



**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)

# **SUPPLEMENT PROFESSIONAL PROGRAMME (New Syllabus)**

*for*

*June, 2021 Examination*

**Multidisciplinary Case Studies**

**MODULE -3, PAPER-8**

*Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.*

### **Instructions to Students**

**Students may please note that the Case laws/Studies are indicative only. For detailed understanding of respective subjects, it is advised to refer to amendments related to Regulations/ Rules/Act/Circular/ Notifications etc. The student are advised to study the orders relating to the subjects under the syllabus beyond study material/supplements, by different authorities/judiciaries including Supreme Court, High Court, NCLT, NCLAT, CCI, Income Tax authorities etc.**

## INDEX

<b>S. No.</b>	<b>Lesson</b>	<b>Pages</b>
<b>1.</b>	<b>Lesson -1:</b> Corporate Laws Including Company Law	3-8
<b>2.</b>	<b>Lesson -2:</b> Securities Laws	9-17
<b>3.</b>	<b>Lesson -4:</b> Insolvency Law	18-24
<b>4.</b>	<b>Lesson -5:</b> Competition Law	25-26
<b>5.</b>	<b>Lesson -6:</b> Business Strategy and Management	27-31
<b>6.</b>	<b>Lesson -7:</b> Interpretation of Law	32-33

## Lesson 1

### CORPORATE LAWS INCLUDING COMPANY LAW

1	06/07/2020	<b>ARUNA OSWAL (Appellant) Vs. PANKAJ OSWAL &amp; ORS (Respondent)</b>	<b>Supreme Court of India Civil Appeal No.9340 of 2019 with connected appeals Arun Mishra &amp; S. Abdul Nazeer, JJ.</b>
---	------------	--	--

**Companies Act, 2013- Sections 72, 241 & 242 – Nomination shares in favour of wife- son disputing the nomination and claiming one-fourth share in the total number of shares in a civil suit- son filed petition before NCLT- NCLT admitted the petition inspite of the civil suit pending- whether admission of the petition is tenable -Held, No.**

#### **Brief facts:**

The case is the outcome of a family tussle. Appellant is the mother while the respondent No.1 is the son of Late Mr. Abhey Kumar Oswal, who was holding 39.88% shares in Oswal Agro Mills Ltd. and 11.11% shares in M/s. Oswal Greentech Ltd. He filed a nomination according to section 72 of the Act in favour of the appellant, his wife. The name the appellant, was registered as a holder as against the shares held by her deceased husband. The respondent No.1, filed a partition suit claiming one-fourth share in the shareholdings of his father in the above two companies. Further he filed a petition before the NCLT claiming oppression and suppression against his mother and others. The appellant challenged the maintainability of the petition, inter alia, under the ground that the respondent No.1 is not holding the required shares to file such petition. The NCLT dismissed the application challenging the company petition's maintainability. NCLT held respondent No.1 as legal heir was entitled to one-fourth share of the property/shares. Aggrieved thereby, three appeals were filed before NCLAT, which have been dismissed vide the impugned judgment and order. Aggrieved thereby, the appellants are before this Court.

#### **Decision & Reason:**

Admittedly, respondent No.1 is not holding the shares to the extent of eligibility threshold of 10% as stipulated under section 244 in order to maintain an application under sections 241 and 242. He has purchased the holding of 0.03% in M/s. Oswal Agro Mills Ltd. in June 2017 after filing civil suit and remaining 9.97% is in dispute, he is claiming on the strength of his being a legal representative. In M/s. Oswal Greentech Ltd., the shareholding of the deceased was 11.11%, out of which one-fourth share is claimed by respondent No.1. Admittedly, in a civil suit for partition, he is also claiming a right in the shares held by the deceased to the extent of one-fourth. The question as to the right of respondent no.1 is required to be adjudicated finally in the civil suit, including what is the effect of nomination in favour of his mother Mrs. Aruna Oswal, whether absolute right, title, and interest vested in the nominee or not, is to be finally determined in the said

suit. The decision in a civil suit would be binding between the parties on the question of right, title, or interest. It is the domain of a civil court to determine the right, title, and interest in an estate in a suit for partition.

It is admitted by respondent no.1 that he was not involved in day to day affairs of the company and had shifted to Australia to set up his independent business w.e.f. 2001. His grievance is that the family had not recognised him as holder of the one-fourth shares. They were registered in the ownership of his mother Mrs. Aruna Oswal; that also he had submitted to be an act of oppression. He acquired 0.03% share capital after filing of the civil suit, otherwise he was not having any shareholding in M/s. Oswal Agro Mills Ltd.

In the instant case, we are satisfied that respondent no.1, as pleaded by him, had nothing to do with the affairs of the company and he is not a registered owner. The rights in estate/ shares, if any, of respondent no.1 are protected in the civil suit. Thus, we are satisfied that respondent no.1 does not represent the body of shareholders holding requisite percentage of shares in the company, necessary in order to maintain such a petition.

It is also not disputed that the High Court in the pending civil suit passed an order maintaining the status quo concerning shareholding and other properties. Because of the status quo order, shares have to be held in the name of Mrs. Aruna Oswal until the suit is finally decided. It would not be appropriate, given the order passed by the civil Court to treat the shareholding in the name of respondent No.1 by NCLT before ownership rights are finally decided in the civil suit, and propriety also demands it. The question of right, title, and interest is essentially adjudication of civil rights between the parties, as to the effect of the nomination decision in a civil suit is going to govern the parties' rights. It would not be appropriate to entertain these parallel proceedings and give waiver as claimed under section 244 before the civil suit's decision. Respondent No.1 had himself chosen to avail the remedy of civil suit, as such filing of an application under sections 241 and 242 after that is nothing but an afterthought.

We refrain to decide the question finally in these proceedings concerning the effect of nomination, as it being a civil dispute, cannot be decided in these proceedings and the decision may jeopardise parties' rights and interest in the civil suit. With regard to the dispute as to right, title, and interest in the securities, the finding of the civil Court is going to be final and conclusive and binding on parties. The decision of such a question has to be eschewed in instant proceedings. It would not be appropriate, in the facts and circumstances of the case, to grant a waiver to the respondent of the requirement under the proviso to section 244 of the Act, as ordered by the NCLAT. It prima facie does not appear to be a case of oppression and mismanagement. Our attention was drawn by the learned senior counsel appearing for respondent No.1 to certain company transactions. From transactions simpliciter, it cannot be inferred that it is a case of oppression and mismanagement. We are of the opinion that the proceedings before the NCLT filed under sections 241 and 242 of the Act should not be entertained because of the pending civil dispute and considering the minuscule extent of holding of 0.03%, that too, acquired after filing a civil suit in company

securities, of respondent no. 1. In the facts and circumstances of the instant case, in order to maintain the proceedings, the respondent should have waited for the decision of the right, title and interest, in the civil suit concerning shares in question. The entitlement of respondent No.1 is under a cloud of pending civil dispute. We deem it appropriate to direct the dropping of the proceedings filed before the NCLT regarding oppression and mismanagement under sections 241 and 242 of the Act with the liberty to file afresh, on all the questions, in case of necessity, if the suit is decreed in favour of respondent No.1 and shareholding of respondent No.1 increases to the extent of 10% required under section 244.

We reiterate that we have left all the questions to be decided in the pending civil suit. Impugned orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed to the aforesaid extent. We request that the civil suit be decided as expeditiously as possible, subject to cooperation by respondent No.1. Parties to bear their costs as incurred.

2	02/09/2020	Sandeep Agarwal & Anr (Appellant) Vs. Union Of India & Anr (Respondent)	High Court of Delhi  W.P. (C) 5490/2020 & CM APPLs. 19779-80/2020  Prathiba M. Singh, J.
---	------------	---	---

**Companies Act, 2013- Section 164-disqualification of directors- one of the company failed to file returns while the other companies did file- whether disqualification is correct-Held, No.**

**Brief facts:**

The Petitioners are directors in two companies namely Koksun Papers Pvt Ltd (“Koksun Papers”) and KushalPower Projects Pvt Ltd (hereinafter, “Kushal Power”). The name of Kushal Power was struck off from the Register of the Companies on 30th June, 2017, due to non-filing of financial statements and annual returns. The Petitioners, being directors of Kushal Power were also disqualified with effect from 1st November, 2016 for a period of five years till 31st October, 2021 under Section 164(2)(a) of the Companies Act, 2013 (hereinafter, “Act”). Pursuant to their disqualification, their Director Identification Numbers (“DIN”) and Digital Signature Certificates (“DSC”) have also been cancelled. In view thereof, they are unable to carry on the business and file returns etc. in the active company Koksun Papers. By the present petition, the disqualification is challenged and quashing is sought of the impugned list of disqualified directors.

**Decision & Reason:**

The Court has heard the ld. counsel for the parties and perused the record. The judgment in *Mukut Pathak & Ors. v. Union of India & Ors.*, 265 (2019) DLT 506, insofar as the merits of the case is concerned, is squarely applicable in the present case. The said judgment clearly holds that the proviso to Section 167(1) (a) of the Act cannot be read to operate retrospectively. It was further

held that the said proviso, being a punitive measure with respect to the rights and obligations of directors, cannot be applied retrospectively unless the statutory amendment expressly provides so.

In the present case, the facts and circumstances show that the Companies Fresh Start Scheme (CFSS) is a new scheme, which has been notified on 30th March, 2020. The scheme is obviously launched by the Government in order to give a reprieve to such companies who have defaulted in filing documents and they have been allowed to file their requisite documents and to regularize their operations, so as to not face disqualification. The Scheme also envisages non-imposition of penalty or any other charges for belated filing of the documents. This Scheme provides an opportunity for active companies who may have defaulted in filing of documents, to put their affairs in order. It thus provides Directors of such companies a fresh cause of action to also challenge their disqualification qua the active companies.

In the present case, the Petitioners are Directors of two companies - one whose name has been struck off and one, which is still active. In such a situation, the disqualification and cancellation of DINs would be a severe impediment for them in availing remedies under the Scheme, in respect of the active company. The purpose and intent of the Scheme is to allow a fresh start for companies which have defaulted. In order for the Scheme to be effective, Directors of these companies ought to be given an opportunity to avail of the Scheme. The launch of the Scheme itself constitutes a fresh and a continuing cause of action. Under such circumstances, the question of delay or limitation would not arise.

In view of the fact that in the present case, the Petitioners are directors of an active company Koksun Papers in respect of which certain documents are to be filed and the said company is entitled to avail of the Scheme, the suspension of the DINs would not only affect the Petitioners qua the company, whose name has been struck off, but also qua the company which is active.

Considering the COVID-19 pandemic, the MCA has launched the Fresh Start Scheme-2020, which ought to be given full effect. It is not uncommon to see directors of one company being directors in another company. Under such circumstances, to disqualify directors permanently and not allowing them to avail of their DINs and DSCs could render the Scheme itself nugatory.

In order to enable the Directors of Koksun Papers i.e. the Petitioners herein, to continue the business of the active company Koksun Papers, in the fitness of things and also in view of the judgment in Mukut Pathak (supra), the disqualification of the Petitioners as Directors is set aside. The DINs and DSCs of the Petitioners are directed to be reactivated, within a period of three working days.

<b>3</b>	<b>20.10. 2020</b>	<b>Ashish O. Lalpuria(Appellant) Vs.</b>	<b>National Company Law Appellate Tribunal New Delhi Company Appeal (AT) No.136 of 2020 (Arising out of judgement and order dated 6th July, 2020 passed in</b>
----------	--------------------	--	--

		<b>Kumaka Industries Ltd &amp; Ors(Respondent)</b>	<b>CP(CAA)/190/MB.I/2017 by National Company Law Tribunal, Mumbai Bench)</b>
--	--	--	--

**Brief facts:**

The Respondent Company i.e. Kumaka Industries Limited presented a Scheme of Arrangement Under Section 391-394 of Companies Act, 1956 (Existing Sections 230-232 of Companies Act, 2013) for sanction of the Arrangement embodied in the scheme originally filed before Bombay High Court which by virtue of notification issued by Ministry of Corporate Affairs (MCA) on 7th December, 2016 got transferred to NCLT, Mumbai.

The Appellant is a shareholder of Respondent Company and he pointed out certain irregularities and non-compliances and raised the objections that the Scheme of Arrangements is a mere rectification of action already taken by the Respondent company without obtaining approval of the Tribunal and other Regulatory Authorities as required under the provisions of Companies Act. NCLT, Mumbai passed the order dated 6th July, 2020 stating that the scheme appears to be fair and reasonable and does not violate any provision of law and is not contrary to public policy or public interest. Hence, the Appellant on being aggrieved by the order of NCLT, Mumbai have preferred this appeal under section 421 of Companies Act, 2013.

**Decision & Reason:**

National Company Law Appellate Tribunal in para 30 & 31 & 32 observed that it is pertinent to note under section 230 (5) provides that a notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectorial regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals. The basic intent behind this provisions of law is that these authorities plays a vital role in the overall legal structure and should work harmoniously with the Tribunal in order to ensure that the proposed scheme is not violative of any provision of law and is also not against the public policy.

NCLT has overruled the objections raised by the Regional Director on the ground that the objections are mere on the procedural aspects and do not raise any illegality in the scheme or that it is against public policy. Even if the objections are procedural but it is the jurisdiction of the Tribunal that such procedural aspects need to be duly complied with before sanctioning of the scheme, as it would lay down a wrong precedent which would allow companies to do whatever acts without the compliances and confirmation of the Court and other sectoral and regulatory authorities and thereafter get it ratified by the Court under the Umbrella of “scheme”. It should



have been contemplated that compliance of law in itself is a part of public policy. It is the duty of the Tribunal or any court that their Orders should encourage compliances and not defaults.

The Scheme under section 230 of Companies Act, 2013 cannot be used as a method of rectification of the actions already taken. Before the scheme gets approved, the company must be in compliance with all the public authorities and should come out clean. There must be no actions pending against the company by the public authorities before sanctioning of a scheme under section 230 of the Companies Act, 2013.

In light of the above observations the appeal is allowed and National Company Law Appellate Tribunal aside the impugned order dated 6th July, 2020 passed by National Company Law Tribunal, Mumbai.

## Lesson -2

### SECURITIES LAWS

1	31.07.2020	Mr. Vidyadhar D Vardam, M/s. Avenue Supermarts Limited and Ms. Ashu Gupta (collectively known as “Noticees”) vs. SEBI	Adjudicating Officer, Securities and Exchange Board of India
---	------------	---	--

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

#### **Facts of the case:**

Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) conducted an investigation in the scrip of Avenue Supermarts Limited (hereinafter referred to as ‘Noticee 2/ ASL/ Company’), which is listed on the Bombay Stock Exchange (herein after referred to as ‘BSE’) and the National Stock Exchange (herein after referred to as ‘NSE’) with respect to certain possible violations, during the period from 1st January 2018 to 31st December 2018 (herein after referred to as ‘Examination Period’). SEBI observed that one of the employees of the ASL viz. Mr. Vidyadhar Dinkar Vardam (hereinafter referred to as ‘Noticee 1/by name’) had not complied with the disclosure norms as laid down in regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as ‘PIT Regulations’). SEBI also observed that the Noticee 1 had failed to file the required disclosure in terms of regulation 7(2)(b) of PIT Regulations and there is lapse on the part of the Compliance Officer viz. Ms. Ashu Gupta, (hereinafter referred to as ‘Noticee 3/ by name’) (Collectively Noticees 1, 2 and 3 are referred to as ‘Noticees’) with respect to regulatory compliance under the provisions of PIT Regulations and the Code of conduct framed thereunder for its employees as envisaged under PIT Regulations. Therefore, SEBI initiated adjudication proceedings against the Noticees under the provisions of Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as ‘SEBI Act’).

#### **Order:**

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

Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of

the Adjudication Rules, SEBI hereby impose the following penalties on the Noticees under the provisions of Section 15A(b) of the SEBI Act.

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

**For more details:**

[https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-avenue-supermarts-limited\\_47242.html](https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-avenue-supermarts-limited_47242.html)

<b>2</b>	<b>20.08.2020</b>	<b>Dr. Satish Chandra, Ms. Sucharita Das and The Orissa Minerals Development Co. Ltd. (collectively known as “Noticees”) vs. SEBI</b>	<b>Adjudicating Officer, Securities and Exchange Board of India</b>
----------	-------------------	---	---

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

**Facts of the case:**

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

The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that the Noticees have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”).

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

**Order:**

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

**For more details:**

<https://www.sebi.gov.in/enforcement/orders/aug-2020/adjudication-order-in-the-matter-of-the-orissa-minerals-development-co-ltd-47370.html>

<b>04..1.2021</b>	<b>Mr. Prannoy Roy and Mrs. Radhika Roy (Appellants) vs. Securities and Exchange Board of India (SEBI)</b>	<b>Held by Securities Appellant Tribunal (SAT)</b>
-------------------	--	--

**Facts of the Case**

SEBI conducted an investigation into the suspected insider trading in the scrip of NDTV (“the Company”) and the investigation detected that-

Mr. Prannoy Roy and Mrs. Radhika Roy were insiders in terms of regulation 2(e) of the PIT Regulations, 1992.

Mr. Prannoy Roy and Mrs. Radhika Roy indulged in the act of insider trading by trading in the scrip of New Delhi Television Ltd (NDTV) while in possession of unpublished price sensitive information (“UPSI”) relating to the proposed reorganization of the Company and therefore, have violated the provision of sections 12A(d) and (e) of the SEBI Act, 1992 read with regulations 3(i) and 4 of the PIT Regulations, 1992.

Mr. Prannoy Roy and Mrs. Radhika Roy sold their shares of NDTV on April 17, 2008, during trading window closure period, i.e., within 24 hours of the public announcement of Price Sensitive Information relating to the proposed reorganization of the Company on April 16, 2008 and as such have violated NDTV's Code of Conduct and the provisions of regulation 12(2) read with regulation 12(1) of the PIT Regulations, 1992.

Mr. Prannoy Roy and Mrs. Radhika Roy together have made a wrongful gain of ₹16.97 crores by trading in the shares NDTV while in possession of UPSI relating to the reorganization of the Company.

SEBI vide order dated 27.11.2020 issued the following directions:

(a) Mr. Prannoy Roy and Mrs. Radhika Roy shall, jointly or severally, disgorge the amount of wrongful gain of ₹16,97,38,335/- , along with interest at the rate of 6% per annum from April 17, 2008, till the date of actual payment of disgorgement amount along with interest, within 45 days from the date of coming into force of this order; and

(b) Mr. Prannoy Roy and Mrs. Radhika Roy shall be restrained from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years.

Further, Mr. Prannoy Roy and Mrs. Radhika Roy filed an appeal against the SEBI's order dated November 27, 2020 whereby SEBI had barred them from the securities market for two years and also directed them to disgorge illegal gains of ₹ 16.97 crore for indulging in insider trading more than 12 years ago.

#### **SAT Order**

SAT has directed NDTV's promoters Prannoy Roy and Radhika Roy to deposit 50 per cent of the disgorged amount before SEBI within four weeks. If NDTV deposits the amount, the balance amount will not be recovered during the pendency of the appeal before SAT.

*For details: [http://sat.gov.in/english/pdf/E2021\\_JO2020558\\_1.PDF](http://sat.gov.in/english/pdf/E2021_JO2020558_1.PDF)*

### **THE FUTURE RETAIL LIMITED**

#### **Fact of the case**

The Future Retail Limited (FRL) made an announcement on April 20, 2017 during market hours on the exchange platform for scheme of arrangement between FRL, Bluerock eServices Private Limited (BSPL), Praxis Home Retail Private Limited (PHRPL) and their respective Shareholders. The said announcement had a positive impact on the price of the scrip of FRL.

The information related to mergers, demergers, acquisitions, etc. qualifies as UPSI as per the 'Code of Conduct for Regulating, Monitoring and Reporting of Trading by Insiders in the Securities of FRL.

The information related to scheme of arrangement which resulted in the demerger of certain business from FRL, qualifies as UPSI as per Regulation 2(1)(n)(iv) of PIT Regulations, 2015, prior to its announcement on the exchange platform dated April 20, 2017.

## **Chronology of events as per Investigation**

**March 10, 2017** - The announcement related to the “Composite Scheme of Arrangement between FRL, BSPL, PHRPL and their respective Shareholders” had come into existence as preliminary discussion for the proposed scheme of arrangement was carried out on this date.

**March 14, 2017** - A team was also created by FRL on to work on this scheme on this date.

**April 20, 2017** - The press release pertaining to the aforesaid scheme was made on this day during market hours.

**In view of the same, the period of UPSI was identified as March 10, 2017 to April 20, 2017.**

SEBI’s Investigation observed that Future Corporate Resources Private Limited (FCRPL) (promoter and promoter group of FRL), Kishore Biyani (CMD and Promoter of FRL) and Anil Biyani (Promoter and brother of FRL) traded in the scrip of FRL during the period of UPSI.

### **SEBI ORDER**

- SEBI restrained Kishore Biyani, Anil Biyani and FCRPL from accessing the securities market for a period of 1 year and from buying, selling or dealing in the securities of the Future Retail Limited (FRL) for a period of two years.
- Further, FCRPL, Kishore Biyani and Anil Biyani imposed with penalty of Rs. 1 crore each.
- They were also directed to disgorge an amount of ₹ 17.78 crore, jointly and severally, along with interest at the rate of 12 per cent per annum from April 20, 2020, till the date of actual payment.

### **APPEAL TO SAT**

In pursuant to this, Kishore Biyani, Anil Biyani and FCRPL have moved the Securities Appellate Tribunal (SAT) against the SEBI order that barred them from the securities market.

### **SAT ORDER**

The Securities Appellate Tribunal (SAT) has stayed the order passed by SEBI on FCRPL, Kishore Biyani and Anil Biyani. SAT has also directed them to deposit a sum of ₹11 crore as an interim measure.

### **References:**

1. [https://www.sebi.gov.in/enforcement/orders/feb-2021/final-order-in-the-matter-of-future-retail-limited\\_49001.html](https://www.sebi.gov.in/enforcement/orders/feb-2021/final-order-in-the-matter-of-future-retail-limited_49001.html)
2. [http://sat.gov.in/english/pdf/E2021\\_JO202181.PDF](http://sat.gov.in/english/pdf/E2021_JO202181.PDF)

## WINDING UP OF SIX YIELD-ORIENTED FIXED INCOME SCHEMES OF FRANKLIN TEMPLETON INDIA AMID COVID-19

### **Winding-Up of Specific Schemes**

Trustees of Franklin Templeton Mutual Fund in India, vide notice dated April 23, 2020, informed that Franklin Templeton Trustee Services Private Limited had decided to wind up its six schemes pursuant to the provisions of regulation 39(2)(a) of the SEBI (Mutual Funds) Regulations, 1996 (Mutual Fund Regulations).

The Trustees, after careful analysis and review of the recommendations submitted by Franklin Templeton Asset Management (India) Private Limited (the AMC), and in close consultation with the investment team, were of the considered opinion that an event had occurred, which requires these schemes to be wound up. It was mentioned that this was the only viable option to preserve value for unitholders and to enable an orderly and equitable exit for all investors in these unprecedented circumstances.

There had been a dramatic and sustained fall in liquidity in certain segments of the corporate bonds market on account of the Covid-19 crisis. At the same time, mutual funds, especially in the fixed income segment, were facing continuous and heightened redemptions. The decision was taken in light of the severe market dislocation and illiquidity caused by the Covid-19 pandemic but it was taken with the objective of safeguarding the interest of the investors.

The winding- up is limited to the below-mentioned funds, which have material direct exposure to the higher yielding, lower rated credit securities in India that have been most impacted by the ongoing liquidity crisis in the market.

### ***Details of schemes being wound up***

<b><i>S. No.</i></b>	<b><i>Name of the Scheme</i></b>	<b><i>Scheme Characteristic (based on Macaulay duration or credit rating) as stated in the scheme information document</i></b>	<b><i>Macaulay duration* in years as on 22 April 2020</i></b>
<b>1.</b>	Franklin India Ultra Short Bond Fund	Investing in Instruments with Macaulay duration between 3-6 months	<b>0.38</b>
<b>2.</b>	Franklin India Short term Income Fund	Investing in Instruments with Macaulay duration between 1-3 years	<b>2.41</b>
<b>3.</b>	Franklin India credit Risk Fund	A bond fund focusing on AA and below rated corporate bonds (excluding AA+ rated corporate bonds)	<b>2.37</b>

4.	Franklin India Low Duration Fund	Investing in Instruments with Macaulay duration between 6-12 months	<b>1.17</b>
5.	Franklin India Dynamic Accrual Fund	Investing across duration	<b>1.95</b>
6.	Franklin India Income Opportunity Fund	Investing in Instruments with Macaulay duration between 3-4 years	<b>3.94</b>

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

Since the fund house has wound up the selected schemes, the existing investors can no longer redeem their money, make any fresh purchases, make transfers to any equity schemes or make systematic withdrawals.

#### **SEBI's direction to Franklin Templeton Mutual Fund**

SEBI vide its press release dated May 7, 2020 advised Franklin Templeton Mutual Fund to focus on returning money to investors, in the context of their winding up six of their debt schemes.

#### **Judgement of the Hon'ble High Court of Karnataka dated October 24, 2020**

While considering the factors, underlying the decision taken by the Trustee to wind up the Scheme, the Hon'ble High Court took note of the stress in the economy and the volatility in the markets on account of the lock-downs that had to be imposed because of the Covid-19 pandemic.

The Hon'ble High Court vide its judgment dated October 24, 2020, held that there was nothing wrong in the decision-making process and that no interference is called for in the decision taken by the Trustee on April 23, 2020 to wind up the Scheme.

At the same time, the Hon'ble High Court also held that the decision can be implemented only after obtaining the consent of Unitholders under sub-clause (c) of clause 15 of Regulation 18 of the Mutual Funds Regulations.

#### **Appeal to Supreme Court**

The Trustee has given due consideration to the judgment of the Hon'ble High Court and preferred an appeal to the Hon'ble Supreme Court of India on certain aspects of the judgement. However, with a view to proceed with orderly realization of value from Scheme assets and distribution to Unitholder at the earliest, the Trustee had sought permission of the Hon'ble Supreme Court to seek the approval of Unitholder for winding up the Schemes, which permission was granted by the



Hon'ble Supreme Court on December 3, 2020 without prejudice to the rights and contentions of all parties.

The Trustee is of the view that if the decision to wind up the Scheme in an orderly manner is not implemented, it would precipitate a rush of redemptions, which would force a distress sale of the portfolio securities, likely resulting in a reduction in the net asset value (NAV) of the Scheme and substantial losses for Unitholders.

It is also likely that such a large volume of sale in a short period of time would impact the bond market as a whole and compound liquidity issues for securities in the Scheme portfolio. Further, if the Scheme is opened for redemptions under these circumstances, meeting redemption demand as they come is likely to result in disproportionate distributions, besides significant losses for Unitholder.

#### **Appointment of Observer in terms of Hon'ble Supreme Court order regarding e-voting of unit holders of the six schemes of Franklin Templeton Mutual Fund.**

The Hon'ble Supreme Court of India had directed SEBI to appoint an Observer regarding the e-voting of unit holders of six schemes of Franklin Templeton Mutual Fund \

Further the Hon'ble Supreme Court had also directed that the result of the e-voting would not be announced and would be produced before the Hon'ble Supreme Court in a sealed cover along with the report of the Observer appointed by the SEBI.

Accordingly, SEBI had appointed Shri Taruvai Subayya Krishnamurthy, the former Chief Election Commissioner of India as the "Observer" on December 18, 2020. SEBI has also constituted a technical assistance team that will assist the Observer.

#### **The result of e-voting**

The result of the e-voting was announced by the Hon'ble Supreme Court on January 18, 2021. Out of the total number of unitholders who cast their votes, over 96% of unitholders have voted in favour of the winding up of the six schemes.

#### **Distribution Process of ₹ 9,122 Crores in Five of the Six Schemes under Winding Up as directed by the Hon'ble Supreme Court**

The Hon'ble Supreme Court, in its order passed on 2<sup>nd</sup> February 2021, directed the distribution of ₹ 9,122 crore to respective unitholders in proportion to their holdings in the schemes under winding up and appointed SBI Mutual Fund to undertake the distribution exercise, as requested by Franklin Templeton Mutual Fund.

## References

1. [https://www.franklintempletonindia.com/investor/market-insights/winding-up-of-specific-schemes?&utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=FT-Windup-RS&utm\\_adgroup=News-EM-RS&gclid=CjwKCAiAm-2BBhANEiwAe7eyFOGv0BoM18EPZ4HeHsGcbopg863wr\\_jIdcu6D9OLVOvcW\\_4RX0LorxoCR-EQAvD\\_BwE&gclid=aw.ds](https://www.franklintempletonindia.com/investor/market-insights/winding-up-of-specific-schemes?&utm_source=google&utm_medium=cpc&utm_campaign=FT-Windup-RS&utm_adgroup=News-EM-RS&gclid=CjwKCAiAm-2BBhANEiwAe7eyFOGv0BoM18EPZ4HeHsGcbopg863wr_jIdcu6D9OLVOvcW_4RX0LorxoCR-EQAvD_BwE&gclid=aw.ds)
2. [https://main.sci.gov.in/supremecourt/2020/25496/25496\\_2020\\_41\\_16\\_25865\\_Order\\_02-Feb-2021.pdf](https://main.sci.gov.in/supremecourt/2020/25496/25496_2020_41_16_25865_Order_02-Feb-2021.pdf)
3. <http://judgmenthck.kar.nic.in/judgmentsdsp/bitstream/123456789/345451/1/WA399-20-24-10-2020.pdf>

## Lesson -4

### INSOLVENCY LAW

1	14/08/2020	<b>Babulal Vardharji Gurjar(Appellant) Vs. Veer Gurjar Aluminium Industries Pvt Ltd &amp; Anr(Respondent)</b>	<b>Supreme Court of India Civil Appeal No. 6347 of 2019 A.M. Khanwilkar &amp; Dinesh Maheshwari, JJ.</b>
---	------------	---	--

**Insolvency and Bankruptcy Code, 2016- Section 238 A- period of limitation for filing insolvency application whether the period of limitation commences from the date of commencement of the Act, irrespective of the date of default- Held, No.**

#### **Brief facts:**

This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 is directed against the judgment and order passed by the National Company Law Appellate Tribunal whereby, the Appellate Tribunal has rejected the contention that the application made by respondent No. 2, seeking initiation of Corporate Insolvency Resolution Process in respect of the debtor company (respondent No. 1 herein), is barred by limitation; and has declined to interfere with the order, passed by the National Company Law Tribunal, for commencement of CIRP as prayed for by the respondent No. 2.

In the impugned order, the Appellate Tribunal has observed that the Code having come into force on 01.12.2016, the application made in the year 2018 is within limitation. The Appellate Tribunal has assigned another reason that mortgage security having been provided by the corporate debtor, the limitation period of twelve years is available for the claim made by the financial creditor as per Article 61 (b) of the Limitation Act, 1963-9 and hence, the application is within limitation.

#### **Decision & Reason:**

Having taken note of the rudiments that the Code is a beneficial legislation intended to put the corporate debtor on its feet and it is not a mere money recovery legislation for the creditors; and having also noticed that CIRP is not intended to be adversarial to the corporate debtor but is essentially to protect its interests and that CIRP has its genesis in default on the part of the corporate debtor, we may now examine the operation of law of limitation over the proceedings under the Code.

When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore:

- that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;

- that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;
- that intention of the Code is not to give a new lease of life to debts which are time-barred;
- that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;
- that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs;
- that default referred to in the Code is that of actual nonpayment by the corporate debtor when a debt has become due and payable; and
- that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and
- an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application.

The discussion foregoing leads to the inescapable conclusion that the application made by the respondent No. 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 08.07.2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The NCLT having not examined the question of limitation; the NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders deserve to be set aside and the application filed by the respondent No. 2 deserves to be rejected as being barred by limitation.

<b>2</b>	<b>18/09/2020</b>	<b>Sagufa Ahmed(Appellant)</b>  <b>Vs.</b> <b>Upper Assam Plywood Products</b> <b>Pvt. Ltd (Respondent)</b>	<b>Supreme Court of India</b>  <b>Civil Appeal Nos.3007 &amp; 3008</b> <b>of 2020</b>  <b>A.B. Bobde, A.S. Bopanna &amp; V.</b> <b>Ramasubramanian, JJ.</b>
----------	-------------------	---	---

**Insolvency and Bankruptcy Code, 2016- appeal- delay in filing- appeal dismissed- whether correct-Held, Yes.**

**Brief facts:**

Though the appellants admittedly received the certified copy of the order on 19.12.2019, they chose to file the statutory appeal before NCLAT on 20.07.2020. The appeal was filed along with

an application for condonation of delay. By an order dated 04.08.2020, the Appellate Tribunal dismissed the application for condonation of delay on the ground that the Tribunal has no power to condone the delay beyond a period of 45 days. Consequently the appeal was also dismissed. It is against the dismissal of both the application for condonation of delay as well as the appeal, which the appellants have come up with the present appeals.

**Decision& Reason:**

The contentions raised by the learned counsel for the appellants are twofold namely (i) that the Appellate Tribunal erred in computing the period of limitation from the date of the order of the NCLT, contrary to Section 421(3) of the Companies Act, 2013, and (ii) that the Appellate Tribunal failed to take note of the lockdown as well as the order passed by this Court on 23.03.2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020*, extending the period of limitation for filing any proceeding with effect from 15.03.2020 until further orders.

From 19.12.2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 02.02.2020. By virtue of the proviso to Section 421(3), the Appellate Tribunal was empowered to condone the delay up to a period of period of 45 days. This period of 45 days started running from 02.02.2020 and it expired even according to the appellants on 18.03.2020. The appellants did not file the appeal on or before 18.03.2020, but filed it on 20.07.2020. It is relevant to note that the lock down was imposed only on 24.03.2020 and there was no impediment for the appellants to file the appeal on or before 18.03.2020. To overcome this difficulty, the appellants rely upon the order of this Court dated 23.03.2020. This takes us to the second contention of the appellants.

To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020*. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23.03.2020, for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.

<b>3</b>	<b>08/09/2020</b>	<b>SREI Equipment Finance Limited(Appellant) Vs.</b>	<b>Supreme Court of India Civil Appeal No. 9425 of 2019</b>
----------	-------------------	--	---

		<b>Rajeev Anand(Respondent)</b>	<b>R. F. Nariman, Navin Sinha, &amp; Indira Banerjee, JJ.</b>
--	--	---------------------------------	---

**Insolvency and Bankruptcy Code, 2016- section 7- restructuring of old loans by financial creditor- default by corporate debtor- NCLT admitted the petition-NCLAT reversed the order by misreading the documents-whether admission of the petition correct- Held, Yes.**

**Brief facts:**

Appellant-financial creditor had granted two loans to the respondent corporate debtor and later on restructured the loans. As the corporate debtor was in default an application under section 7 of the IBC was filed. NCLT admitted the application but on appeal NCLAT dismissed the application. Against this dismissal the appellant is before the Supreme Court.

**Decision & Reason:**

A bare reading of the NCLT order shows that it is only after a perusal of the documents, pleadings, and the supplementary affidavit of 03.08.2018, including the counter affidavit in the earlier section 7 application, that the NCLT came to the conclusion that a loan amount remained outstanding. The NCLAT, when it dealt with the NCLT order, wrongly recorded that documents which were already rejected by the adjudicating authority could not have been the basis of the order of admission. The NCLAT also wrongly recorded that there was no further evidence in support of the fact that any amount was outstanding. Further, the NCLAT also held that a ‘document’ filed in the earlier petition that was dismissed as withdrawn could not have been relied upon by the adjudicating authority. The NCLAT is wrong on all these counts. As has been stated earlier, documents evidencing an outstanding loan amount were produced; a supplementary affidavit dated 03.08.2018 was also relied upon; and the admission made in the counter affidavit that was made in the first round of litigation, can by no means be described as a ‘document’ in an earlier petition that could not be relied upon. The ‘document’ was not a pleading by the appellant – it was a counter affidavit by the corporate debtor in which a clear admission of the debt being outstanding was made.

For all these reasons, we set aside the NCLAT order and restore that of the NCLT. The resolution proceedings will continue from the stage at which they were interrupted.

<b>4</b>	<b>02/11/2020</b>	<b>Kiran Gupta(Appellant) Vs. State Bank of India &amp; Anr(Respondent)</b>	<b>Supreme Court of India W.P. (C) 7230/2020 &amp; CM.APPL. 24414/2020(stay) Hama Kohl &amp; Subramanian Prasad, JJ.</b>
----------	-------------------	---	--

**Section 13 of SARFAESI read with Insolvency and Bankruptcy Code, 2016- CIRP admitted against principal debtor by NCLT- IRP appointed- bank initiated proceedings under the SARFAESI against the guarantor- whether permissible- Held, Yes.**

**Brief facts:** The short question which arises for consideration in this writ petition is as to whether a bank/financial institution can institute or continue with proceedings against a guarantor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘the SARFAESI Act’), when proceedings under the Insolvency and Bankruptcy Code 2016 (hereinafter referred to “IB Code”) have been initiated against the principal borrower and the same are pending adjudication.

**Decision & Reason:**

The question as to whether the respondent/Bank can proceed against a guarantor even after initiation of proceedings under the IB Code also stands settled. As correctly pointed out, the said issue is squarely covered by the judgment of the Supreme Court in the Supreme Court in State Bank of India v. V.Ramakrishan & Anr, reported as (2018) 17 SCC 394 (supra).

Paras 20 and 25 of the said decision read as under:-

“20. Section 14 refers to four matters that may be prohibited once the moratorium comes into effect. In each of the matters referred to, be it institution or continuation of proceedings, the transferring, encumbering or alienating of assets, action to recover security interest, or recovery of property by an owner which is in possession of the corporate debtor, what is conspicuous by its absence is any mention of the personal guarantor. Indeed, the corporate debtor and the corporate debtor alone is referred to in the said section. A plain reading of the said section, therefore, leads to the conclusion that the moratorium referred to in Section 14 can have no manner of application to personal guarantors of a corporate debtor.

25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety’s consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.” (Emphasis added) The view expressed by the Supreme Court amply demonstrates that neither Section 14 nor Section 31 of the IB Code place any fetters on Banks/Financial Institutions from initiation and continuation of the

proceedings against the guarantor for recovering their dues. That being the position, the plea taken by the counsel for the petitioner that all proceedings against the petitioner, who is only a guarantor, ought to be stayed under the SARFESI Act during the continuation of the Insolvency Resolution process qua the Principal Borrower, is rejected as meritless. The petitioner cannot escape her liability qua the respondent/Bank in such a manner. The liability of the principal borrower and the Guarantor remain co-extensive and the respondent/Bank is well entitled to initiate proceedings against the petitioner under the SARFESI Act during the continuation of the Insolvency Resolution Process against the Principal Borrower. In view of the above discussion, we do not find any merit in the writ petition, which is accordingly dismissed along with the pending application.

<b>5</b>	<b>19/11/2020</b>	<b>Kaledonia Jute &amp; Fibres Pvt Ltd(Appellant) vs. Axis Nirman &amp; Industries &amp; Ors(Respondent)</b>	<b>Supreme Court of India Civil Appeal No. 3735 of 2020[@ SLP(C) No.5452 of 2020) S.A.Bobde, A.S. Bopanna &amp; V. Ramasubramanian, JJ.</b>
----------	-------------------	--	---

**Insolvency and Bankruptcy Act,2016- Section 7- transfer of winding up petition from High Court to NCLT- Whether any creditor, other than the creditor who filed the winding up petition, can apply-Held, Yes.**

**Brief facts:**

On the winding up petition of M/s Girdhar Trading Co., the 2nd respondent herein, the High Court of Allahabad, passed the winding up order against the first respondent and appointed the Official Liquidator. Thereafter, the 1st respondent paid the entire amount due to the petitioning creditor (the second respondent herein) along with costs. However, the Company Court kept the winding up order in abeyance, directing the Official Liquidator to continue to be in custody of the assets of the Company. While things stood thus, the appellant herein, claiming to be a creditor of the first respondent herein, filed an application before the NCLT, and it moved an application before the company court seeking a transfer of the winding up petition to the NCLT, Allahabad. This application was rejected by the Company Court, on the sole ground that the requirement of Rule 24 had already been complied with and that a windingup order had already been passed. It is against this order of the High court, refusing to transfer the winding up proceedings from the Company Court to the NCLT that the financial creditor has come up with this civil appeal.

**Decision & Reason:**

The main issues that arise for consideration in this appeal are that (i) what are the circumstances under which a winding up proceeding pending on the file of a High Court could be transferred to the NCLT; and (ii) at whose instance, such transfer could be ordered.



Thus, the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The proceeding might have been initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word “party” appearing in the 5th proviso to Clause (c) of Subsection (1) of section 434 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words “party or parties” appearing in the 5th proviso to Clause (c) of Subsection (1) of Section 434 would take within its fold any creditor of the company in liquidation.

The above conclusion can be reached through another method of deductive logic also. If any creditor is aggrieved by any decision of the official liquidator, he is entitled under the 1956 Act to challenge the same before the Company Court. Once he does that, he becomes a party to the proceeding, even by the plain language of the section. Instead of asking a party to adopt such a circuitous route and then take recourse to the 5th proviso to section 434(1) (c), it would be better to recognise the right of such a party to seek transfer directly.

As observed by this Court in *Forech India Limited* (supra), the object of IBC will be stultified if parallel proceedings are allowed to go on in different fora. If the Allahabad High Court is allowed to proceed with the winding up and NCLT is allowed to proceed with an enquiry into the application under Section 7 IBC, the entire object of IBC will be thrown to the winds.

Therefore, we are of the considered view that the petitioner herein will come within the definition of the expression “party” appearing in the 5th proviso to Clause (c) of Subsection (1) of Section 434 of the Companies Act, 2013 and that the petitioner is entitled to seek a transfer of the pending winding up proceedings against the first respondent, to the NCLT. It is important to note that the restriction under Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 relating to the stage at which a transfer could be ordered, has no application to the case of a transfer covered by the 5th proviso to clause (c) of subsection (1) of Section 434.

Therefore, the impugned order of the High court rejecting the petition for transfer on the basis of Rule 26 of the Companies (Court) Rules, 1959 is flawed. Therefore, the appeal is allowed, the impugned order is set aside and the proceedings for winding up pending before the Company Court (Allahabad High Court) against the first respondent herein, is ordered to be transferred to the NCLT, to be taken up along with the application of the appellant herein under Section 7 of the IBC. There will be no order as to costs.

## Lesson - 5

### Competition Law

1	20/01/2021	<b>Thupili Raveendra Babu (Appellant) vs Bar Council Of India &amp; Ors (Respondents)</b>	<b>Competition Commission of India[CCI] Case No. 50 of 2020</b>
---	------------	---	---

**Section 4 of the Competition Act, 2002 read with the Advocates Act, 1961- Bar Council of India Rules- legal education-age restriction for pursuing legal education whether BCI is an enterprise-Held, No. Whether the complaint is maintainable-Held, No.**

Brief facts:

The instant information was filed by the Informant alleging contravention of provisions of Section 4 of the Act by Bar Council of India and its office bearers, collectively referred to as 'Opposite Parties'. The informant was 52 years old and could not pursue legal education post his retirement. As per the BCI Rules, candidates belonging to General category who have attained the age of more than 30 years, are barred from pursuing legal education. The allegations were based on this age restriction, The BCI has allegedly imposed maximum age restrictions upon the new entrants to enter into the legal education and thus, created indirect barriers to the new entrants in the profession of legal service. The impugned Clause 28 [in he rules] has been incorporated by the BCI in contravention of Section 4 of the Act by 'misusing its dominant position'. By having done so, the BCI has also allegedly indulged in colourable exercise of power. The Informant has further alleged that the members of the BCI, by way of aforementioned Clause 28, conspired to reduce the competition to its electors and created indirect barriers in the profession of legal service. He has also alleged that the members of the BCI who are managing the affairs of the BCI are misusing the dominant position enjoyed by the BCI in controlling the legal education in India.

Decision: Dismissed.

Reason:

The Commission has carefully perused the information, the documents filed by the Informant and the information available in public domain. The Commission notes that the Informant has alleged contravention of the provisions of Section 4 of the Act, primarily, against the BCI. However, in order to appreciate the facts in the matter, it is imperative to examine the status of the BCI as an

enterprise within the contours of the provisions of Section 2(h) of the Act before proceeding further with regard to the allegations raised in the information. Thus, the primary question which falls for consideration is that whether BCI is an 'enterprise' within the meaning of Section 2(h) of the Act. The term 'enterprise' has been defined under Section 2(h) of the Act, inter alia, as a person or a department of the Government, engaged in any activity relating to provision of any kind of services. In the present matter, the Commission notes that the BCI is a statutory body established under Section 4 of the Advocates Act, 1961. Section 7 of the said Act lays down the functions of the BCI which includes promotion of legal education in India and to lay down standards of such education in consultation with the Universities in India and the State Bar councils. Further, Section 49 of the Advocates Act, 1961 empowers the BCI to make rules for discharging its functions under the said Act such as prescribing qualifications and disqualifications for membership of a Bar Council, minimum qualifications required for admission to a course of degree in law in any recognised university, prescribing the standards of legal education for the universities in India, etc. Thus, it is noted that the BCI appears to carry out functions which are regulatory in nature in respect of the legal profession. It is noted that that in Case No. 39 of 2014, In re: Dilip Modwil and Insurance Regulatory and Development Authority (IRDA), decided on 12.09.2014, the Commission had the occasion to examine the status of IRDAI as an 'enterprise' under the Act. The Commission had observed that any entity can qualify within the definition of the term 'enterprise' if it is engaged in any activity which is relatable to the economic and commercial activities specified therein. It was further observed that regulatory functions discharged by a body are not per se amenable to the jurisdiction of the Commission. In the present matter, when the BCI appears to be discharging its regulatory functions, it cannot be said to be an 'enterprise' within the meaning of Section 2(h) of the Act and consequently, the allegations made in relation to discharge of such functions which appears to be non-economic in nature, may not merit an examination within the provisions of Section 4 of the Act. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case under the provisions of Section 4 of the Act and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.

## Lesson 6

### Business Strategy and Management

#### AXA – Creating the New CR Metrics

##### Introduction

A global leader in the insurance and asset management business, AXA had risen to the top ranks in terms of corporate responsibility (CR) as well. In 2014, the French-based insurer led the industry on a number of corporate social responsibility and sustainability indexes. Not content to rest on these laurels, AXA transferred its CR team from the department that included the Communications function to a newly created department combining the Strategy, CR, and Public Affairs functions together, to further integrate CR into the core of the business.

The company was formed in the 1980s through the merger of a few mid-sized French insurance firms. From the beginning, AXA's CEO Claude Bébéar aspired to build the first global insurance brand. The company made a series of acquisitions in the 1990s, including companies in the United States, Europe, Africa, and Asia. AXA was hailed in the business press for savvy deal-making. The company took over struggling franchises and utilizing its strong balance sheet, technical expertise and abilities in product innovation, managed to turn around their acquisitions. Over time, AXA also branded the companies under the AXA banner, assembling a global brand piece by piece.

##### Strategic Move

In 2010, the company announced *Ambition AXA*, a five-year strategic plan to grow the company. The plan called for harvesting slow-growing businesses in mature markets, investing in emerging markets, and reducing the company's overall cost of operations. Under the strategy, AXA made significant acquisitions and deals in Asia, Africa and Latin America. The company became the leading foreign insurance provider in China and a player in the Indian market. By 2014, AXA employed 157,000 people across the globe, serviced over 100 million clients, enjoyed a €50 billion market cap, and managed over €1,000 billion in assets. According to Interbrand, AXA's was the leading global brand name in insurance, and also the leading "green" insurance brand.

Throughout its growth, AXA's leadership had maintained an interest in corporate social responsibility, and many AXA employees believed that CR was in the DNA of the organization. During 1980s, Bébéar set up a number of organizations to bring business leaders together to tackle social problems and engage in philanthropy. Inside AXA in 1990, the company created AXA Atout Coeur ("Hearts in Action") to encourage and support community engagement by employees, and in 2001 it established the Group's first "sustainable development" function.

But it wasn't until 2008 that the company created a formal CR strategy. Following an internal study that argued that corporate responsibility was a key strategic area for the company to pursue, AXA's first global CR action plan was launched. Under the direction of Alice Steenland, AXA's CR team created a proprietary CR metric for the company, which was adapted for each of the company's major operating activities. This metric allowed AXA leadership to assess the company's CR work and provided a framework for individual units to formulate their own CR goals. The CR team's work also helped AXA become more visible within the larger CR community and led to the company's success on ratings metrics constructed by various outside organizations.

### **On the Path of Success**

In September of 2014, the CR team's success led AXA leadership to transfer it from the department that included the Communications function to the department comprised of the Strategy and Public Affairs functions. This new integrated department was baptized "Strategy, Sustainability, and Public Affairs." The reorganization inspired a reconsideration of how AXA monitored and measured its CR efforts. The metrics Steenland and her group had constructed were adapted from outside ratings agencies, notably using the Dow Jones Sustainability Index methodology created for investors. As part of the company's strategy apparatus, Steenland and her team were now looking to create new CR metrics that tied CR work more closely to AXA's operations and growth. To do so, Steenland would have to identify CR issues of particular concern to the company, examine how addressing these CR issues would add value to the company (e.g. by fostering innovation, by reducing costs), and then create metrics that would capture a business unit's success or failure in addressing the CR issue.

Creating new metrics was a tall order, but considered to be another step to establish CR inside AXA. Eventually, the company aspired to produce an "integrated report" that would define the Group's next strategy for the 2020 time horizon, measured by a set of metrics reflecting in an integrated way the financial, but also the social and environmental, value created by the company.

Q1. How 'Ambition Axa' assisted in providing an impetus to the business growth of AXA?

Q2. Evaluate the efficacy of Corporate Responsibility Team of Axa.

### **References**

1. <https://som.yale.edu>

## **Indira Gandhi International Airport- Collins Aerospace**

### **Introduction**

India is growing. A rising upper and middle class combined with increased consumer spending is propelling India towards greater economic prosperity. That wealth is boosting air traffic – so much so that India may soon overtake Japan to become the world’s third largest domestic market behind the U.S. and China.

Delhi’s Indira Gandhi International Airport (DEL) is a symbol of India’s burgeoning progress as an economic and travel center, connecting to 127 destinations worldwide and serving as a hub for many major airlines, including Air India, Vistara, IndiGo and SpiceJet. A recent report published by the International Civil Aviation Organization (ICAO) listed Indira Gandhi International Airport (IGIA) as the 12th busiest airport worldwide in November 2016,<sup>1</sup> coinciding with the airport crossing the 50 million passenger mark – the highest ever in the country. IGIA also enjoys international recognition as the world’s second best airport in the “largest airport” category (passenger capacity of over 40 million passengers per annum) as recognized by the prestigious Airports Council International’s (ACI) Airport Service Quality 2016 rankings.

### **Achieving the Vision**

Since the beginning, “Passenger Delight” has been a single minded goal for DIAL, driving the shape of the company, its services and everything it stands for. A key enabler of the airport’s goal is its “Fast Travel” vision: taking the best ideas in the airport business and making them a reality for passengers.

To achieve this vision, DIAL saw a need to implement new technologies that would provide significant benefits to its passengers. In 2009, the airport turned to Collins Aerospace, beginning a deep and strategic relationship between the two companies. Collins Aerospace understood DIAL’s vision and used it as the basis for its technology recommendations, without losing sight of creating value for the airport by reducing operational challenges, creating efficiency gains and maximizing return on investments.

Since then, DIAL has benefited from a host of Collins’ solutions throughout the entire airport, including its ARINC v MUSE™ common use passenger processing system, ARINC SelfServ™ kiosks for self-service check-in, the ARINC VeriPax™ passenger reconciliation system and ARINC BagLink™ for baggage messaging, as well as a baggage reconciliation system (BRS) and a local departure control system (LDCS) deployed as part of Collins’ airport system integration.

### **Transformation of IGIA**

Collins’ initial relationship with DIAL involved the implementation of CUTE (Common Use Terminal Equipment) in Terminal 1D (T1D) in 2009, making it the first domestic terminal to be

equipped with this technology. Previously, airlines operated dedicated check-in systems that created operational and cost inefficiencies. CUTE provided airlines interoperability to use any workstations for day-to-day operations, allowing faster passenger check-in and processing.

The implementation of Collins' solutions helped IGIA T1D handle its capacity issues, reducing processing time as well as decreasing passenger frustration and airport congestion. In addition, Collins' commitment to training, support and collaboration across all relevant stakeholders made the implementation of the new systems seamless. The positive results led the two organizations to extend their collaboration to IGIA Terminal 3 (T3).

### **Exceeding Expectations with IGIA Integrated International Terminal**

Similar to Terminal 1D, the airport needed to implement a common use solution for its T3 international terminal to better manage growth. This second implementation presented a unique challenge – time was a key factor. With India set to host the 2010 Commonwealth Games, the new systems had to be implemented prior to the beginning of the multisport event. Collins turned the challenge into an opportunity and managed to successfully deliver 650+ CUTE workstations and 100+ baggage reconciliation system (BRS) scanners ahead of schedule. In addition, the Collins implementation included the installation of India's first remote check-in solution at Delhi Metro's Shivaji Stadium and New Delhi stations, where Air India and Jet Airways passengers commuting to IGIA have the option to check in, obtain their boarding passes and check in luggage as well. This significantly reinforced DIAL'S reputation as a leader in the use of the newest technologies to reduce congestion as well as simplify and improve the passenger experience.

### **Surge in India's Domestic Travel**

Collins has also helped DIAL manage the dramatic increase in domestic passengers. India's domestic travel has grown at over 20 percent per annum in recent years, overtaking its international growth rate of 10 percent per year.<sup>3</sup> To help accommodate this tremendous growth, DIAL has shifted some of the passenger traffic from T1 to T2. However, T2 initially lacked the necessary technologies to support such a significant increase in capacity. Collins' implementation of CUPPS (Common Use Passenger Processing) and BRS in T2 has streamlined its operations, which has created time and cost savings as well as helped achieve operational excellence in capacity. Collins' implementation of CUPPS (Common Use Passenger Processing) and BRS in T2 has streamlined its operations, which has created time and cost savings as well as helped achieve operational excellence.

### **Strategic Relationship Delivering Results**

Collins has earned a well-deserved reputation with DIAL – and throughout India – as a trusted partner for its ability to deliver high-quality, high-value solutions that have a dramatic impact on airport operations. The relationship has been so successful that DIAL has twice honoured Collins with its “Best IT Service Provider” award.

Together, DIAL and Collins have developed a long-term strategic relationship dedicated to achieving DEL's "Fast Travel" vision, delighting passengers today and for decades to come.

Q1. Vision is crucial element of any business organisation. In light of the given case, elucidate the significance of vision.

Q2. Customer satisfaction is not sufficient in today's competitive world. Customer delight plays a pivotal role in attaining success. In view of the given case, explore Collins approach in creating customers delight and building goodwill of the business.

### **References and Further Reading**

1. <https://views.paperflite.com/assets/5ef60d08a103157f96fb5403>
2. 2017, February 13. "IGI became 12th busiest airport in Nov: Report." The Times of India. Retrieved August 2017 from <http://timesofindia.indiatimes.com/city/delhi/igi-became-12th-busiest-airport-in-nov-report/articleshow/57115668.cms>
3. Mishra, Mihir (2017, March 6). "Delhi Airport is second best among world's biggest airports: ASQ Awards 2016." The Economic Times. Retrieved August 2017 from <http://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/delhi-airport-is-second-best-among-worlds-biggest-airports-asq-awards-2016/articleshow/57498019.cms>
4. Shukla, Tarun (2017, April 11). "India climbs to fourth spot in 2016 global air traffic rankings." Livemint.com. Retrieved August 2017 from <http://www.livemint.com/Companies/IfUNTvcGnnSfsAJ0AF3o7L/India-climbs-to-fourth-spot-in-2016-global-air-traffic-ranki.html>



## Lesson -7

### Interpretation of Law

08.08.2019	Mahanagar Telephone Nigam Ltd.(Appellant) vs. Canara Bank & Ors. (Defendant)	Supreme Court <b>INDU MALHOTRA, J.</b>
------------	--	---

**Whether non-signatory to an arbitration agreement permitted to participate in the arbitration proceedings, Held: Yes**

#### Facts of the case

In 1992, MTNL floated 17% Non-Cumulative Secured Redeemable Bonds worth Rs. 425 crores. On 10.02.1992, MTNL placed bonds worth Rs.200 crores with Can Bank Financial Services Ltd. (“CANFINA”) under an MOU agreement. The bond amount of Rs. 200 crores was placed as fixed deposit by MTNL with CANFINA. CANFINA paid back Rs. 50 crores of the fixed deposit in 1992. The balance fixed deposit amount of Rs. 150 crores along with interest was not paid by CANFINA to MTNL. As a consequence, MTNL did not service the interest on bonds. Against payment of Rs. 50 crores received from CANFINA, MTNL serviced the bonds of approximately Rs. 31 crore. Canara bank was of view that an out-break of a security scam and CANFINA was faced with a severe liquidity crunch and Respondent No. 1 Canara Bank purchased the Bonds issued by MTNL, of the face value of Rs. 80 crores, from Respondent No. 2 – CANFINA which is its wholly owned subsidiary. Canara Bank requested for registration of these Bonds but MTNL refused to transfer the Bonds on the various grounds. MTNL subsequently registered a part of the face value of Rs. 40 crores, in favour of CANFINA but however retained on the ground that CANFINA had failed to pay the deposit money of Rs. 150 crores, which was payable to MTNL with an accrued interest of 12% p.a. MTNL later cancelled all the Bonds inter alia on the ground that letters of consideration remained with CANFINA. MTNL sent a statement of accounts by adjusting the proceeds of the cancellation of bonds and attached a cheque for Rs. 5,41,17,463 as the amount payable to Canara Bank. Canara Bank filed before the Delhi High Court to challenge the cancellation of the Bonds. It is relevant to note that CANFINA was joined as a proforma party in the Writ Petition filed by Canara Bank. The Writ Petition was dismissed on the ground of availability of an alternative and efficacious remedy before the Company Law Board under Section 111 of the Companies Act, 1956. The proceedings before the Company Law Board came to be dismissed, since the remedy was no longer available, as per the amendment of Section 111 by the Depositories Act, 1996. Canara Bank filed an application for Restoration of the Writ Petition. Canara Bank made a representation to the Cabinet Secretary. A meeting was convened by the Cabinet Secretariat and attended by the representatives of MTNL, Canara Bank, and CANFINA. The Committee directed Canara Bank, CANFINA and MTNL to settle the disputes through arbitration. The Delhi High Court referred the disputes between the parties to the Committee on Disputes. The Writ Petition was adjourned sine die. The Delhi High Court disposed of the pending Writ Petition with the observation that the matter should be resolved by the Committee on Disputes expeditiously so that the arbitration agreement between the parties is signed as soon as possible. The decision in *O.N.G.C. v. Commissioner of Central Excise* (supra) came to be overruled by a Constitution Bench in *Electronics Corporation of India Ltd. v. Union of India & Ors.* Accordingly, Canara Bank moved the Delhi High Court u/S. 151, CPC for restoration of the disposed of Writ Petition. Delhi High Court restored the Writ Petition. During the course of the proceedings, the

parties before the Delhi High Court agreed that these issues may be referred to arbitration. The appointed Sole Arbitrator issued notice to all the three parties *i.e.* MTNL, Canara Bank, and CANFINA. Canara Bank raised an objection to joining CANFINA as a party to the arbitration. The learned Arbitrator passed an interim award holding that CANFINA had not appeared on 16.09.2011 before the High Court, when the disputes were referred to arbitration. CANFINA was not a party to the arbitration agreement, and cannot be joined as a party to proceedings. MTNL filed C.M. No. 8100 of 2012 before the Delhi High Court seeking clarification of Order dated 16.09.2011, as to whether CANFINA ought to be impleaded as a necessary party to the arbitration agreement. The Delhi Court dismissed the application as “not pressed” on the statement made by the Counsel of MTNL. MTNL filed I.A.s before the Delhi High Court for recall of the Orders passed in W.P. The Delhi High Court dismissed the Application for Recall on the ground that the application was identical to the application previously filed by MTNL. Aggrieved by the Orders passed by the Delhi High Court in W.P. the Appellant – MTNL filed the Special Leave Petition. There are two issues which have arisen for the consideration of Hon’ble Supreme Court:

- (i) the first issue raised by the Appellant – MTNL with respect to the existence of a valid arbitration agreement between the three parties;
- (ii) the second issue has been raised by Respondent No. 1 – Canara Bank that the Order are between Canara Bank and MTNL. Respondent No. 2 – CANFINA, is not a party to the arbitration agreement, and hence cannot be impleaded in the proceedings.

### **Decisions of the case**

Hon’ble Supreme Court observed that a binding agreement for disputes to be resolved through arbitration is a *sine-qua-non* for referring the parties to arbitration. The arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to settle their disputes through arbitration. Section 7(4)(b) of the 1996 Act, states that an arbitration agreement can be derived from exchange of letters, telex, telegram or other means of communication, including through electronic means. If it can *prima facie* be shown that parties are *ad idem*, even though the other party may not have signed a formal contract, it cannot absolve him from the liability under the agreement. Arbitration agreements are to be construed according to the general principles of construction of statutes, statutory instruments, and other contractual documents. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. In interpreting or construing an arbitration agreement or arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law. The agreement between MTNL and Canara Bank to refer the disputes to arbitration is evidenced from the various documents. The agreement between the parties as recorded in a judicial Order, is final and conclusive of the agreement entered into between the parties. The Appellant – MTNL after giving its consent to refer the disputes to arbitration before the Delhi High Court, is now estopped from contending that there was no written agreement to refer the parties to arbitration. A non-signatory can be bound by an arbitration agreement on the basis of the “Group of Companies” doctrine, where the conduct of the parties evidences a clear intention of the parties to bind both the signatory as well as the non-signatory parties. CANFINA is undoubtedly a necessary and proper party to the arbitration proceedings. The matter is remitted to the Sole Arbitrator to continue with the arbitral proceedings, and conclude the same as expeditiously as possible. Supreme Court had, however, expressed no opinion on the merits of the dispute.