capital of the Target Company at the quarter ended September 2016 was 30,00,000 out of which the Noticee was holding 1,31,168 (4.37%) shares of the Target Company in public category.
2. On November 28, 2016, Chhotalal Ramjibhai Bhanderi acquired 19,216 shares of Target Company through off market transfer and as a result his shareholding in the Target Company increased to 5.01% from 4.37% (i.e. more than 5 %).
3. Noticee was required to make disclosures, within two days, under provisions of SAST Regulations, to the company & stock exchange, which the Noticee made after a delay of 803 days i.e. after a delay of more than two years.

Thus, Adjudication proceedings under section 15A (b) of the SEBI Act 1992, were initiated against the Noticee for violation of Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

SEBI Order :

SEBI imposed a penalty of Rs. 1 lakh on Noticee for not making disclosures as required under regulations 29(1) r/w regulation 29(3) of SEBI (SAST) Regulations, 2011, to the exchange where securities of the Target Company were listed and to the Target Company within 2 working days from the date of change in shareholding.

** Erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997*

For details:
https://www.sebi.gov.in/enforcement/orders/mar-2021/adjudication-order-in-the-matter-of-united-textiles-ltd-_49507.html

5.	**10.02.2021**	**In the matter of NSE Co-location-** **1. National Stock Exchange of India Limited ('Noticee No. 1')** **2. Mr. Ravi Narain ('Noticee No. 2')** **3. Ms. Chitra Ramakrishna ('Noticee No. 3')**	**Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018***	**Adjudication Officer, SEBI**

The Principle of 'fair and equitable' should be adhered by the management and adequate steps to be taken to ensure proper systems, checks and balances so as to provide fair and equitable access to all

Facts of the case :

In 2015, SEBI received complaints alleging that a trading member OPG Securities Pvt. Ltd. ("OPG") used National Stock Exchange of India Ltd. ("NSE") system to its advantage by having an arrangement with NSE staff that helped it to connect first. The first one to connect to the lowest load server would get advantage in terms of receiving the data faster than others.

Mr. Ravi Narain served as managing director and chief executive officer of NSE from 2000 to March 2013 and Ms. Chitra Ramakrishna served as MD & CEO of NSE from April 2013 to December 2016.

Further, it was alleged that, during the relevant period of violations of NSE, the Noticee No. 2 and 3, who were in-charge of the affairs of NSE, have failed to take any step to ensure proper systems, checks and balances so as to provide fair and equitable access to all. The adherence to the principle of 'fair and equitable' was left to the technology team without any specific guidance. Thus, the Noticee No. 2 and 3 had failed to perform their role in establishing adequate systems leading to the scenario whereby certain brokers were allowed to breach the norms of fair and equitable access.

SEBI Order :

SEBI imposed a penalty of Rs. 1 crore on the NSE for failing to ensure a level-playing field for trading members subscribing to its tick-by-tick (TBT) data feed system.

In addition, the SEBI levied a penalty of Rs 25 lakh each on NSE's former managing directors and chief executive officers Ms. Chitra Ramakrishna and Mr. Ravi Narain.

NSE flouted the principles underlying the conduct of business of a stock exchange, pertaining to fair and equitable access to information.

The NSE had failed to comply with the provisions of Stock Exchange and Clearing Corporation (SECC) Regulations in letter and spirit and Ms. Chitra Ramakrishna and Mr. Ravi Narain are vicariously liable for the acts of omissions/ commissions committed by the exchange during the investigation period.

**Erstwhile* *Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.*

For details:
https://www.sebi.gov.in/enforcement/orders/feb-2021/adjudication-order-in-respect-of-three-entities-in-the-matter-of-nse-co-location_49079.html

DIRECT TAX

1.	**09.04.2021**	***Sadruddin Tejani (Appellant) vs. ITO (Respondent)***	**Bombay High Court**

The Direct Tax Vivad se Vishwas 'DTVSV' Act, 2020 is an Act to provide for resolution of disputed tax and matters connected therewith or incidental thereto. The emphasis is on disputed tax and not on disputed income.

Fact of the case :

The Assessee, an Individual, had filed return of income for the AY 1987-88 to 1998-99. The assessments were reopened u/s 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] and the assessment orders were passed u/s 143(3) r.w.s 147 of the Act. For the AYs 1996-97 to 1998-99, the assessments were finalised u/s 143(3) of the Act by raising substantial demand. The additions made in the said assessments were challenged in appeals before CIT(A), who confirmed the action of the AO. Further, the appeal was preferred before ITAT contesting the additions confirmed in the appellate proceedings. The ITAT set aside the order of CIT(A) and directed the AO to grant relief.

Pending the appellate proceedings, the TRO initiated the recovery proceedings and the Petitioner to avoid any coercive action handed over the cheques totalling to an amount of Rs.12,43,000 against the demand raised for the AYs 1986-87 to 1998-99. However, while preparing the challans, the TRO wrongly mentioned only AY 1986-87 in all the challans and adjusted the said amount only against the demand for AY 1986-87 and not for the AYs 1987-88 to 1998-99.

After the ITAT order, when the AO gave effect to the same, the demand for all the assessment years had substantially reduced. But, the credit for the taxes recovered was given only in the AY 1987-88, which resulted into refund in the AY 1987-88. Consequently, huge tax and interest demand was created in all the other years i.e. AY 1988-1989 to 1998-99.

Thus, the Petitioner sought rectification of the same by moving an application u/s 154 of the Act. However, the same was rejected. The Petitioner therefore, moved an application u/s 264 of the Act for all the AYs 1987-88 to 1998-99.

Pending the application u/s 264 of the Act, the Petitioner preferred to settle the litigation under Direct Tax Vivad se Vishwas 'DTVSV' Act, 2020. On filing the declaration u/s 4(1) of DTVSV Act, 2020, the **Petitioner was asked to justify his claim that there is a 'disputed tax' when there is no 'disputed income' as per the relief sought in the applications filed u/s 264 of the Act**. The Petitioner responded to the same and submitted that as per section 2 (1)(a)(v), an assessee whose application is pending on the specified date is an 'appellant' for the purpose of DTVSV Act, 2020. The disputed tax in such cases is defined in section 2(1)(j)(F) as the amount of tax payable by the appellant, if such application for revision was not accepted. In the Petitioner's case there are 'tax arrears' as per the definition in section 2(1)(o) of the DTVSV Act, 2020. Thus, the Petitioner determined the amount payable u/s 3(a)

of DTVSV Act, 2020. The Designated Authority did not appreciate the said explanation of the Petitioner and rejected the declaration without assigning any reason for the same.

Order/ Judgement :

The Hon'ble High Court observed that the DTVSV Act, 2020 is an Act to provide for resolution of disputed tax and matters connected therewith or incidental thereto. The emphasis is on disputed tax and not on disputed income. It was further held that "from a plain reading of the provisions of the DTVSV Act, 2020 and the Rules set out above, it emerges that the Respondent – Designated Authority would have to issue Form 3 as referred to in section 5(1) specifying the amount payable in accordance with section 3 of the DTVSV Act. In the case of the declarant who is an eligible appellant not falling under section 4(6) nor within the exceptions in section 9 of the DTVSV Act, 2020, which fact appears to be undisputed".

The Hon'ble Court further held that as the Petitioner's case is covered by the definition of disputed tax as per section 2(1)(j)(F) of the DTVSV Act, 2020, the Designated Authority is not justified in rejecting the declaration of the Petitioner.

2.	**25.03.2021**	***Little Angels Education Society* vs. *UOI***	**Bombay High Court**

As per Circular No.2 / 2020 dated 03.01.2020, the CBDT has delegated the power to the CIT to admit belated applications in filing Form No.10B for AY 2018-19 and onwards for a period of only upto 365 days. Fixing a period of one year's delay i.e., 365 days of delay for condonation of delay in filing Form No.10B for AY 2018-19 and onwards cannot be said to be arbitrary or irrational. However, there is also nothing in section 119(2)(b) preventing or precluding the CBDT from passing a special order in any given case from condoning the delay in filing Form No.10B beyond 365 days despite passing a general order. The Petitioner should approach the CBDT which will deal with the claim on merit and in accordance with law. [Section 11: Form No.10B]

Fact of the case :

The petitioners are charitable trusts providing education to students belonging to middle class families through various schools situated in Mumbai. Both the petitioners are assessed to income tax under the Income Tax Act, 1961(Act). Challenge made in both the writ petitions is to the orders dated 19.02.2020 passed by the Commissioner of Income Tax (Exemptions), Mumbai declining to condone the delay in filing Form No.10B of the Act for the assessment year 2018-2019.

It is stated that for the assessment year 2018-19, petitioner filed return of income on 25.07.2018 declaring nil income. Form No.10B was obtained on 15.08.2018 from the auditor. It is stated instead of uploading Form No.10B in the income tax portal, petitioner uploaded Form No.10BB because of mistake of the chartered accountant and accountant. The CPC under section 143(1) of the Act raising a demand of Rs.1,46,01,489 as payable by the petitioner for the assessment year 2018-19 by denying exemptions under sections 11 and 12 of the Act.

Petitioner uploaded Form No.10B on the income tax portal on 06.11.2019 and also filed an application for condonation of delay. As a matter of fact, petitioner filed Form No.10B for assessment years 2017- 18 and 2018-19.

Central Board of Direct Taxes issued Circular No. 2 of 2020 dated 03.01.2020 empowering the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for a period upto 365 days from the assessment year 2018-19 onwards. However, vide the impugned order dated 19.02.2020, Commissioner of Income Tax (Exemptions), Mumbai rejected the application of the petitioner for condonation of delay for the assessment year 2018-19. The said order was passed following Circular No. 2 / 2020 of the Central Board of Direct Taxes.

Aggrieved, the related writ petition has been filed for quashing of order dated 19.02.2020 and for a direction to the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for the assessment year 2018-19.

Judgement :

For delay in filing form Nom 10B denial of exemption is not justified – Petitioner is directed to file an application before the CBDT within a period of three weeks, and CBDT shall pass an appropriate order in terms of direction No.1 above within a period of four weeks from the date of receipt of such application with due intimation to the petitioner.

3.	**15.03.2021**	***Shri Tek Chand* vs. *ITO***	**ITAT Chandigarh Bench**

The Income Tax Appellate Tribunal (ITAT), Chandigarh bench, while granting relief to a 70-year old taxpayer, quashed re-assessment under Section148 of the Income Tax Act, 1961 since the same was passed mechanically without application of mind.

Fact of the case :

The Assessing Officer (A.O.), on the basis of the information that the assessee (Shri Tek Chand aged 70 year old, Farmer) deposited cash amounting to Rs. 125,00,000 in his saving bank account during the period relevant to the A.Y. under consideration, was of the view that the aforesaid amount escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 as the assessee had not filed his return of income. The A.O. after obtaining the approval of the Principal CIT, Karnal issued notice under section 148 of the Income Tax Act, 1961. Since, the assessee had not filed the return of income, the A.O. made the addition of Rs. 1,25,00,000.

Though this was challenged before the CIT(A), Karnal, the submissions of the appellant were turned down by citing the ruling of the Supreme Court in *Raymond Woolen Mills Ltd*. vs. *ITO and other (1999)*, wherein it was held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was, prima facie, some material on the basis of which the department could reopen the case. In the appeal preferred against the aforesaid order of the CIT(A), vide additional grounds challenged the

jurisdiction of the Assessing Officer assumed under section 148 of the Income Tax Act, 1961 was challenged alleging that the proceeding was initiated on borrowed satisfaction, without applying his own mind.

The Income Tax Appellate Tribunal 'ITAT' found that the approval granted by the Principal CIT read as "Yes, satisfied, it is a fit case for issue of notice under section 148". This according to the ITAT was a mechanical way of recording sanction, with no application of mind. This ratio was substantiated by citing an extract from the case of *CIT Jabalpur* vs. *S. Goyanka Lime & Chemical Ltd. [(2015) 56 Taxmann.com 390*], decided by the High Court of M.P following the decision in *Arjun Singh* vs. *ADIT (2000) (M.P)*.

ITAT further observed that the decision in Goyenka Lime & chemical Ltd. was upheld by the Supreme Court and held, "that where Joint Commissioner recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid."

Judgements :

The Income Tax Appellate Tribunal held that the reopening under section 148 of the Income Tax Act, 1961 on the basis of mechanical approval without applying the mind by the Principal CIT was not valid, wherefore; the reopening of assessment by issuing notice under Section148 of the Income Tax Act, 1961 was quashed.

4.	**11.02.2021**	***Shiv Bhagwan Gupta* vs. *ACIT***	**ITAT Patna**

Whether levy of penalty u/s 271AAB is mandatory or not ?

Fact of the case :

A search action under section 132 of the Income tax Act, 1961 was carried out at the premises of the assessee/appellant on August 7, 2014. During the search action jewellery in the shape of gold bars, coins were found from the locker of the assessee. The assessee could explain about the source of investment in respect of the part of the said bullion and jewellery. The assessee could not explain the source of assets worth Rs. 21,97,221 with bills and vouchers. The assessee, however, explained that the said jewellery was accumulated out of gifts received by the assessee on the eve of marriage and other ceremonies/occasions from time to time. The assessee, thereafter, included the value of the above stated jewellery in the computation of income and offered the same for taxation. The Assessing Officer in the assessment proceedings noted that the assessee in the return of income has disclosed income of Rs. 21,79,222 on account of undisclosed jewellery. He, therefore, initiated penalty proceedings under section 271AAB of the Act and levied the minimum penalty at 10 % of the said declared income of the assessee.

Commissioner of Income Tax (Appeal) observed that the levy of penalty under the provisions of section 271AAB of the Act was mandatory and accordingly confirmed the penalty so levied by the AO.

Judgement :

The Tribunal relied on the decision of Co-ordinate Chandigarh Bench of the Tribunal in the case of *M/s SEL Textiles Ltd. vs. DCIT* wherein it was held that levy of penalty u/s 271AAB of the Act is not mandatory. It has also been noted that the Legislature has consciously used the word 'may' in contradistinction to the word 'shall' in the opening words of Section 271AAB of the Act which shows that the Legislature did not intend to make the levy of penalty statutory, automatic and binding on the Assessing Officer but the Assessing Officer has been given discretion in the matter of levy of penalty. It has also been held that the penalty u/s 271AAB will not be attracted if the surrendered income would not fall in the definition of 'undisclosed income' as defined under explanation to section 271AAB of the Act. Therefore, from plain reading of section 271AAB of the Act, it is evident that the penalty cannot be imposed unless the assessee is given a reasonable opportunity and assessee is being heard. Further, the provisions of section 271AAB of the Act are self-contained and are not dependent upon commencement or finalization of the assessment proceedings.

Since, the assessee has neither made any surrender of any undisclosed income during the search action nor the penalty has been initiated on the basis of undisclosed income found during such search action, the appeal of the assessee stands allowed.

Reference :

- https://itat.gov.in/files/uploads/categoryImage/1615892708-TEK%20CHAND-255-CHD-2020.pdf
- https://itatonline.org/digest/ito-v-techspan-india-private-ltd-sc-www-itatonline-org/

INDIRECT TAX

1.	**20.04.2021**	***Radha Krishan Industries (Appellant)* vs. *State of Himachal Pradesh (Respondent)***	**Supreme Court of India**

Power to order Provisional Attachment of Property including Bank Account is draconian in nature, all conditions to be strictly fulfilled

Facts of the case :

The Appellant challenged the orders issued on 28 October 2020 by the Joint Commissioner of State Taxes and Excise, provisionally attaching the appellant's receivables from its customers. The provisional attachment was ordered while invoking Section 83 of the Himachal Pradesh Goods and Service Tax Act, 2017 and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017. While dismissing the writ petition on grounds of maintainability the High Court was of the view that the appellant had an 'alternative and efficacious remedy' of an appeal under Section 107 of the HPGST Act, 2017.

The GST Department had moved the Apex Court against the ruling of a Division Bench of the High Court of Himachal Pradesh. The High Court dismissed the writ petition instituted under Article 226 of the Constitution challenging orders of provisional attachment on the ground that an alternate remedy is available. While dismissing the writ petition on grounds of maintainability, the High Court was of the view that the appellant had an 'alternative and efficacious remedy' of an appeal under State GST law.

While dismissing the writ petition, the High Court held that it was undisputed that the third respondent and the Divisional Commissioner, who has been appointed as Commissioner (Appeals) under the GST Act, are constituted under the HPGST Act, and therefore, it is assumed that there is no illegal or irregular exercise of jurisdiction. The High Court further observed that even if there is some defect in the procedure followed during the hearing of the case, it does not follow that the authority acted without jurisdiction, and though the order may be irregular or defective, it cannot be a nullity so long it has been passed by the competent authority.

Judgment :

The Supreme Court has recently held that power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. The Court said that before passing an order of provisional attachment, it is necessary to adhere to the twin conditions: first, allowing the assessee to submit objections to the order of attachment on the ground that the property was or is not liable for attachment and second, give him opportunity to be heard before the order.

2.	**07.04.2021**	**In re Kou-Chan Technologies Private Limited**	**GST AAR Karnataka**

GST @ 5% liable on pick-up charges paid to the vehicle owner / driver

Facts of the case :

M/s. Kou-Chan Technologies Pvt. Ltd., is a Private Limited Company registered under the Goods and Services Tax Act, 2017 and proposes to operate a mobile based taxi aggregation service, on a pan-India basis under the trade name "DYUT RIDES". The applicant has a unique business model comprising of three entities, first, the applicant as the Taxi Aggregator', second, an In-charge for each District known as 'Associate Partner' (usually a proprietor or single individual) and third, the Taxi Driver'/ 'Owner'. The applicant/aggregator is responsible for linking the Driver to the Passenger. The applicant does not own any vehicle nor does he employ the driver. Both are independent and are free to switch on or switch off from the App. The driver is however registered with the Taxi Aggregator.

In the revenue breakup provided by the applicant, it is seen that they are charging GST from passengers on the basic fare paid to the driver, collecting pick up cost from the passenger, service charge, associate partner's charge and payment gateway charge. Besides, the applicant also collects toll charges, luggage charges, waiting charges, cancellation, insurance etc. which may be shared with drivers. Further there is 'Goodwill Bonus' which is purely a voluntary amount paid by passengers to drivers at the time of rating the services which is credited to the driver's account by the applicant. The applicant collects service charge on this amount. Lastly, there is a Participation Fee which is a payment made by drivers to the applicant when they bid for passengers offering different fares.

The following question are arise for the consideration of the AAR:

1. Do the various supplies (of the applicant, the vehicle owner, the driver and the associate partner together) qualify as Composite supply?
2. Do the pick-up charges paid to the owner / driver fall under GST rate of 5%?
3. The Associate Partner renders services to the passengers and to the drivers/ vehicle owners directly, and in that case does any supply of service exist between the applicant /aggregator and the Associate partner, and if yes, what is the rate at which GST has to be collected and remitted?
4. Does the amount received from drivers/ owners towards bidding get covered in the 5% GST or should it be separately charged at 18%?
5. Does the goodwill bonus being paid by passenger to the driver and on which the applicant collects the service charges, attract GST and if so at what rate?
6. Do the charges for cancelling the trip for any reason attract GST liability?
7. Do the charges for insurance come under composite supply?

8. If the principal supplier / applicant collects GST, say at 5% along with fare from passengers (as mentioned in the Table submitted by the applicant), does it amount compliance of the GST Rules?

Judgement/Order :

Accordingly AAR in it's ruling clarified that :

1. The various supplies (of the applicant, the vehicle owner, the driver and the associate partner together) does not qualify as Composite supply.
2. Yes, the pick-up service is incidental to the main service of transportation of passengers by radio taxi and hence the pick-up charges form part of the service of transportation of passengers by a radio taxi and hence the applicant is liable to pay GST @ 5%, on such pick-up charges.
3. 18% by associate partners in case the associate partner is registered under GST. Where the associate partners are not registered under GST, no GST is leviable on the amount remitted to the associate partner.
4. It should be paid at 18%.

3.	**25.03.2021**	***Tvl. Vectra Computer Solutions (Appellant)* vs. *Commissioner of Commercial Taxes (Respondent)***	**Madras High Court**

Personal hearing to taxpayer must before cancellation of GST Registration

Facts of the case :

The Appellant was filing returns under the Tamil Nadu Value Added Tax Act, 2006 and subsequently, under the GST regime also. The appellant's registration was cancelled on 06.09.2018 on the ground of non-filing of returns. The said defect was subsequently rectified by the appellant. The appellant also remitted GST dues to the tune of Rs.66,781/- together with late fee. The appellant received notice dated 29.10.2019 in which certain defects have been pointed out. The defect includes sales omission and purchase omission also. It was also proposed to levy tax on service charges paid and discount paid. For the reasons best known to the appellant, no reply was submitted. Thereafter, the impugned order came to be passed levying tax and penalty on the appellant.

Judgement/Order :

Madras High Court held that Personal hearing must be afforded to taxpayer before cancellation of GST Registration. As in this case no such Opportunity was afforded to Taxpayer so High Court has Quashed the Cancellation order.

4.	**24.03.2021**	***Commissioner of Commercial Taxes & Anr. (Appellant)* vs. *Ramco Cements Ltd. etc. (Respondent)***	**Supreme Court of India**

Purchasers of Non-GST goods entitled to 'Form C' under Central Sales Tax (CST) for concessional rate even after GST

Facts of the case :

Six commodities like Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor have not been brought under GST and they are continuing under the CST with respect to inter-state trade. After the GST came into force on July 1, 2017, there arose an issue whether dealers who are purchasing these commodities are entitled to avail the concessional rate under the CST against Form C declaration.

The Government of Tamilnadu filed the Special Leave Petition in the matter of allowing the HSD purchases, by issuing C Forms at the concessional rate of 2% and it has upheld the decisions of both the Single Judge and the Division Bench of Madras High Court.

The Punjab and Haryana in the case of Carpo Power Limited vs. State of Haryana held that Sale of Natural Gas by BPCL/HPCL from Gujarat to Petition in Haryana is inter-state sale in terms of Section 3(a) of CST Act, 1956.

Judgment:

The Supreme Court has upheld the views taken by various High Courts that the Goods and Services Tax Act does not affect the right of purchasers of goods not covered by the GST to get Form 'C' under the CST Act to avail concessional tax rate. The respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana.

5.	**17.03.2021**	***Navneet R. Jhanwar (Appellant)* vs. *State Tax Officer & others (Respondent)***	**Jammu and Kashmir High Court**

Show Cause Notice (SCN) to be served before denying GST Refund

Facts of the case :

The Appellant having become entitled to refund of excess tax paid in terms of Section 54 of the CGST Act, submitted a refund claim before the respondent authority in FORM-GST-RFD-06.

The Respondent instead of directing the refund issued a Show-Cause Notice (SCN) calling upon the appellant to show cause as to why his refund claim to the extent of the amount claimed should not be rejected or the amount erroneously refunded should not be recovered

for the reason that the claim for refund is belated having been filed after the expiry of two years from the relevant date, as per explanation in Section 54(1) of the CGST Act and that in the instant case the period had expired in April 2020. The appellant replied to the SCN and explained the delay.

The explanation on delay by the appellant was accepted and accordingly, the application of the petitioner for refund was processed by respondent. Respondent, however, without serving further show cause notice upon the appellant, determined the claim for refund and in terms of the order impugned dated December 2, 2020 rejected the same being not tenable in law.

Judgment :

The Jammu and Kashmir High Court quashed the order rejecting the refund and remitted the matter back to the Authority for fresh consideration. The Court was of the view that the appellant has invited their attention to Section 54 of the Act and Rule 92 of the Central Goods and Service Tax Rules, 2017, wherein it is specifically provided that no order rejecting the claim of refund shall be passed unless the person claiming refund is given an opportunity of being heard.

INSOLVENCY

1.	**22.03.2021**	***Sesh Nath Singh (Appellant)* vs. *Baidyabati Sheoraphuli Co-operative Bank Ltd(Respondent)***	**Supreme Court of India [CA 9198 OF 2019], LL 2021 SC 177**

Section 14 Limitation Act Applies To Application under Section 7 IBC & Court/Tribunal Can Condone Delay under Section 5 Limitation Act Even In the Absence of A Formal Application :

Fact of the case :

In this case, the National Company Law Appellate Tribunal rejected the contention raised by Corporate Debtor that since the account of the Corporate Debtor that since the account of the Corporate Debtor had been declared NPA on 31st March, 2013 and since the application under Section 7 of IBC had been filed on 27th August, 2018, after almost five years and five months from the date of accrual of the cause of action, the application filed by financial creditor is barred by limitation. The NCLAT held that, the applicant, the financial creditor, had bona fide, within the period of limitation , initiated proceedings against the Corporate Debtor under the SARFAESI Act and was thus entitled to exclusion of time under Section 14(2) of the Limitation Act. The NCLAT, after exclusion of the period of about three years and six months till the date of the interim order of the High Court, during which the Financial Creditor had been proceeding under SARFAESI Act, found that the application of the Financial Creditor, under Section 7 of IBC, was within limitation.

Judgement :

In this case Hon'ble Supreme Court observed that in our considered view, keeping in mind the scope and ambit of proceedings under the IBC before the NCLT/NCLAT, the expression 'Court' in Section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under the SARFAESI Act.

In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

For details:
https://www.livelaw.in/top-stories/section-14-limitation-act-applies-to-application-under-section-7-ibc-supreme-court-171616

2.	**15.03.2021**	***Arun Kumar Jagatramka (Appellant)* vs. *Jindal Steel and Power Ltd (Respondent)***	**Supreme Court of India** **[CA 9664 of 2019]**

Person Ineligible u/s 29A IBC to Submit Resolution Plan Cannot Propose Scheme of Compromise & Arrangement u/s 230 Companies Act 2013.

Facts of the case :

By its judgment dated 24 October 2019, the National Company Law Appellate Tribunal (NCLAT) held that a person who is ineligible under Section 29A of the Insolvency Bankruptcy Code, 2016 to submit a resolution plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013. The judgment was rendered in an appeal filed by Jindal Steel and Power Limited, an unsecured creditor of the corporate debtor, Gujarat NRE Coke Limited. The appeal was preferred against an order passed by the National Company Law Tribunal (NCLT) in an application under Sections 230 to 232 of the Act of 2013, preferred by Mr Arun Kumar Jagatramka, who is a promoter of GNCL. The NCLT had allowed the application and issued directions for convening a meeting of the shareholders and creditors. In its decision dated 24 October 2019, the NCLAT reversed this decision and allowed the appeal by JSPL. The decision of the NCLAT dated 24 October 2019 is challenged in the appeal before Supreme Court.

Judgement :

Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section 29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the Code, a scheme is a facet of the liquidation process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a scheme. The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A permeates the liquidation process under Chapter III (by virtue of the provisions of section 35(1)(f).

The SC clarified that three modes of revival are contemplated under the Code. The first is in the form of the CIRP elucidated in the provisions of Chapter II. The second is where the CD or its business is sold as a going concern within the purview of clauses (e) and (f) of regulation 32. The third is when a revival is contemplated through the modalities provided in section 230 of the Companies Act. It further clarified that the scheme cannot certainly be equated with a withdrawal simpliciter of an application, as contemplated under section 12A of the Code.

For details:

https://www.ibbi.gov.in/uploads/publication/2021-05-29-204331-atxcy-3363461de858b06bfa1afdbf13151b90.pdf

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1.	**09.03.2021**	***Sanjay Soya Private Limited (Appellant) vs. Narayani Trading Company (Respondent)***	**Bombay High Court** **Ordinary Original Civil Jurisdiction In Its Commercial Division** **Interim Application (L) No. 5011 of 2020** **In Commercial IP Suit No. 2 of 2021**

Copyright registration is not compulsory to sue for infringement

Facts of the case :

Sanjay Soya Pvt. Ltd. (SSPL), which had approached the Bombay High Court against Narayan Trading Company (NTC) with a plea seeking reliefs for copyright infringement in relation to the artistic work of SSPL in the label of its product. SSPL claimed that NTC entirely lifted and illicitly copied their registered label mark. SSPL claimed that the two marks were visually and conceptually identical, and deceptively similar to SSPL's mark. It was used in relation to identical or similar goods so that NTC could trade and encash upon the goodwill of SSPL.

SSPL sought interim injunction for both trade mark and copyright infringement, passing off and for the appointment of a Court Receiver to seize and seal NTC's products under the offending or rival label mark and artistic work.

NTC denied that SSPL had any copyright in artistic work. NTC maintained that the label mark is a registered trade mark and therefore cannot be an artistic work. This necessarily implies that trade mark registration and copyright protection are distinct and disjunctive. A person may have one or the other but cannot have both, it was argued.

Judgement :

The High Court in this case observed that *Dhiraj Dharamdas Dewani vs. M/s Sonal Info Systems Pvt. Ltd,* at least implicitly, equates or places on the same pedestal registration under Trade Marks Act with registration under the Copyright Act. This is incorrect. The two are entirely distinct. Registration under the Trade Marks Act confers specific distinct rights unavailable to an unregistered proprietor. Important amongst these is the right to sue for infringement. This is only available to a registered proprietor. There is no such requirement under the Copyright Act at all. In fact the Copyright Act gives a range of rights and privileges to the first owner of copyright without requiring prior registration. Chapter 10 from Sections 44 to 50A deals with registration of copyright. Section 45 says that the author or publisher or owner or other person interested in copyright in any work "may" make an application in the prescribed form for entering the particulars of work in the register of copyright. Now Section 51, which speaks

of infringement of copyright, does not restrict itself to works that have been registered with the Registrar of Copyright. Notably, the bar we find in Section 27 of the Trade Marks Act is conspicuous by its absence in the Copyright Act. Section 27 of the Trade Marks Act says that no person is entitled to institute any proceeding in regard to infringement of an unregistered trade mark. This is the requirement of prior registration of a mark to be able to maintain a suit for infringement. This is to be distinguished from the common law action in passing off available even to an unregistered proprietor of a trade mark.

For details:
https://www.barandbench.com/news/litigation/copyright-registration-is-not-compulsory-to-sue-for-infringement-bombay-high-court-read-judgment

INSURANCE LAWS

1.	**13.04.2021**	***National Insurance Co. Ltd.* vs. *Smt. Anuradha Kejriwal And Others***	**Allahabad High Court**

Compensation decided on the basis of Income Tax Return and any amount of future loss of income

Facts of the case :

The factual data as it emerges from the record is that the claimants are the legal heirs namely widow and parents of the deceased who died in the vehicular accident which occurred on 2.8.2015. The claimants had filed one claim petition being MACP No. 471 of 2015 before the Tribunal claiming sum of Rs.3,40,50,000/- for the death of Somesh Agrawal, as according to the claimants the accident took place on account of rash and negligent driving of the driver of the truck bearing No.UP 55 T 5151. It is averred in the claim petition that the deceased was aged 28 years and was earning Rs.25,00,000/- per annum as he was qualified engineer and was engaged in the business of construction work for U.P. Power Corporation.

The Tribunal has considered the income of the deceased on the basis of Income Tax Return for the year which was filed prior to his death. The Tribunal refused to grant future loss of income as according to it the deceased was not in employment and he was about to set up a factory and, therefore, there was no question of future loss of income is the finding of the Tribunal. he Insurance Company has challenged the award on the grounds that the deceased was a contributor to the accident having taken place, that the income considered by the Tribunal was on higher side and same would not have been made the basis of compensation and that the driver of the said vehicle did not have proper driving licence when the accident took place as it was proved by documentary evidence produced from the R.T.O. that the driver did not have licence to drive transport vehicle.

Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants.

Judgement :

The compensation has been decided on the basis of Income Tax Return but which has to be relied has to be considered. In this case, just prior to the death of the deceased, his Income Tax Return for last three years has been considered by the Tribunal but his income has been taken for the period just preceding his death namely for the year of death. It is further submitted that the factory had not even started or was started in the name of his brother and,

therefore, the only income of Theka should have been considered and that the apportionment must be in proportion.

The appeals preferred by the claimants are partly allowed and the appeal preferred by the Insurance Company is dismissed. Award and decree passed by the Tribunal shall stand modified to the aforesaid extent. The respondents shall jointly and severally liable to pay additional amount within a period of 12 weeks from today with interest at the rate of 7.5% from the date of filing of the claim petition till the amount is deposited.

Finally it is directed that on deposit of the amount, the Tribunal shall disburse the entire amount by way of account payee cheque or by way of RTGS to the account of the claimants within 12 weeks from the date the amounts are deposited by the respondents. Record be sent back to the Tribunal.

The court has modified the apportionment as 60% to the parents and 40% to the young widow of the additional amounts.

2.	**12.04.2021**	***Iffco Tokio General Insurance (Appellant)* vs. *Pearl Beverages Ltd. (Respondent)***	**Supreme Court of India**

If the person driving the vehicle under the influence of intoxicating liquor or drug-insurer may establish exclusion of liability

Facts of the case :

An accident, which took place on 22.11.2007 involving a car (a Porsche) belonging to the respondent-Company, which was insured with the appellant, has resulted in this appeal against the Order by the National Consumer Disputes Signature Not Verified Digitally signed by Dr. Redressal Commission ('NCDRC' for short). The car was completely damaged. The appellant repudiated the claim by the respondent. The question which arises in this Appeal is, whether the NCDRC is correct in holding that the appellant is not entitled to invoke the shield of Clause (2c) of the Contract of Insurance, under which, it was not liable, if the person driving the vehicle, was under the influence of intoxicating liquor, or drugs. The State Commission rejected the complaint of the respondent finding that there was evidence to show that the person who drove the vehicle, had consumed liquor and was under the influence of liquor. The NCDRC, by the impugned Order, on the other hand, found that there was no material to establish that the driver of the vehicle was under the influence of intoxicating liquor within the meaning of the Exclusion Clause, as aforesaid.

Judgement :

The accident took place when the road would have been wholly free from any traffic. The impact is so much that it led to the overturning of the car and what is more, catching fire of the vehicle. This accident is inexplicable, if the driver is to be believed as PW2, when he deposed "I was in my full senses and capable of exercising full control over the car, at the time of the accident". It is more probable that his drink, really led to it. On the facts, the view of the State Commission is a plausible view.

The upshot of the discussion is that the impugned Order is liable to be set aside. Accordingly, the Honorable court has allowed the Appeal.

ARBITRATION

1.	**12.02.2021**	***National Highways Authority of India (Appellant)* vs. *M/s Progressive Construction Ltd. (Respondent)***	**The Supreme Court of India**

Fresh adjudication may be ordered by the Supreme Court while the Appeals being pending under Section 37 of the Arbitration and Conciliation Act, 1996 before the High Court.

Facts of the case:

This Appeal arose out of the Judgment passed under Section 34 of the Arbitration and Conciliation Act, 1996 wherein the Single Judge has substantially set aside the Award passed by a three-member tribunal. It was observed that the arbitral tribunal has drawn incorrect inferences from the documents on record, and has not considered vital and relevant evidence in reaching its conclusions. Aggrieved by the judgment of the Single Judge, cross appeals were filed by both parties under Section 37 before the Division Bench of High Court. The Division Bench vide the impugned interim Order directed that the Appeals be confined to the findings with respect to claims. The Appellant - NHAI filed the present Appeal to challenge the interim Order of Division Bench.

Decision :

During the pendency of this Appeal, the parties agreed to a fresh adjudication of all the claims and counter claims before a Sole Arbitrator that has been appointed by Supreme Court. In view of the aforesaid directions, the Order passed by the Delhi High Court is set aside. The Appeals filed by both parties under Section 37 of the Arbitration Act being pending before the Delhi High Court have accordingly become infructuous.

For details:
https://main.sci.gov.in/supremecourt/2020/18693/18693_2020_43_25_26142_Judgement_12-Feb-2021.pdf

2.	**11.02.2021**	***Chintels India Ltd. (Appellant)* vs. *Bhayana Builders (Respondent)***	**Supreme Court of India**

An appeal under section 37(1)(c) of the Arbitration and Conciliation Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under section 34 of the Arbitration Act, 1996.

Facts of the case:

This appeal arises out of a certificate issued under Article 133 read with Article 134A of the Constitution of India by the High Court of Delhi. The question raised in this appeal was

whether a learned single Judge's order refusing to condone the Appellant's delay in filing an application under section 34 of the Arbitration and Conciliation Act, 1996 is an appealable order under section 37(1)(c) of the said Act.

Decision:

It was observed by the Hon'ble Supreme Court that an appeal under section 37(1)(c) of the Arbitration and Conciliation Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under section 34 of the Arbitration Act, 1996 to set aside an award. The appeal was accordingly allowed. The impugned judgment of the Division Bench under appeal was set aside, and the matter was remitted to a Division Bench of the High Court of Delhi to decide whether the Single Judge's refusal to condone delay was or was not correct.

For details:
https://main.sci.gov.in/supremecourt/2020/27049/27049_2020_33_1501_26177_Judgement_11-Feb-2021.pdf

3.	**20.04.2021**	***PASL Wind Solutions Private Limited (Appellant)* vs. *GE Power Conversion India Private Limited***	**The Supreme Court of India**

Indian Parties may choose for foreign seat of Arbitration

Facts of the case:

This appeal raises an interesting question – as to whether two companies incorporated in India can choose a forum for arbitration outside India – and whether an award made at such forum outside India, to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ["New York Convention"] applies, can be said to be a "foreign award" under Part II of the Arbitration and Conciliation Act, 1996 ["Arbitration Act"]. The appellant and respondent were companies incorporated under the Companies Act, 1956 with their registered office in India. The appellant issued a request for arbitration to the International Chamber of Commerce ["ICC"]. The parties agreed to resolution of disputes by the sole arbitrator appointed by the ICC. It was agreed between the parties that the substantive law applicable to the dispute would be Indian law. A final award was passed by the learned arbitrator in which the appellant's claim was rejected. The appellant in this case asserted that the seat of arbitration was really Mumbai. The appellant filed proceedings challenging the said final award under section 34 of the Arbitration Act. The proceedings under section 34 of the Arbitration Act and the respondent's application of execution under Order 21 of the CPC for execution of the final award were at a standstill in view of the appeal before Supreme Court.

Decision :

The Hon'ble Supreme Court observed that it is not possible to accept that the seat of arbitration ought to be held to be Mumbai in the facts of the present case. It further observed that freedom of contract needs to be balanced with clear and undeniable harm to the public, even if the facts of a particular case do not fall within the crystallised principles enumerated in well-established 'heads' of public policy. It further observed that it can be seen that exception 1 to section 28 of the Contract Act specifically saves the arbitration of disputes between two persons without reference to the nationality of persons who may resort to arbitration. The Supreme Court uphold the impugned judgment of the Gujarat High Court, except for the finding on the section 9 application of the respondent being held to be non-maintainable.

For details:
https://main.sci.gov.in/supremecourt/2021/2818/2818_2021_33_1501_27661_Judgement_20-Apr-2021.pdf

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Part B
Case Studies

DATA LOCALIZATION *VIS-A-VIS* MASTER CARD IN INDIA*

Introduction

The Central Bank of India launched the first bank credit card in 1980, which was followed by Andhra Bank in the same year – both were of the Visa brand. Indian banks mostly provide four types of debit and credit cards: Visa, Mastercard, Maestro (a part of the Mastercard enterprise), and RuPay.

Mastercard was introduced to Indian consumers by Vijaya Bank in 1988. Presently in India, there are more than 60 million credit cards, mid of 2021. In India private and public sector banks are associated with Mastercard and Visa, the payment service providers for issuance of all card i.e. Credit Cards, Debit Cards or Prepaid Cards. Public sector banks are not a significant player in the credit card market also issues card in association with home grown RuPay card of National Payments Corporation of India (NPCI).

RuPay launched in the year 2012 is the only Indian service provider and which is owned by RBI's National Payments Corporation of India (NPCI). According to the data available, major player of the Indian card market is Visa with more than 50 per cent of the market share and Mastercard with about 30-35 per cent market share and remaining share is with RuPay.

Credit and Debit Card Transactions Statistics for the Month May 2021

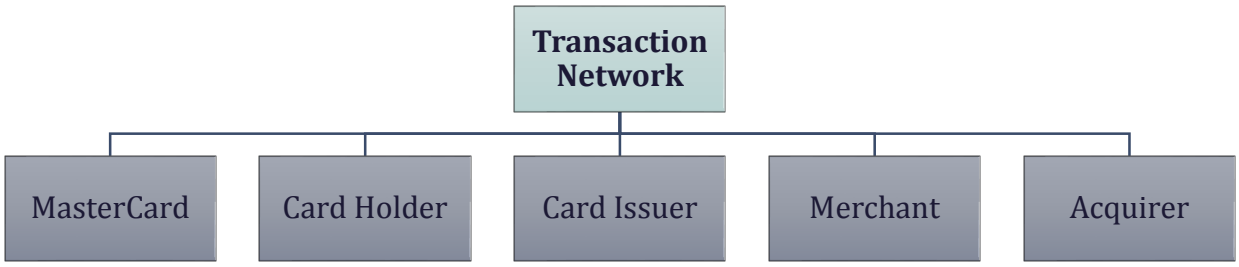
System	*Volume (Lakh)*				*Value (Rs. in Crore)*			
	FY 2020-21	*2020*	*2021*		*FY 2020-21*	*2020*	*2021*	
		May	*April*	*May*		*May*	*April*	*May*
Card Payments	57841.3	3687.68	4833	3982.53	1293080	70209	115572	98818
Credit Card	17641.06	1028.86	1575.32	1346.59	630414	32225	59049	54730
Debit Cards	40200.24	2658.82	3257.68	2635.94	662667	37984	56523	44089
Prepaid Payment Instruments (Cards)	9405.28	499.7	798.95	668.56	45631	1729	7727	6883

Source: RBI Bulletin July 2021.

* *Case Study written by CA Sarika Verma, Assistant Director, The ICSI.*
Views expressed in the Case Study are the sole expression of the Author and may not express the views of the Institute.

Mastercard is an American multinational financial services corporation which was incorporated and has it's headquarter in the Mastercard International Global Headquarters in Purchase, New York, USA. The Global Operations Headquarters of the Mastercard is located in O'Fallon, Missouri, USA. The principal business all over the world is to process payments between the banks of merchants and the card-issuing banks or credit unions of the purchasers who use the "Mastercard" brand debit, credit and prepaid cards to make purchases. Mastercard is the 2nd largest payments network, ranked after Visa, in the global payments industry. It partners with various financial institutions or entities worldwide to connect different participants in various types of transactions, including businesses, financial institutions, merchants, and consumers using its branded electronic payment cards. The terms and conditions may vary for all the entities associated with Mastercard as the company gave prerogative to determine the cardholder's terms and conditions. In addition, a partner may also decide to issue debit, credit, or prepaid cards.

A transaction network involves different relationship maps that collect clients' fees, depending on the agreement and the type of card issued. A typical transaction on Mastercard's network involves five participants – Mastercard, the cardholder, the issuer, the merchant, and the acquirer.

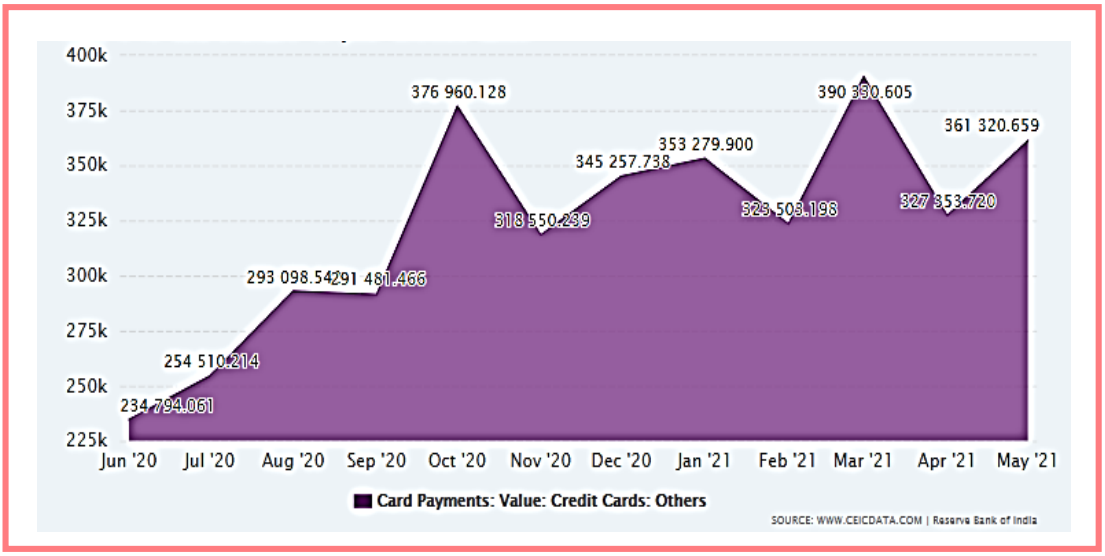


Credit / Debit Card Fraud Amplified

Usually a card fraud occurs when an unauthorized person gains access to your information and uses it to make purchases. Card details like card number, name of the card holder, address of the card holder, date of birth can be stolen from online databases or through email scams, then sold and used on the internet, or over the phone.

The Reserve Bank of India (RBI) has released its guidelines for the regulation of Payment Aggregators (PAs) and Payment Gateways (PGs) in March, 2020. Those guidelines placed considerable emphasis on security, fraud and risk mitigation but due to pandemic people are forced to use online payment systems and resulting increase in online frauds.

Value of Credit Cards: Other from November 2019 to May 2021



Storage of Payment System Data

The Reserve Bank of India (RBI) has observed that not all system providers store the payments data in India. To ensure the better monitoring, it is important to have unfettered supervisory access to data stored with these system providers as also with their service providers / intermediaries/ third party vendors and other entities in the payment ecosystem. RBI has decided and issued a directive in the year 2018 on 'Storage of Payment System Data' advising all system providers to ensure that, within a period of six months, the entire data relating to payment systems operated by them is stored in a system only in India.

These directions are applicable on all the banks operating in Indian and the transactions through system participants, service providers, intermediaries, payment gateways, third party vendors and other entities in the payments ecosystem, who are retained or engaged by the authorised / approved entities for providing payment services.

RBI has clarified that the entire payment data shall be stored in systems located only in India, except specified cases. The data should include end-to-end transaction details and information pertaining to payment or settlement transaction that is gathered / transmitted/ processed as part of a payment message / instruction.

For example:

i. Customer data (Name, Mobile Number, email, Aadhaar Number, PAN number, etc. as applicable);

ii. Payment sensitive data (customer and beneficiary account details); Payment Credentials (OTP, PIN, Passwords, etc.); and

iii. Transaction data (originating & destination system information, transaction reference, timestamp, amount, etc.).

RBI also clarified that in case of cross border transactions the data that consists foreign component and a domestic component, a copy of the domestic component may also be stored abroad, if required.

The processing of the data can be done in India or outside India, however, the data shall be stored only in India after the processing. In case the data is processed outside India then the data should be deleted from the systems abroad and brought back to India not later than the one business day or 24 hours from payment processing, whichever is earlier. The same should be stored only in India. Any subsequent activity such as settlement processing after the payment processing is also done outside India, in this case also it should be undertaken/ performed on a near real time basis. The RBI has also instructed that other activities related to processing, such as chargeback, etc., the data can be accessed, at any time, from India where it is stored.

The Reserve Bank of India instructed to store data related to Indian card payments at local servers with no copies can be retained elsewhere. As more countries impose such data sovereignty requirements, the economic efficiencies from centralized storage and processing will go out the window.

According to the report by the Cushman & Wakefield Plc in the years 2021, the main data centers markets are:

i. Northern Virginia,

ii. Singapore,

iii. London,

iv. Sydney and

v. Silicon Valley.

Supervisory Action of RBI on the Payment Service Providers

Reserve Bank of India had barred HDFC Bank for issuance of new credit cards since December 2020. As a result, the largest private sector bank's credit card base declined from 15.38 million in November to 14.85 million in May, 2021 following the ban. HDFC Bank was adding around 200,000 cards every month before the ban.

In April, 2021 the RBI took supervisory action of American Express Banking Corp. and Diners Club International Ltd. due to non-adherence of mandatory requirement of storage of data in India. Both the payment system providers banned by the RBI from on-boarding new domestic customers onto their card networks from May 1, 2021.

On July 14, 2021, RBI has imposed restrictions on Mastercard Asia / Pacific Pte. Ltd. (Mastercard) from on-boarding new domestic customers (debit, credit or prepaid) onto its card network from July 22, 2021. RBI gave sufficient time and opportunities to Mastercard

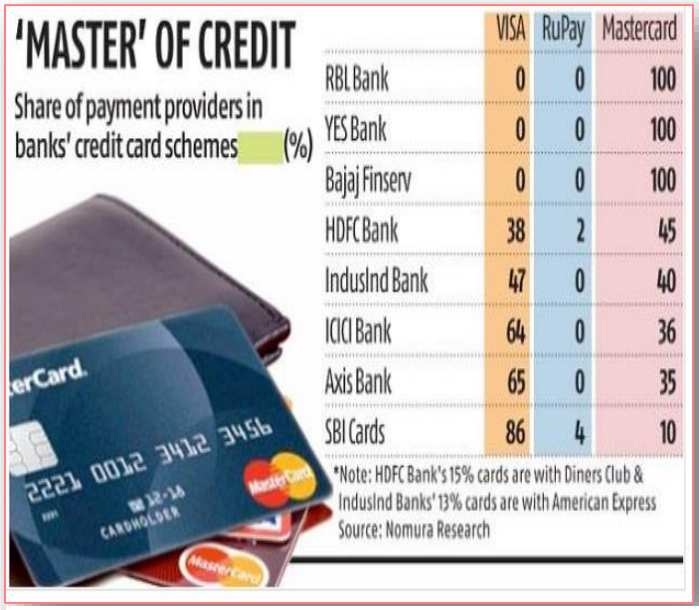
to comply the mandatory guidelines on "Storage of Payment System Data" in India but it was found non- complaint with the directions.

Impact of RBI's Action on Indian Banks and Financial Institutions

The restriction of RBI on master card will affect 6 Indian Banks and one Non-Banking Finance Company the most, as these lenders issue a large proportion of credit cards with the payment system operator.

All the credit cards issued by Yes Bank and RBL bank are in the Mastercard platform, whereas Bajaj Finserv has co-branded cards with RBL bank and also issued card with Mastercard as payment service operator.

Among major credit card players, SBI Card is the least dependent on Mastercard as only 10 per cent of its cards are on Mastercard's platform.



Source : https://www.business-standard.com/article/finance/rbi-ban-on-mastercard-may-hit-card-issuance-of-banks-like-axis-bank-rbl-121071500476_1.html

As per the official statement of Mastercard, the company is fully committed to their legal and regulatory obligations in the markets in wherever they operate. The RBI's 2018 directions for data storage on domestic payment transaction data, the company is working on the same and will comply all the required compliances. As RBI's supervisory action taken for MasterCard, American Express and Diner Card will not affect the existing customers and those directions are for new customers only. Indian payment service provider RuPay may use this time period to capture the Indian card market and provide customer service to increase it's customer base.

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