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IN PURSUIT OF PROFESSIONAL EXCELLENCE

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# **SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)**

*for*

*December, 2020 Examination*

**Multidisciplinary Case Studies**

**(Detailed Supplement)**

**MODULE 3**

**PAPER 8**

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Lesson No. and Name	Remarks
1. Corporate Laws including Company Law	New Case Laws/ Case Studies are added in simplified language for better understanding to the students.
2. Securities Laws	
3. FEMA and other Economic and Business Legislations	Students may please note that since Multidisciplinary Case Studies (MCS) is an open book examination paper, <b><u>the Case laws/Studies in the study material are indicative only.</u></b> Students are expected to study the orders/judgements (relating the syllabus for MCS) by different authorities/judiciaries including Supreme Court, High Court, NCLT, NCLAT, CCI, Income Tax authorities etc.
4. Insolvency Law	
5. Competition Law	
6. Business Strategy and Management	
7. Interpretation of Law	
8. Governance Issues	

## Lesson 1

### Corporate Laws including Company Law

1)	20.12.2019	<b>Joint Commissioner of Income Tax (OSD), Circle (3)(3)-1, Mumbai (Appellant) vs. Reliance Jio Infocomm Ltd. &amp; Ors. (Respondents)</b>  <b>And</b> <b>Income Tax Officer, Ward 3(3)-1, Mumbai (Appellant) vs. M/s. Reliance Jio Infratel Pvt. Ltd. &amp; Ors. (Respondents)</b>	<b>NCLAT</b> <b>Company Appeal (AT) Nos. 113 &amp; 114 of 2019</b>  <b>Justice S. J. Mukhopadhya,</b> <b>(Chairperson)</b> <b>Justice A.I.S. Cheema,</b> <b>Member (Judicial)</b>  <b>Mr. Kanthi Narahari,</b> <b>Member (Technical)</b>
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**Mere fact that a Scheme of Compromise or Arrangement may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.**

#### **Brief facts of the case**

‘Reliance Jio Infocomm Limited’- Demerged/ Transferor Company (Petitioner Company No.1), ‘Jio Digital Fibre Private Limited’- Resulting Company (Petitioner Company No.2) and ‘Reliance Jio Infratel Private Limited’- Transferee Company (Petitioner Company No. 3) moved joint petition under Sections 230-232 of the Companies Act, 2013, seeking sanction of the Composite Scheme of Arrangement amongst ‘Reliance Jio Infocomm Limited’ and ‘Jio Digital Fibre Private Limited’ and ‘Reliance Jio Infratel Private Limited’ and their respective shareholders and Creditors (“Composite Scheme of Arrangement”).

The Petitioner Companies (Respondents herein) filed Company Application seeking dispensation of the meeting of Equity Shareholders of the Petitioner Company No.2 and the Petitioner Company No.3 by seeking directions to convene and hold meetings of Secured Creditors (including Secured Debenture Holders), Unsecured Creditors (including Unsecured Debenture Holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1.

By order dated 11th January, 2019, passed in Company Application, the National Company Law Tribunal (“Tribunal” for short), Ahmedabad Bench, ordered dispensation of the meeting of the Equity Shareholders of the Petitioner Company No.2 and the Petitioner Company No.3, directing for holding and convening the meetings of the Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1.

Notices were directed to be issued on Regional Director, North Western Region, Registrar of Companies, concerned Income Tax Authority (in case of Petitioner Company No.1), ‘Securities and Exchange Board of India’, ‘BSE Limited’ and ‘National Stock Exchange

of India Limited' (in case of Petitioner Company No.1) stating that the representation, if any, to be made by them, within a period of 30 days from the date of receipt. Publication was also directed to be made and published in the Newspaper in English language having all India circulation and in Gujarati language having circulation in Ahmedabad. Statutory notice was issued and Affidavits were also filed.

The NCLT, Ahmedabad Bench, taking into consideration the Chairperson's Report of the meeting of the Secured Creditors; Chairperson's Report of the meeting of the Unsecured Creditors; Chairperson's Report of the meeting of the Preference Shareholders; Chairperson's Report of the meeting of the Equity Shareholders of the Petitioner Company No.1, by order dated 11.01 2019, directed the Regional Director, North Western Region to make a representation under Section 230(5) of the Companies Act, 2013 and the Income Tax Department to file representation.

The Joint Commissioner of Income Tax (OSD), Circle (3)(3)-1, Mumbai and the income Tax Officer, Ward 3(3)-1, Mumbai have preferred these appeals.

According to the Appellants, the Tribunal has not adjudicated upon the objections raised by the Appellant- Income Tax Department at the threshold before granting any sanction to the proposed composite scheme of arrangement. It was submitted that the Tribunal has not dealt with specific objection that conversion of preference shares by cancelling them and converting them into loan, it would substantially reduce the profitability of Demerged Company/ 'Reliance Jio Infocomm Limited' which would act as a tool to avoid and evade taxes.

The main thrust of the argument was that by scheme of arrangement, the transferor company has sought to convert the redeemable preference shares into loans i.e. conversion of equity into debt which is not only contrary to the well settled principles of company law as well as Section 55 of the Companies Act, 2013 but also would reduce the profitability or the net total income of the transferor company causing a huge loss of revenue to the Income Tax Department.

According to the Appellants, the scheme seeks to do indirectly what it cannot do directly under the law. By way of the composite scheme, there is an indirect release of assets by the demerged company to its shareholders which is used to avoid dividend distribution tax which would have otherwise been attracted in light of Section 2(22) (a) of the Income Tax Act.

Further, as per the law, dividend arising out of preference shares can only be paid by the company out of its accumulated profits. However, when preference shares are converted into loan, the shareholders turn into creditors of the company. There are two consequences of such conversion of preference shares into loan. Firstly, the shareholders who are now creditors can seek payment of the loan irrespective of whether there are accumulated profits or not and secondly, the company would be liable to pay interest on the loans to its creditors, which it otherwise would not have had to do to its shareholders. Payment of interest on such huge amounts of loan would lead to reducing the total income of the company in an artificial manner which is not permissible in law.

## Issues

Whether an assumption that the scheme of Compromise or arrangement may result in reduction of tax liability will furnish a basis for challenging the validity of the same?

## Judgement

The NCLAT, held that without going to the record and without placing any evidence or substantiating the allegation of avoidance of tax by appearing before the Tribunal, it was not open to the income tax department to hold that the composite scheme of arrangement amongst the petitioner companies and their respective shareholders and creditors is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance. The NCLAT observed that mere fact that a scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

The Income Tax Department, which sought for liberty, while accepted by the Petitioner Companies (Respondents herein) and the NCLT, Ahmedabad bench while approving the Composite Scheme of Arrangement has granted liberty. Such liberty to the Income Tax Department to enquire into the matter, if any part of the Composite Scheme of Arrangement amounts to tax avoidance or is against the provisions of the Income Tax and is to let it take appropriate steps if so required.

Thus, NCLAT upheld the decision of NCLT, Ahmedabad bench and in view of the liberty given to the Income Tax Department decided not to interfere with the Scheme of Arrangement as approved by the Tribunal and dismissed the appeals filed.

2)	04.12.2019	<b>Registrar of Companies, Kerala (Appellant) vs. Ayoli Abdulla (Respondent)</b>	<b>NCLAT</b> <b>Company Appeal (AT)</b> <b>No.145 of 2019</b> <b>Justice Jarat Kumar Jain,</b> <b>Member (Judicial)</b> <b>Mr. Balvinder Singh</b> <b>Member (Technical)</b> <b>Dr.Ashok Kumar Mishra</b> <b>Member (Technical)</b>
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**NCLT per se has no power to waive the filing fee & additional fee.**

## Fact of the case

The Appeal has been preferred by Registrar of Companies, Kerala ('for short ROC') under Section 421 of the Companies Act, 2013 R/w Section 248, 252 403 R/w Rule 12 of Companies (Registration Offices & Fees) Rules, 2014 and also Rule 87A(4)(d) NCLT Rules, 2016 by inter alia seeking to set aside the order dated 07.03.2019 passed by NCLT, Chennai Bench, so far as it

relate to waiver of additional fee in filing of balance sheet and Annual Return; to direct the Respondent to file all the pending statutory returns viz., Balance Sheets and Annual Returns with filing fee and additional fee as envisaged under Section 403 of the Companies Act, 2013 etc.

The Appellant i.e. Registrar of Companies, Kerala has preferred the Appeal and the Appellant has no objection in restoring the name of the company as ordered by the said NCLT but the Appellant is aggrieved by waiver of the additional fee in filing of the pending statutory returns of the Company viz., Balance Sheets and Annual Returns. As per Section 403 (1) of the Companies Act, 2013 it says that any documents required to be filed under the Act shall be filed within the time specified in the relevant provisions on payment of such fee as may be prescribed and also provided for payment of such additional fee which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of Companies. Rule 12 of Companies (Registration Offices & Fees) Rules, 2014 also states similarly.

The Respondent Company was under the management dispute in the year 2011 onwards and the same was settled before the NCLT Chennai Bench vide order dated 07.08.2017. The Respondent in the present case was reinstated as Managing Director of the Company as mentioned in the order of NCLT Chennai Bench. The NCLT reinstated the Respondent as the Managing Director of the Company and declared all documents filed on or after 27.04.2011 as null and void which included the Annual Financial Statements and Annual Returns for the Financial Years of the Company viz. 2003-2004 to 2010-2011 filed on 7.10.2011 under the Company Law Settlement Scheme (in vogue at the time).

**Issues:**

Whether NCLT has power to waive additional fees levied on defaulted statutory documents?

**Judgement**

The NCLAT set aside the order passed by the NCLT, Chennai Bench to the extent of waiver of additional fee for filing of Balance Sheet and Annual Return and held that NCLT per se has no power to waive the filing fee & additional fee. The Registrar of Companies, Kerala is directed to charge minimum additional fee. The Respondent is directed to file all the pending statutory returns viz., Balance Sheet and Annual Return with filing fee and additional fee within a period of 30 days from the date of receipt of this order and RoC, Kerala is directed to accept the same with minimum additional fee.

3)	04.12.2019	Regional Director, Southern Region and Ors. (Appellants) vs. Real Image LLP and Ors. (Respondents)	<p style="text-align: center;"><b>NCLAT</b></p> <p style="text-align: center;"><b>Company Appeal (AT) No. 352 of 2018</b></p> <p style="text-align: center;"><b>Justice Jarat Kumar Jain, Member (Judicial)</b></p> <p style="text-align: center;"><b>Mr. Balvinder Singh, Member (Technical)</b></p> <p style="text-align: center;"><b>Dr. Ashok Kumar Mishra, Member (Technical)</b></p>
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**If an Indian Limited Liability Partnership ('LLP') is proposed to be merged into an Indian company then firstly, the LLP has to apply for registration under Section 366 of the**

## **Companies Act, 2013.**

### **Fact of the case**

National Company Law Tribunal, Chennai vide impugned order dated 11.06.2018 allowed the company petition filed by respondents and permitted amalgamation of the Limited Liability Partnership firm into Private Limited company. Hence the appellant Regional Director, Southern Region and Registrar of Companies have preferred this appeal under Section 421 of the Companies Act, 2013.

M/s. Real Image LLP (hereinafter referred to as transferor LLP) with M/s. Qube Cinema Technologies Pvt. Ltd. (hereinafter referred to as transferee company) and their respective partners, shareholders and creditors moved joint company petition under Section 230 to 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules 2016 and National Company Law Tribunal Rules, 2016 before NCLT, Chennai. Transferor LLP is proposed to be amalgamated and vested with transferee company. Transferor LLP is incorporated on 4.1.2016 under the provisions of Limited Liability Partnership Act, 2008 having its registered office in Chennai. The transferee company is a private limited company incorporated on 12.1.2017 under the Companies Act, 2013 and having its registered office also in Chennai. Both the incorporated bodies are engaged in the business of establishing and or acquiring Audio and Video Laboratories for Recording, Re-recording, Mixing, Editing, Computer Graphics and special effects for Film, Television Video and Radio Productions etc.

NCLT after considering the scheme found that all the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013 (in brief Act 2013). NCLT further found that as per Section 394(4)(b) of companies Act, 1956, LLP can be merged into company but there is no such provision in the Companies Act, 2013. However, explanation of sub-section (2) of Section 234 of the Companies Act 2013 permits a foreign LLP to merge with an Indian company, then it would be wrong to presume that the Companies Act, 2013 prohibits of a merger of an Indian LLP with an Indian company.

Thus, there does not appear any express legal bar to allow merger of an Indian LLP with an Indian company. Therefore, NCLT applying the principal of Casus Omissus, by the impugned order allowed the amalgamation of Transferor LLP with transferee company.

Being aggrieved the appellants have filed the present appeal.

### **Issues**

Issue for consideration before NCLAT is that by applying the principal of casus omissus a Indian LLP incorporated under the LLP Act 2008 can be allowed to merge into an Indian Company incorporated under the Act, 2013?

### **Judgement:**

NCLAT observed that it is undisputed that transferor LLP is incorporated on 04.01.2016 under the provisions of LLP Act, 2008 and the transferee company is incorporated on 12.01.2017 under the Companies Act, 2013. Thus, these corporate bodies were governed by

the respective Acts and not by earlier Act, 1956. Hence, it is apparent that as per Section 232 of the Companies Act, 2013, a company or companies can be merged or amalgamated into another company or companies. The Companies Act, 2013 has taken care of merger of LLP into company. In this regard Section 366 of the Companies Act, 2013 provides that for the purpose of Part I of Chapter XXI the word company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity which can apply for registration under this part. It means that under this part LLP will be treated as company and it can apply for registration and once the LLP is registered as company then the company can be merged in another company as per Section 232 of the Companies Act, 2013.

NCLAT further observed that the provisions of the Companies Act, 2013 as a whole in reference of conversion of Indian LLP into Indian company there is no ambiguity or absurdity or anomalous results which could not have been intended by the legislature. The principal of casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. There is no such occasion to apply the principal of casus omissus.

The legislature has enacted provision in the Companies Act, 2013 for conversion of Indian LLP into Indian Company and vice versa in the Limited Liability Partnership Act, 2008. Thus there is no question infringement of any constitutional right of the Respondent.

The NCLAT held that the impugned order passed by NCLT, Chennai Bench is not sustainable in law and thus, set aside, which is allowing the merger of an Indian LLP with an Indian company without such registration.

*Cassus Omissus: a situation omitted from or not provided for by statute or regulation and therefore governed by the common law.*

4)	02.12.2019	G. Vasudevan (Petitioner) vs. Union of India (Rep. by Secretary, Ministry of Corporate Affairs and Ministry of Law and Justice) (Respondents)	Madras High Court Writ Petition No. 32763 of 2019 and WMP. No. 33188 of 2019 Mr. A. P. Sahi (Chief Justice) Justice Subramonium Prasad
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**Section 167(1)(a) Companies Act not violative of Articles 14, and 19(1)(g) of the Constitution of India.**

**Fact of the case:**

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, to declare the “Proviso” in Section 167(1)(a) of the Companies Act 2013, as



inserted vide the Companies (Amendment) Act 2017 as ultra vires the Articles 14, 19(1)(g) of the Constitution of India and declare illegal and null and void.

The challenge in the instant writ petition is to the vires of the proviso to Section 167(1)(a) of the Companies Act, as inserted by the Companies (Amendment) Act 2017. The same is extracted hereunder: -

*"(i) in clause (a), the following proviso shall be inserted, namely: — "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."*

Section 167 of the Companies Act gives instances where the office of a Director shall become vacant. Section 167(1)(a) states that if a Director incurs any disqualification specified in Section 164, then he vacates his seat as a Director. The proviso which is under challenge in the instant writ petition states that, when a company commits a default as stipulated in sub-section 2 of Section 164, then a Director of such defaulting company does not vacate the post in the company in which the default is committed but a Director of such a company has to vacate his seat as a Director in all other companies in which he is Director.

The petitioner contends that proviso to Section 167(1)(a) of the Companies Act, leads to unequal treatment being met out to Directors of a defaulting company based on whether they are Directors in other companies or not. The petitioner claims that since this proviso states that such Directors of a defaulting company would only have to vacate Directorship in other companies while retaining the same in the defaulting company, this leads to unfair treatment to those Directors who hold such posts in multiple companies.

The petitioner further claims that this differential classification is not based on an intelligible differentia and that there is no justification provided for mandating the vacation of Directorship in other companies, thus leading to this provision being arbitrary and violative of Article 14 of the Constitution of India. It is also contended that the impugned provision irrationally has a detrimental effect on other, non-defaulting companies and punishes individual Directors for the defaults of a company even when fault cannot be directly attributed to them. The petitioner also claims that the impugned proviso also violates the principles of natural justice.

### **Issue**

The primary issue in this case relates to whether or not the proviso to Section 167(1)(a) was without justification irrationally mandating the vacating of Directorship in other companies while not providing for the same in the defaulting company ?

### **Judgement:**

The Madras High Court held that the proviso to Section 167(1)(a) must be interpreted in ordinary terms and would apply to the entirety of Section 164 including sub-section 2. The Court has further held that this proviso can be justified on two grounds. Firstly, it has been reiterated that the exclusion of Directors from vacating their posts in the defaulting company while doing so in all other companies where they hold Directorship has been done in order

to prevent the anomalous situation wherein the post of Director in a company remains vacant in perpetuity owing to automatic application of Section 167(1)(a) to all newly appointed Directors. Secondly, the underlying object behind the proviso to Section 167(1)(a) is seen to be the same as that of Section 164(2) both of which exist in the interest of transparency and probity in governance, Owing to these justifications, the Court thus holds that the proviso to Section 167(1)(a) is neither manifestly arbitrary nor does it offend any of the fundamental rights guaranteed under Part III of the Constitution of India. Thus, the writ petition is dismissed.

5)	04.11.2019	<b>Mukut Pathak &amp; Ors. vs. Union of India &amp; Anr.</b>	<p align="center"><b>Delhi High Court</b></p> <p align="center"><b>W.P. (C) 9088/2018 &amp;CM</b> <b>Appln. No.35006/2018</b></p> <p align="center"><b>Justice Vibhu Bakhru</b></p>
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**Penalty u/s 164(2) of Companies Act not to apply retrospectively.**

**Fact of the Case:**

The petitioners were directors in various companies and were disqualified from being appointed/ reappointed as directors for a period of five years u/s 164(2)(a), for default on the part of their concerned companies, in filing of the annual returns and financial statements for the financial year 2014-2016. The said list of directors, who were disqualified, was published in 2017. The petitioners challenged the list of disqualified directors, for defaults, pertaining to the financial years 2012-2014 and 2013-2015 before the High Court.

**Issues**

- A. Whether the provisions of Section 164(2)(a) are retrospective?
- B. Whether a prior notice and an opportunity of being heard was required to be given before publishing the list of the disqualified directors?
- C. Whether the directors of a company are disqualified from being re-appointed as directors in other non-defaulting companies in which they were directors at the time of incurring the disqualification?

**Judgement**

A. It was held that the provisions of Section 164(2) would apply prospectively and that it a well settled law, that no statute should be construed to apply retrospectively, unless such construction appears clear from the language of the enactment or otherwise necessary by implication. It was also equally trite that a statute is not retrospective merely because it affects existing rights or because a part of the requisites for its action is drawn from a time antecedent to its passing.

B. With respect to the second issue, it was noted that principles of natural justice are only meant

to supplement the law and are a kind of code of fair administrative procedure in the decision making process.

However, in the present case, the administrative authorities are not required to take any qualitative decision, in as to when a director would be disqualified. Section 164(2) merely sets out the conditions, which if not complied with, would disqualify a person from being reappointed or appointed as a director. Thus, it was unable to accept that exclusion of the “audi alteram partem” rule resulted in any procedural unfairness.

C. Lastly, Section 164(2) provides that no person who is or has been a director of company that has defaulted u/s 164(2) shall be eligible to be re-appointed as a director of ‘that company’ or appointed in any ‘other company’.

The expression ‘other company’ is used to refer to all companies other than the company which has committed the defaults as specified in clauses (a) and (b) of Section 164(2).

It was also noted that the term appointment would include any ‘reappointment’ as well. Thus, it was held that the directors of the defaulting companies were not eligible to be appointed or reappointed as directors in any company for a period of five years. It is clarified that the petitioners would continue to be liable to pay penalties as prescribed under the Act.

<b>6)</b>	<b>24.10.2019</b>	<b>Jindal Steel and Power Limited (Appellant) vs. Arun Kumar Jagatramka and Ors. (Respondents)</b>	<b>NCLAT Company Appeal (AT) No. 221 of 2018 Justice S.J. Mukhopadhaya (Chairperson) Justice Bansi Lal Bhat, Member (Judicial)</b>
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**During the Liquidation proceeding under Insolvency and Bankruptcy Code, 2016 a petition under Section 230 to 232 of the Companies Act, 2013 is maintainable.**

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

Gujarat NRE Coke Limited (‘Corporate Debtor’/ ‘Corporate Applicant’) moved an application under Section 7 of the I&B Code before the Adjudicating Authority (NCLT), Kolkata for initiation of ‘Corporate Insolvency Resolution Process’ on account of various defaults committed by it. It was admitted by the Adjudicating Authority on 7.04.2017 and ‘Corporate Insolvency Resolution Process’ was initiated.

In absence of any ‘Resolution Plan’, the Adjudicating Authority passed order of ‘Liquidation’ on 11.01.2018 after the expiry of 270 days. First Respondent-Mr. Arun Kumar Jagatramka (Promoter) filed Appeal before NCLAT against the order of ‘Liquidation’ in Company Appeal (AT) (Insolvency) No.55-56 of 2018, challenging the ineligibility under Section 29A of the I&B Code as ‘Resolution Plan’ submitted by him was not accepted. NCLAT allowed the

liquidation proceeding to continue.

In the meantime, 1st Respondent-Mr. Arun Kumar Jagatramka (Promoter) moved an application under Sections 230 to 232 of the Companies Act, 2013 before the NCLT, Kolkata for Compromise and Arrangement between erstwhile Promoters and the Creditors. In the said case, the impugned order dated 15.05.2018 was passed.

Jindal Steel and Power Limited (Appellant), an unsecured creditor of Gujarat NRE Coke Limited ('Corporate Debtor') has preferred this Appeal under Section 421 of the Companies Act, 2013 against order dated 15.05.2018 passed by NCLT, Kolkata Bench, which allowed the application under Section 230 to 232 of the Companies Act, 2013, preferred by Promoter - Arun Kumar Jagatramka ordered for taking steps for Financial Scheme of Compromise and Arrangement between Applicant - Arun Kumar Jagatramka (Promoter) and the Company ('Corporate Debtor') through the 'Liquidator', after holding the debts of shareholders, creditors etc., in terms of Section 230 of the Companies Act, 2013.

### **Issues**

The Appellant has challenged the same on following grounds: -

- (i) Whether in a liquidation proceeding under Insolvency and Bankruptcy Code, 2016 the Scheme for Compromise and Arrangement can be made in terms of Sections 230 to 232 of the Companies Act, 2013?
- (ii) If so permissible, whether the Promoter is eligible to file application for Compromise and Arrangement, while he is ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 to submit a 'Resolution Plan'?

### **Judgement:**

The NCLAT observed that during the liquidation process, step required to be taken for its revival and continuance of the 'Corporate Debtor' by protecting the 'Corporate Debtor' from its management and from a death by liquidation. During a Liquidation proceeding under Insolvency and Bankruptcy Code, 2016, a petition under Section 230 to 232 of the Companies Act, 2013 is maintainable.

NCLAT further, stated that even during the period of Liquidation, for the purpose of Section 230 to 232 of the Companies Act, 2013, the 'Corporate Debtor' is to be saved from its own management, meaning thereby the Promoters, who are ineligible under Section 29A of Insolvency and Bankruptcy Code, 2016, are not entitled to file application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act, 2013. Proviso to Section 35(f) of Insolvency and Bankruptcy Code, 2016 prohibits the Liquidator to sell the immovable and movable property or actionable claims of the 'Corporate Debtor' in Liquidation to any person who is not eligible to be a Resolution Applicant

Further, Promoter, if ineligible under Section 29A of Insolvency and Bankruptcy Code, 2016 cannot make an application for Compromise and Arrangement for taking back the immovable

and movable property or actionable claims of the ‘Corporate Debtor’.

The NCLT by impugned order dated 15.05.2018, though ordered to proceed under Section 230 to 232 of the Companies Act, failed to notice that such application was not maintainable at the instance of 1st Respondent-Arun Kumar Jagatramka (Promoter), who was ineligible under Section 29A to be a ‘Resolution Applicant’.

The NCLAT thus, set aside the order passed by the NCLT, Kolkata bench and remitted the case to Liquidator/ Adjudicating Authority to proceed. Hence, the Appeal is allowed.

7)	19.09.2018	M/s Ind-Swift Limited (Appellant) vs. Registrar of Companies (Punjab & Chandigarh) (Respondent)	NCLAT Company Appeal (AT) No.52 - 53 of 2018 Justice A.I.S. Cheema, Member (Judicial) Mr. Balvinder Singh, Member (Technical)
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## **Repayment of Deposits accepted before Commencement of the Companies Act, 2013**

### **Fact of the case**

Appellant is a Listed company, it had accepted deposits since 2002 and regularly paid back till 28.02.2013. In 2013, it started facing liquidity problems and incurred losses. The Appellant company filed application before CLB and obtained relief under Section 58AA read with Section 58A (9) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, Appellant again sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi bench under Section 74 of the Companies Act, 2013. NCLT rejected the application. This appeal is against rejection of the application/s.

### **Issues:**

Whether the Appellant company which has already got relaxation from CLB under Section 58AA read with Section 58A (9) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, can again apply for re-fixing of periods, instalments and rate of interest for repayment of deposits accepted before commencement of the Companies Act, 2013 ?

### **Judgement:**

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

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

Considering these provisions, it appears that Section 74(1)(b) was attracted and when it appears from record that the Appellant defaulted, the penal provisions would get attracted.

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

8)	09.07.2019	S. Gopakumar Nair & Anr. vs. Obo Bettermann India Pvt. Ltd.	<p style="text-align: center;"> <b>NCLAT</b>  <b>Company Appeal (AT)</b>  <b>No. 272/2018</b>  <b>Justice A.I.S. Cheema</b>  <b>Member (Judicial)</b>  <b>Mr. Balvinder Singh</b>  <b>Member (Technical)</b> </p>
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**Purchase of minority shares without compliance to Companies Act amounts to oppression and mismanagement.**

**Fact of the case:**

The Appellants held 100% shares in Cape Electric India Pvt. Ltd. (“CEIPL”). Subsequently, OBO Bettermann Holdings- GMBH Ltd. (“OBO Germany”) acquired 76% of the shares in CEIPL, pursuant to a shareholder’s agreement entered into with the appellants. Over the course of time, the name of CEIPL was changed to OBO Bettermann India Pvt. Ltd. (“OBO India”) and the shareholding of the appellant was reduced to 0.36% in OBO India.

OBO Germany made attempts to buy out the equity shares of the appellants pursuant to a put and call option agreement and later, being in control of OBO India, issued notice u/s 236 of the Companies Act, to buy the shares of the appellants in spite of their resistance. A petition was filed before the NCLT u/s 241, which was held as not maintainable. Aggrieved by the order, an appeal was filed before the NCLAT.

**Issues:**

- A. Whether the appellants’ petition filed u/s 241 is maintainable.
- B. Whether Section 236 could be invoked to acquire the minority shareholding in the present case.

## **Judgement:**

It was observed that there were only three shareholders in OBO India, which included OBO Germany and the two Appellants. One of the criteria u/s 241 stated that the petition was maintainable if not less than one-tenth of the total number of members had filed an application making grievances of oppression and mismanagement.

Thus, it was held that appellants were eligible to file petition on the basis of the number of members. The argument that the petition wasn't maintainable as the Appellants ceased to exist as the members of OBO India was rejected, since the cause u/s 241 arose only when the shares of the appellants were wrongfully acquired u/s 236 of the Companies Act, 2013. In the present case, there was a gradual change in shareholding as per different agreements executed between OBO Germany and the Appellants. However, Section 236 could be invoked only in case of amalgamation, share exchange and conversion of securities and for any other reasons. It was observed that the words "for any other reasons" had to be read 'ejusdem generis' with the preceding word and must take the same or similar colour.

If this was not the intention of the legislature, then it could have generally mentioned that, in the event of any person or group of persons becoming 90% shareholder of the issued equity share capital of the company, such members could express their intention to buyout the remaining stake. Thus, it was held that the respondents could not have invoked Section 236 to acquire the minority shares of the Appellants as the said provision wasn't applicable to their case. Hence, the appeal was allowed.

<b>9)</b>	<b>07.05.2019</b>	<b>CADS Software India Pvt. Ltd. and Ors (Appellant) vs. Mr. K.K. Jagadish &amp; Ors., (Respondents)</b>	<b>NCLAT Company Appeal (AT) No.320 of 2018 Justice A.I.S. Cheema, Member (Judicial) Mr. Balvinder Singh, Member (Technical)</b>
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## **Removal of director due to loss of confidence as argued by the appellant does not appear in the Companies Act and Managing Director is eligible for compensation**

### **Fact of the case**

1<sup>st</sup> Respondent was removed as Director of the Appellant Company pursuant to the Management losing confidence in him at the EGM on 7.8.2015 which resulted in 1<sup>st</sup> Respondent to file company petition before the NCLT, Chennai for relief against oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. The 1<sup>st</sup> Respondent alleged five acts of oppression while alleging three acts of mismanagement. The Appellants pleaded that the Company Petition is filed with the ulterior motive of extracting Rs.10 crores from the Company.

The NCLT held that in terms of Section 202(3) of the Companies Act, upon removal, the Managing Director of a company would be entitled to receive remuneration which he would have earned if had been in office for the remainder of his term or for three years, whichever is shorter. Accordingly, it is deemed fit to order a compensation of Rs.105 lakhs (calculated at the rate of Rs.35 lakhs p.a. for three years) together with interest @ 10% from the date of removal of the petitioner (Respondent herein) from the office of Managing Director, plus other benefits as already offered, till the date of payment to the Petitioner by the R1 company/other respondents (Appellants herein). Being aggrieved by the impugned order dated 19.7.2018 the Appellants (Original 1st and 6th Respondent) have preferred this appeal.

The Appellants have stated that the 1<sup>st</sup> Respondent was not legally entitled to any compensation for the loss of office as Managing Director in the absence of any breach by the 1<sup>st</sup> Appellant and in the absence of any fixed period of appointment as Managing Director. The Appellants further stated that the removal of the 1<sup>st</sup> Respondent as Director of the company is valid as they have done substantial compliance with Section 169 of Companies Act, 2013.

**Issues:**

Whether a person removed from the post of Managing Director is eligible for compensation, when he is removed due to the reason of loss of confidence?

**Judgement:**

The NCLAT observed that the 1st respondent was functioning as Managing Director of the company since 17.4.1996 and was not appointed for a fixed tenure. 1st respondent was removed from the company. Upon removal as Managing Director, 1st respondent is entitled to compensation for loss of office as per Section 202 of the Companies Act, 2013.

The arguments advanced by the Appellant that 1st Respondent was removed due to loss of confidence. The Tribunal held that the term loss of confidence does not appear in the Companies Act and accordingly, the NCLT Chennai bench has rightly given his findings and arrived at to give compensation of Rs.105 lakhs (calculated at the rate of Rs.35 lakhs p.a. for three years) together with interest @ 10% from the date of removal of the 1st Respondent as Managing Director plus other benefits as already offered, till the date of payment by the company/other respondents.

Hence, the Appeal is accordingly dismissed.

10)	08.01.2019	Shashi Prakash Khemka (Dead) Through LRs. and Anr. (Appellant) vs. Npc Micon & Ors. (Respondents)	Supreme Court of India Civil Appeal Nos.1965-1966 of 2014 Justice L. Nageswara Rao Justice Sanjay Kishan Kaul
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**Power vested with the NCLT to deal with issues pertaining to rectification of register of members and not the civil courts.**



## **Fact of the case**

The appellant had filed a petition before the Company Law Board (“CLB”), seeking rectification of the register of members u/s 111- A of the erstwhile Companies Act, 1956. It was held that the petitions were maintainable and didn’t suffer from limitation, and CLB decided to hear the matter on merits.

However, an appeal was filed by the respondent before the High Court of Madras, which reversed the decision of the CLB and in effect, relegated the parties to a civil suit. Thus, a special leave petition was filed before the Supreme Court by the appellant to resolve the subject matter of dispute in the exercise of power u/s 111-A of the erstwhile Companies Act, 1956.

## **Issues**

Whether issue related to transfer of shares would be adjudicated by the Civil Courts or by the Company Law Board.

## **Order**

Reliance was placed on the judgment in Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and Others to canvass the proposition that while examining the scope of Section 155 of the Companies Act, 1956 (the predecessor to Section 111), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit.

Furthermore, it was noted that subsequent legal developments had a direct effect on the present case as Companies Act, 2013 had been amended which provided for the power of rectification of the Register u/s 59 of the Companies Act, 2013 and conferred such powers on the NCLT. A reference was also made to Section 430 of the Companies Act, 2013 which completely barred the jurisdiction of the civil courts in matters in respect of which the power had been conferred on the NCLT. In light of the above facts, the Supreme Court was of the view that relegating the parties to a civil suit would not be appropriate, considering the manner in which Section 430 was widely worded.

Hence, the appeal was allowed and it was held that the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013.

<b>11)</b>	<b>23.05.2018</b>	<b>Karn Gupta (Petitioner) vs. Union of India &amp; Anr. (Respondents)</b>	<b>Delhi High Court</b> <b>W.P.(C) 5009/2018 and</b> <b>CM No.19290/2018</b> <b>Justice C. Hari Shankar</b>
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**The petitioner has resigned from the directorship of the company in question. The petitioner would not incur a disqualification under Section 164 of the Companies Act, 2013.**

## **Fact of the case:**

The writ petitioner complains that he had been appointed as a director in a company registered under the name of Eternal Wellness Centre Pvt. Ltd. on 11.07.2012. From where he resigned on 05.12.2012. The company failed to submit Form 32 regarding his resignation in accordance with the provisions of the erstwhile Companies Act, 1956 with the Registrar of Companies.

On 6.09.2017 and 12.09.2017 MCA notified a list of directors who have been disqualified

under Section 164(2) (a) of the Companies Act, 2013 as directors with effect from 1.11.2016. Petitioners name features in this list, irrespective of his resignation. As a result, the Petitioner stands prohibited from being appointed or re-appointed as a director in any other company for a period of five years.

Hence, it is submitted that as the Petitioner has resigned from the directorship of the company in question, He would not incur a disqualification under Section 164 of the Companies Act, 2013.

Consequently, the disqualification as notified in the lists dated 6.09.2017 and 12.09.2017 by the Respondent no.1 was incorrect and illegal.

This position is not disputed by the respondents.

**Issue:**

Whether the petitioner who has resigned from the directorship of the company in question. would incur a disqualification under Section 164 of the Companies Act, 2013?

**Judgement:**

Delhi High Court held that the disqualification of the petitioner as notified in the impugned list as disqualification of the petitioner as a director of the company and the resultant prohibition under Section 164(2)(a) of the Companies Act, 2013 by virtue of the petitioner's name featuring in the lists dated 6.09.2017 and 12.09.2017 is hereby set aside and quashed. The Registrar of Companies is directed to ensure that its records are properly rectified to delete the name of the petitioner from the lists.

<b>12)</b>	<b>01.03.2017</b>	<b>Rishima SA Investments LLC (Petitioner) vs. Registrar of Companies, West Bengal &amp; Ors.(Respondent)</b>	<b>Calcutta High Court W.P. No. 20044 (W) of 2016 Justice Debangshu Basak</b>
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**A person other than member or creditor can also challenge the 'Striking' off the Company Name**

**Fact of the case :**

The petitioner assails a decision of the Registrar of Companies, West Bengal striking off the name of Rama Inn (International) Private Limited from the Register maintained in respect of companies. The petitioner is neither a member nor a creditor or the company itself to apply under Section 560(6) of the erstwhile Companies Act, 1956 for recall of the order of the Registrar.

He submits that, the impugned decision of the Registrar of Companies is dated September 10, 2015 when the provisions of the Companies Act, 2013 had not been notified. He further submits that, on the date of filing of the writ petition being 08.09.2016, the same position with regard to the notification of the provisions of the Companies Act, 2013 had continued. He submits that, the provisions of Section 248 of the Companies Act, 2013 have been notified subsequent to the filing of the writ petition. Therefore, the petitioner did not approach the National Company Law Tribunal under the Act of 2013.

Referring to the impugned decision of the Registrar of Companies, Petitioner submits that, no reasons have been ascribed by the Registrar why the name of the company was struck off. He submits that, the petitioner, the company and another legal entity had entered into an agreement with regard to a hotel business. Such agreement contains an arbitration clause. Disputes and differences had arisen between the parties to such agreement. The petitioner had referred such disputes to arbitration in terms of the arbitration clause. Such arbitration proceedings are pending. The company was a party respondent in such arbitration proceedings. In order to non-suit the petitioner in the arbitration proceedings, the respondent nos. 2 and 3 who were the persons in control and management of such company have made an application under Section 560 of the Act of 1956 before the Registrar of Companies, West Bengal. The decision of the Registrar of Companies to strike off the name of the Company in this regard is, therefore, perverse.

The Respondent nos. 2 and 3 submits that, the Petitioner has no locus standi to file the writ petition. He submits that, the Petitioner is neither the company itself nor is a member or creditor of the company. The petitioner, therefore, cannot be allowed to achieve something indirectly which is not permitted to it directly. The petitioner is not entitled to apply under Section 560(6) of the Act of 1956. The petitioner is, therefore, not entitled to challenge a decision of the Registrar of companies taken under Section 560 of the Act of 1956.

#### **Issues:**

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

- Is a person, not being a member or a creditor or the company itself, entitled to challenge the striking off of the name of the company under Section 560 of the erstwhile Companies Act, 1956?
- Does the petitioner have the locus standi to file and maintain the present writ petition?
- If the answers to the first two issues are in the affirmative, is the impugned order of the Registrar vitiated as being perverse and without reason?

#### **Judgement :**

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

The respondent nos. 2 and 3 had activated the Registrar of Companies by way of an application under Section 560 of the Companies Act, 1956. Apparently, the respondent nos. 2 and 3 were acting under an Exit Scheme under Section 560 of the Act of 1956.

Section 560 of the Act of 1956 allows the Registrar to strike a defunct company from the Register. Sub-section (1) of Section 560 allows the Registrar when it has reasonable cause to believe that, the company is not carrying on business or its operation, to issue a notice calling upon the company to explain whether the company is carrying on business.

In the present case, the respondent nos. 2 and 3 apparently had applied under such exit policy. Even under the exit policy, the respondent nos. 2 and 3 has to demonstrate and the Registrar has to come to a finding that, the company had not carried on business or its operation for the name of the company to be struck off under Section 560 of the Act of 1956. The claim of the Respondent nos. 2 and 3 before the Registrar of Companies is that, the company was inoperative.

The NCLAT observed that a company having a paid up capital of Rs.50,00,000/-, inventories of Rs.50,51,500/-, holding shares worth Rs.13,84,61,540/- and entering into tripartite agreement to carry on hotel business cannot be said to be without business or being inoperative since incorporation. The decision of the Registrar of Companies impugned herein dated September 10, 2015 is, perverse. Therefore, the Registrar of Companies, West Bengal shall forthwith restore the name of Rama Inn (International) Private Limited in the Register of Companies and shall take all consequential follow up steps to give effect to such restoration.

## CASE STUDY

### **The case study on Cyrus Investments Pvt. Ltd. & Anr. Vs. Tata Sons Ltd. & Ors.**

#### **Background:**

Tata Group is an Indian multinational conglomerate founded in 1868 by Jamsetji Tata, the company gained international recognition after purchasing several global companies. One of India's largest conglomerates, Tata Group is owned by Tata Sons. The group operates in more than 100 countries across six continents, with a mission 'To improve the quality of life of the communities we serve globally, through long-term stakeholder value creation based on Leadership with Trust'.

Tata Sons is the principal investment holding company and promoter of Tata companies. Approximately 66% of the equity share capital of Tata Sons is held by philanthropic trusts, which supports education, health, livelihood generation, art, culture etc. The next major chunk of approx 18% is controlled by Shapoorji Pallonji Group, whose heir apparent is Cyrus Mistry.

Mr. Cyrus Mistry was appointed as the chairman of Tata Sons in the year December, 2012 who was the sixth chairman of Tata Sons.

#### **Timeline of Events:**

#### **Cyrus Mistry's Ouster**

1) In the Board meeting of Tata Sons Limited held on **24<sup>th</sup> October, 2016**, Mr. Cyrus Mistry, was replaced from the post of Executive Chairman with immediate effect on ground of growing trust deficit and repeated departures from the culture and ethos of the Tata group and Mr. Ratan

Tata was appointed as the interim Chairman of Tata Sons and a committee was formed to hunt for a new chairman in four months.

2) On **25<sup>th</sup> October, 2016**, Tata Sons filed caveats in Supreme Court, Bombay High Court and National Company Law Tribunal to prevent ousted Tata Sons Chairman Cyrus Mistry from getting an ex-parte order against his sacking. They don't want any court to pass any ex-parte orders without hearing their side of the story.

### **Legal Battle**

3) In **December, 2016**, two investment firms backed by Mistry family in the names - 'Cyrus Investments Private Limited' and 'Sterling Investment Corporation Private Limited', the minority group of shareholders/ 'Shapoorji Pallonji Group' ("SP Group" for short) holding 18.37% of equity share capital "hereinafter referred to as Petitioner" filed a suit in National Company Law Tribunal (NCLT), Mumbai bench under Sections 241-242 of the Companies Act, 2013 alleging prejudicial and oppressive acts of the majority shareholders. They also challenged Cyrus Mistry's removal.

4) In reply to this suit, Tata Sons alleged that Mistry family backed investment firms don't have the requisite eligibility conditions to file a suit against them. As the petitioners do not hold at least 10% of the "**issued share capital**" of Tata Sons or representing at least one-tenth of the total number of members, as required by the Companies Act, 2013. According to Tata Sons, though the petitioners hold 18.37% of equity share capital of the company, their holding fell to approximately 2.17% when both equity and preference shares were taken into account. With regard to the power of a tribunal to waive off such requirements if applied for by a petitioner, Tata Sons has contended that since, the petitioners had not sought such a waiver during the filing of the petition, such a request should not be accommodated at a later stage.

5) In the application filed by Mistry family firms stated that the Tata Sons' understanding of the legal provision is not correct. They hold 18.37% of equity shares in the Company and if preference shareholding is considered none of the groups would have the requisite 10% issued and paid up share capital and would lead to an absurdity as none of them would be able to maintain an application. Further, it requested the tribunal to waive off the 10% minimum shareholding norm requirement stating that there are enough 'facts, circumstances and sufficient reasons' which warrants the tribunal to exercise its powers so that the petition can be heard on its merits. If not done so "the grave issues raised in the petition would go entirely un-investigated".

### **Provisions under the Companies Act, 2013**

Under Section 244 of the Companies Act, 2013, the following members of a Company shall have the right to file application under Section 241 of Companies Act, 2013 namely:

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than **one-tenth of the issued share capital** of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

***Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) above so as to enable the members to apply under section 241 of Companies Act 2013, for prevention of oppression or mismanagement against minority shareholders.***

6) Meanwhile during pendency of the case in NCLT, Tata Sons issued notice in month of January calling for Extraordinary General Meeting ('EGM') of the company on **6<sup>th</sup> February, 2017** with subject of business being removal of Mr. Cyrus Mistry as director of Tata Sons.

7) On **6<sup>th</sup> February, 2017**, shareholders of Tata Sons removed Mr. Cyrus Mistry as director of Tata Sons.

8) With effect from **21<sup>st</sup> February, 2017**, Mr. N Chandrasekaran took the charge as Executive Chairman of Tata Sons.

9) The National Company Law Tribunal (NCLT), Mumbai Bench, initially dismissed the petition under Sections 241-242 of the Companies Act, 2013 being non-maintainable, citing that no cause of action was established in any of the allegations raised by the Petitioners, they didn't meet the criteria of 10% ownership in a company for the filing of a case of alleged oppression of minority shareholders under the Companies Act, 2013 and also dismissed the petition for waiver.

10) Petitioner moved The National Company Law Appellate Tribunal (NCLAT), challenging NCLT order which rejected their petitions over maintainability. They also challenged rejection of their waiver plea.

11) NCLAT by its order dated **21<sup>st</sup> September, 2017** allowed the plea by the petitioners seeking waiver in filing case of oppression and mismanagement against Tata Sons taking into consideration the exceptional circumstances and directed the Mumbai bench of the NCLT to proceed in the matter.

### **Allegations of the Petitioner:**

i) The Articles of Association of the Company ("Articles") are per se oppressive as they ensure that Sir Ratan Tata Trust and Sir Dorabji Tata Trust control the affairs of the Company.

ii) Huge interference of Mr. Ratan N. Tata and Mr. N.A. Soonawala in every decision of the Company.

iii) The Petitioners alleged that the powers vested under certain Articles were not exercised in a judicious manner and should be struck off in entirety. However, the Petitioners failed to disclose in their pleadings whether at the time of making amendments to the specific Articles, they did not attend the meeting, contested and voted against the resolution.

- iv) Overpriced Corus acquisition- Tata Steel Limited purchased Corus Group PLC (Corus) for a sum approximately in excess of USD 12 billion at a substantial premium, the value of which was more than 33% of its original offer price.
- v) Continuation of doomed business of Nano Car Project undertaken by Tata Motors upon insistence of Mr. Ratan Tata.
- vi) Use of Tata Sons shareholding in certain Tata Group Companies to requisition EGM for removal of Cyrus Mistry as Director from the Board of Tata Sons.
- vii) Illegal removal of Mr. Cyrus Mistry as the Chairman of the Company was in violation of law, principles of governance, fairness, transparency and probity.
- viii) Actions of Tata Sons undermined the position and status of independent Directors in listed Tata Group companies and taking steps to remove Nasli Wadia as he expressed support towards Mr. Cyrus Mistry.
- ix) Joint Venture between Air Asia Limited and Telstra Trade place Private Limited entering the aviation sector including possible fraudulent, hawala transactions as indicated in the Deloitte Forensic Report.
- x) Actions of Mr. Ratan Tata constitute breach of SEBI Regulations on prohibition of Insider Trading.
- xi) Close relationship of Ratan Tata with Shiva leading to leakage of Board meeting discussions.
- xii) Bestowing contracts upon Mr. Mehli Mistry and enriching him at the cost of Tata companies.

**Reply to the petition on behalf of Tata Sons:**

- i) The company says that this petition is primarily filed to advocate the cause of Mr. Cyrus Mistry's removal as illegal and prejudicial to the petitioners so that to raise the issues of alleged oppression against the petitioners and alleged mismanagement in the company, but in reality, it is nothing but a strategy by Mr. Cyrus Mistry to publicly express his displeasure at the loss of his office as executive chairman of the company and also to tarnish the reputation of the company.
- ii) Mr. Ratan Tata was appointed as chairman of the company in the year 1991 and continued for about 21 years until his retirement in the year 2012 upon attaining the retirement age of 75 years, and that in his leadership, Tata group witnessed best significant growth and the valuation of the company increased more than 500 times.
- iii) In December 2012, the board of the company decided to re-designate Mr. Cyrus Mistry as executive chairman of the company, in the same board meeting, the board decided that Mr. Ratan Tata should, as a special and a permanent invitee to the board meetings, continue to receive notices, agenda papers and the minutes of the board meetings, so that Mr. Ratan Tata could attend at his choice, any meeting which he would feel appropriate but whereas Mr. Ratan Tata clarified that he would no longer be on the board, he would always be available if the directors needed his guidance.
- iv) As to the allegations regarding arbitrary articles of the Company are concerned, shareholders of the company passed an unanimous resolution introducing a right to Tata Trusts to jointly nominate "one-third of the prevailing number of directors on the Board" so long as the Trusts own and hold in aggregate at least 40% of the paid-up ordinary share capital of the company and that all "matters before any meeting of the board which are required to be decided by a

majority of the directors shall require the affirmative vote of all the directors appointed pursuant to article 104B at the meeting”. This article was subsequently amended by the shareholders of the company pursuant to which, the affirmative vote could be exercised by "majority of directors appointed pursuant to Article 104B present at the meeting”. Tata Sons states that it is pertinent to note that Mr. Pallonji Shapoorji Mistry was present at the General Meeting and voted in favour of the adoption of the new version of the Articles of Association which the petitioners now want to struck off in entirety.

v) During the tenure of Mr. Cyrus Mistry, several disturbing facts emerged in relation to his leadership in respect to capital allocation decisions, slow execution on problems that were identified, which are called as "hot spots", strategic plan and business plan lacked specificity and no meaningful steps to enter new growth businesses, reluctant to embrace the articles of association leads to growing trust deficit between the Board of Directors and Mr. Cyrus Mistry.

vi) Mr. Cyrus Mistry in a systematic manner reduced the representation of the company on the Boards of other major Tata Companies. Over a period of time, several directors of the company on the Board of Tata group Companies retired. Exercising the executive power, Mr. Cyrus Mistry did not appoint any directors of the company on the Boards of other Tata Companies, as was practice in the past. This systemic dilution weakened the bind through which Tata values, ethos, governance principles, group strategies were to be implemented across the Tata Group Companies. In most of the cases, Mr. Cyrus Mistry ensured that he was the only director who was common to the company and Tata group companies, effectively making himself the only channel between the company and Tata Group Companies.

vii) Mr. Cyrus Mistry acted unwisely in acquiring Welspun Renewables Energy Ltd. by Tata Power Renewable Energy Ltd., a subsidiary of Tata Power company, to which purchase consideration for the transaction was estimated to be approximately in excess of USD 1 billion, because Tata power was in already 40,000 crores debt apart from non-resolution of tariff issue of its Mundra Project. In addition to this problem, Mr. Cyrus Mistry, without placing it before the Directors of the company, agreed for such an execution.

viii) The Articles of Association against which these Petitioners making hue and cry were unanimously approved either by the father of Mr. Cyrus Mistry or by Mr. Cyrus Mistry himself, though amendments have come to these Articles long before, they did never become a problem to these Petitioners until before Mr. Cyrus Mistry's removal, now all those past acts have all of sudden become oppressive against the Petitioners from the day he was removed as Chairman.

ix) As to historical business decision and investment by the Tata Group, the company says, Tata Steel acquisition of Corus Group is the largest overseas acquisition by Indian corporate, making Tata Steel the world's sixth largest steel producer. The launch of Nano Car by Tata Motors, is a revolutionary aimed at changing the landscape of Indian Passenger car market. Siva group is a Consultant to TTSL as an equity investor. The company re-entered into an aviation business through joint ventures with two of Asia's leading airline carriers in the low cost segment and premium full service business. As to Mr. Mehli is concerned, it has nowhere been mentioned in the Petition that Mr. Cyrus Mistry was the director on the board of Tata Power from the year 2002 approving many of the transactions, Tata Power entered into with Mr. Mehli. The company submits that all the above issues raked up by the petitioners were all hit by delay and laches for many of them or almost all of them were issues in between 1993 and 2008, therefore those issues cannot be issues before this Bench solely because Mr. Cyrus Mistry was removed as Chairman.

x) The company submits that this petition is sponsored by Mr. Cyrus Mistry to pursue personal vendetta against Mr. Ratan Tata and Mr. Soonawala to adopt a "scorched earth policy" so as to



tarnish the reputation of the company on being removed as Chairman of the board of directors of the company

xi) The company submits that the allegations in the petition do not constitute the affairs of the company, which in fact is a petition sought to impugn the affairs of public charitable trusts which is not permissible under law, of course, the allegation of violation of Insider Trading Regulation and FEMA Regulations is not triable by this Bench.

xii) The Company submits that it is weird to hear that Tata Trusts acting detrimental to the interest of the company, if such is the case, Trusts are the first persons to suffer because such action would directly hurt the investments held by the Trusts in the company.

xiii) The company submits that the petitioners have cherry picked certain business decisions predicating Mr. Ratan Tata has taken certain decisions during his tenure which the petitioners consider imprudent and non-judicious which have allegedly caused loss to the company. When they say Corus and Nano are instances of bad business deal, why they have not referred Tetley acquisition and immensely successful Jaguar Land Rover acquisition and phenomenal rise and success of TCS.

xiv) As to the allegation of interference by Mr. Soonawala, it has been said that he has held various positions on financial side in the company including that of Finance Director from 1988-89 to 2000, thereafter for 11 years as Vice Chairman and Finance Advisor of the company, therefore it was unanimously resolved that Mr. Soonawala would be available as an advisor to the company as such Mr. Cyrus himself and other persons from the company approached Mr. Soonawala on various occasions seeking his guidance and advice.

xv) It is denied that the removal of Mr. Cyrus Mistry as chairman of the company is wholly illegal, ultra-vires and constitutes suppression of the petitioners and it is against the interest of the company. It is submitted that the removal process does not suffer from any impropriety and it is in complete conformity with the provisions of the Act

12) On **September 21, 2017**, Tata Sons' shareholders approved conversion of Tata Sons from Public Limited Company to a Private Limited Company.

13) In **November, 2017**: Cyrus Mistry's camp moves petition to the NCLT, Mumbai, against Tata Sons going private.

14) On **July 9, 2018**: NCLT Mumbai dismissed pleas of Mr. Mistry challenging his removal as Tata Sons chairman and also the allegations of rampant misconduct on part of Mr. Ratan Tata and the company's Board. NCLT said it found no merit in his allegations of mismanagement in the Company. The two-judge bench also cleared the deck for Tata Sons going Private.

15) Accordingly, NCLT highlighted the past and products of the 'Tata Sons Limited' and observed that "The petitioners have petitioned to this Tribunal asking to seasoning of Tata Sons functioning, which keeps seasoning our daily food with Tata Salt. Irony is salt also at times needs salt to be seasoned....." and passed stricture observations against the Petitioners and dismissed the petition.

16) The Petitioners approached the NCLAT against the order of the NCLT of dismissal of plea of Mr. Mistry challenging his removal as chairman of the company. The NCLAT admitted petition filed by the petitioners and also admitted Mr. Cyrus Mistry's petition in his personal capacity and decided to hear along with the main petitions filed by the two investment firms.

17) On **August 6, 2018**: Tata Sons got nod from Registrar of Companies for conversion from Public to Private Company.

18) On **May 23, 2019**: NCLAT reserves its order after completing the hearing in the matter.

19) On **December 18, 2019**, the NCLAT gave its judgement in favour of Mistry camp and set aside the order of NCLT. The NCLAT reinstated Mr. Mistry as the Executive Chairperson for Tata Sons for his remaining term, and declared that the appointment of Natarajan Chandrasekaran as executive chairman of Tata Sons was illegal, but suspended its implementation for four weeks in order to provide time for Tatas to appeal. The NCLAT order had also set aside Tata Sons' decision to convert itself into a private company. The NCLAT enquired the Registrar of Companies (RoC) to explain the rationale behind allowing Tata Sons to convert into a private company and also sought details of the process for the permission.

20) In **January 2020**, Tata Sons appealed to the Supreme Court against National Company Law Appellate Tribunal (NCLAT) decision to re-instate Mr. Cyrus Mistry as its Chairman as this decision is a blow to corporate democracy and rights of the Board of Directors.

### **Ground of Appeal**

i) Restoration of Cyrus Mistry “undermines corporate democracy”. He was replaced after a majority in the Board voted against him.

ii) Mr. Mistry never sought re-instatement after his tenure ended.

iii) NCLAT's conclusions are based on an error that Tata Sons continues to be a Public Company.

iv) NCLAT imposed an unsolicited consultative process by asking the Tatas to consult minority shareholders Shapoorji-Pallonji group before appointing the executive chairman.

v) Restraint imposed by NCLAT on Mr. Ratan Tata and the nominee of the ‘Tata Trusts’ “from taking any decision in advance which requires majority decision of the Board of Directors or in the Annual General Meeting”. According to Tata Sons such a direction was “wholly nebulous and seeks to stifle the exercise of rights of the shareholders and board members, resulting in their disenfranchisement which cripples corporate democracy”.

21) The Hon'ble Supreme Court on **10<sup>th</sup> January, 2020** stayed NCLAT order reinstating Mr. Cyrus Mistry as the executive chairman of Tata Sons and restoring his directorships in the holding company, with a preliminary observation that the first impression of the order was “not good” and that the tribunal ‘could not have given consequential relief that had not been sought in the first place’.

22) On **24<sup>th</sup> January, 2020** The Supreme Court put stay on the NCLAT order of dismissing the Registrar of Companies (RoC) plea seeking modification of its verdict in the Tata-Cyrus Mistry matter.

## Lesson 2

### Securities Laws

1)	17.01.2019	<b>Indus Weir Industries Limited (Appellant) vs. SEBI (Respondent)</b>	<b>Securities Appellate Tribunal</b> <b>Appeal No. 85 of 2018</b> Justice Tarun Agarwala, Presiding Officer Dr. C.K.G. Nair, Member
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**Penalty imposed by SEBI on violating SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, further reduced by SAT to meet the end of justice in the matter.**

#### **Brief facts of the case:**

Appellant, a Company registered under the Companies Act mobilized funds through issuance of Redeemable Preference Shares (“RPS”) during 2010-11 to 2013-14. Admittedly, the appellant collected an amount of ` 33,39,86,230/- from 32,454 investors during this period of 4 years. This appeal has been filed challenging the order of the Adjudicating Officer of SEBI dated January 15, 2018 whereby a penalty of ` 1,00,00,000/- (Rupees One Crore only) has been imposed on the appellant under Section 15HB of SEBI Act for violation of Regulations 4(2) and 16 of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

Since the number of investors from whom money was collected by the appellant through issuance of RPS exceeded 49 in each of the 4 years, it is held in the impugned order that the appellant has violated Regulation 4(2) and 16 of the Issue and Listing Regulations, 2013. This act of collecting funds from more than 49 investors is tantamount to a deemed public issue which has been done without following the procedure as stipulated by the regulations for such public issue and listing, and hence the violations.

#### **Decision:**

While upholding the impugned order on merit, SAT reduce the amount of penalty imposed on the appellant from ` 1 crore to ` 50 lakh. Appellant is directed to pay the penalty of Rs. 50 lakh to SEBI within a period of 4 weeks from the date of this order. In the event, the appellant fails to deposit the penalty within the stipulated period of 4 weeks SEBI is at liberty to recover the amount of Rs. 50 lakh along with interest @ 12% p.a. from the date of the impugned order. Appeal is partly allowed and is disposed of on above terms with no order as to costs.

(For more details, please click on [http://sat.gov.in/english/pdf/E2019\\_JO201885.PDF](http://sat.gov.in/english/pdf/E2019_JO201885.PDF))

2)	28.02.2019	<b>Mr. Mahendra Girdharilal (Appellant) vs. NSE, SEBI and T. Stanes And Company Limited (Respondents)</b>	<b>Securities Appellate Tribunal</b> <b>Misc. Application no.91 of 2019</b> <b>Appeal No. 73 of 2019</b> Justice Tarun Agarwala, Presiding Officer
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			Dr. C.K.G. Nair, Member Justice M.T. Joshi, Judicial Member
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**Where the buy-back offer is made with the intention to provide an exit opportunity to the existing shareholders at a fair price, the stock exchange may remove the company from the Dissemination Board of the stock exchange.**

**Brief facts of the case:**

The scrips of T. Stanes And Company Limited were listed in the Madras Stock Exchange. The said Stock Exchange surrendered its recognition due to non-fulfillment of the criteria stipulated by SEBI. As a result, the Company's share was placed in the Dissemination Board of the NSE with effect from December 1, 2014. A circular in this regard was issued by the Company dated December 2, 2014 to its shareholders intimating that they can avail the limited facility of buying and selling their shares on the Dissemination Board of the NSE.

The appellant is a shareholder of T. Stanes And Company Limited. The appellant being aggrieved by the order dated July 2, 2018 passed by the National Stock Exchange of India Limited ('NSE'), allowing T. Stanes And Company Limited, to be removed from the Dissemination Board has filed the present appeal praying for the quashing of the order dated July 2, 2018 passed by the NSE and further praying that a direction should be issued to bring back the T. Stanes And Company Limited on the Dissemination Board of NSE.

**Decision:**

SAT finds that SEBI issued a circular dated July 25, 2017 permitting the Company to buyback the shares so as to provide an exit to the public shareholders. In view of the said circular SAT do not find any illegality being made in the buy-back of the shares by the Company. In the light of the aforesaid, SAT do not see any illegality in the order of NSE dated July 2, 2018 removing T. Stanes And Company Limited Company from the Dissemination Board. The appeal fails and is dismissed.

*(For more details, please click on [http://sat.gov.in/english/pdf/E2019\\_JO201973.PDF](http://sat.gov.in/english/pdf/E2019_JO201973.PDF))*

3)	25.02.2019	Synergy Cosmetics (Exim) Limited (Appellant) vs. BSE Limited (Respondent)	Securities Appellate Tribunal Misc. Application no.414 of 2018 Appeal No. 469 of 2018 Justice Tarun Agarwala, Presiding Officer Dr. C.K.G. Nair, Member
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**The delay in filing the appeal is condoned and the application for condonation of delay is allowed on sufficient cause.**

**Brief Facts of the case:**

The respondent BSE Limited by the impugned order dated 26.06.2018 issued an order compulsorily delisting the securities of the appellant company. The appellant being aggrieved

by the computation of the fair value of the shares at ` 9.07 per equity share has filed the appeal under Section 23L of the Securities Contracts (Regulation) Act, 1956.

There is a delay of 73 days in filing the appeal. It has been urged that the reason for the delay is that the appellant company has its registered office at Ahmedabad, in Gujarat and it took them some time to find a specialized lawyer dealing in securities market. Thereafter, it took some time to collect, compile as well as collate various documents as required by the advocate. It was also urged that the appellant is in financial difficulties and that they had to pool the resources to file the appeal which also took time. It was contended that they are not aggrieved by the order of delisting but are only aggrieved by the determination of the fair value as determined by the independent valuer at ` 9.07 per equity share for which purpose they approached the respondent to provide the details with regard to the determination of the fair value. It was contended that since no information was supplied the present appeal was filed along with an application for condoning the delay.

**Decision:**

SAT of the opinion that sufficient cause has been explained by the appellant which is adequate as well as satisfactory and, therefore, SAT of the opinion, that the delay of 73 days in filing the appeal should be condoned

(For more details, please click on [http://sat.gov.in/english/pdf/E2019\\_JO2018469.PDF](http://sat.gov.in/english/pdf/E2019_JO2018469.PDF))

4)	25.02.2019	<b>Nicer Green Housing Infrastructure Developers Ltd. &amp; Ors. (Appellant) vs. SEBI (Respondent)</b>	<b>Securities Appellate Tribunal</b> <b>Appeal No. 307 of 2018</b> Justice Tarun Agarwala, Presiding Officer Dr. C.K.G. Nair, Member
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**In the absence of any evidence that the appellants had refunded and that they are ready and willing to pay the balance amount to investors in a time bound manner, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations.**

**Brief facts of the case:**

The Nicer Green Housing Infrastructure Developers Ltd., Appellant No. 1 is a company incorporated under the Companies Act, 1956 as a public limited company and is engaged in the business of acquiring agricultural land and developing the same for the purpose of re-sale. SEBI found that the activity of fund mobilization by the appellant no. 1 under its scheme fell within the ambit of “Collective Investment Scheme” as defined under Section 11AA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, ‘SEBI Act’).

SEBI issued an order dated November 9, 2015 under Section 19 read with Sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 issuing a slew of directions restraining the appellant and its directors from collecting any money from the investors or to launch or to carry out any investments schemes.

SEBI further directed to refund the money collected under its scheme to the investors and thereafter wind up the company. The appellants being aggrieved by the said order filed an

Appeal before the Securities Appellate Tribunal wherein the appellants contended that they are ready and willing to comply with the order passed by SEBI contending that out of an amount of Rs. 31.71 crore collected the appellants have already refunded Rs. 27.48 crore and that the appellants are ready and willing to refund the balance amount in a time bound manner.

**Decision:**

SAT finds that no proof has been filed either before SEBI or even before this Tribunal to show that the appellants had refunded a sum of Rs. 27.48 crore and that they are ready and willing to pay the balance amount in a time bound manner. In the absence of any evidence being filed, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations. The appeal lack merit and is dismissed summarily.

*(For more details, please click on [http://sat.gov.in/english/pdf/E2019\\_JO2018307.PDF](http://sat.gov.in/english/pdf/E2019_JO2018307.PDF))*

## Lesson 5

### Competition Law

17.07.2019	CADD Systems and Services Pvt. Ltd. vs CCI	Delhi High Court
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**The absence of a Judicial Member did not preclude CCI from performing its adjudicatory function until such time the Judicial Member was appointed by the Central Government**

#### Regulatory Provisions relating to the case

Section 15 –Vacancy, etc. not to invalidate proceedings of Commission

Competition Commission of India ('CCI') ordered investigation into alleged cartelization in a tender floated by Pune Municipal Corporation ('PMC') for conducting trees census within the PMC jurisdiction area, using GIS and GPS Technology.

CCI, passed two separate orders where vide first order the final hearing in the case was adjourned and vide the subsequent order, after hearing the detailed arguments, the matter was reserved for judgment. The said two orders were challenged before the Hon'ble High court of Delhi on the ground that these orders were passed in absence of a Judicial Member and therefore, were in contravention of the law laid down by the Division Bench of this Court in the judgment dated 10.04.2019 in Mahindra & Mahindra Ltd. & Ors v. CCI &Anr.; W.P.(C) 11467 of 2018 whereby the CCI and Central Government were directed to ensure the presence and participation of a Judicial Member at all times while passing adjudicatory orders by the CCI and that these orders being adjudicatory in nature required the presence of a Judicial Member to be mandatory as per the law.

However, Delhi High Court vide judgment dated 17.07.2019 in CADD Systems and Services Pvt. Ltd. vs CCI held that the absence of a Judicial Member did not preclude CCI from performing its adjudicatory function until such time the Judicial Member was appointed by the Central Government. It was also noted by the court that no act or proceedings of CCI would be invalid by reason of any vacancy or any defect in its constitution by virtue of the provisions of Section 15 of the Act.

15.01.2019	Competition Commission of India Vs. JCB India Ltd. and Ors	Supreme Court
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**Authorization for search includes authorization of seizure as well.**

### **Regulatory Provisions relating to the Case**

#### **Provisions of Competition Act 2002**

Section 41- Director General to investigate contravention

41. (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

(2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of section 36.

(3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 195), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

### **Facts of the Case**

CCI ordered an investigation into an alleged abuse of dominant position by JCB. Pursuant to the same, dawn raid was carried out by the DG in the JCB premises and all incriminating documents, hard drives and laptops found by the inspecting team during the course of the “dawn raid” were seized.

A writ petition before the Delhi High Court was filed for setting aside of the search and seizure conducted by the DG. The Single Judge Bench of Delhi High Court, vide order dated 02nd June 2016 stayed the investigation restraining DG from acting on the seized material for any purpose whatsoever till the next date of hearing.

CCI filed an SLP in the Supreme Court against the order of the Delhi High Court. The Supreme Court in its judgment dated 15th January 2019 in CCI vs JCB observed that the **provisions of Section 240A of the Companies Act, 1956 do not merely relate to an authorization for a search but extend to the authorization of a seizure as well. Unless the seizure were to be authorized, a mere search by itself will not be sufficient for the purposes of investigation. By virtue of Section 240A read with Section 41(3) of the Competition Act, DG was authorised to conduct search and seizures.**

The Apex court vacated the stay stating that the blanket restraint which had been imposed by the Delhi High Court on the DG from acting on the seized material for any purpose whatsoever was not warranted. The appeal was allowed and the transferred matters were remitted back to the Delhi High Court to be decided in the writ petitions pending before Delhi High Court.



15.01.2019	<p style="text-align: center;"><b>Rajasthan Cylinders &amp; Containers Ltd. and Ors.</b> Vs. <b>Respondent: Competition Commission of India and Ors.</b></p>	<p style="text-align: center;"><b>Delhi High Court</b></p>
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**Failure to comply with the orders or directions would lead to criminal prosecution**

**Regulatory Provisions relating to the Case**

**Provisions of Competition Act 2002**

Sections 27- Orders by Commission after inquiry into agreements or abuse of dominant position

Section 28- Division of enterprise enjoying dominant position

Section 31- Orders of Commission on certain combinations

Section 32- Acts taking place outside India but having an effect on competition in India

Section 33- Power to issue interim orders]

Section 42 – Contravention of orders of Commission

Section 42A- Compensation in case of contravention of orders of Commission

Section 43- Penalty for failure to comply with directions of Commission and Director General

Section 43A- Power to impose penalty for non-furnishing of information on combinations

CCI issued notices to Rajasthan Cylinders & Containers Ltd. and Shri Jose C. Mundadan in three separate cases, however, both of them failed to comply with the said notices. Pursuant to the same, penalties were imposed upon them.

Failure to deposit the penalties as imposed by the CCI under Section 43 of the Act upon Rajasthan Cylinders & Containers Ltd. and Shri Jose C. Mundadan led to initiation of criminal prosecution against them under Section 42 (3) before the CMM. Same were challenged before the Delhi High Court on the grounds that Section 42(3) cannot be invoked for non-payment of penalty imposed under Section 43 of the Act and that criminal action under Section 42(3) in cases wherein penalty has been imposed under section 43 of the Act, would lead to double jeopardy.

The Delhi High Court in its judgment dated 29th March 2019 in M/s Rajasthan Cylinders and Containers Ltd. vs CCI while dismissing the three applications vide a common judgment observed that the use of comma (,) in Section 42(3), indicates that a cause of action for criminal complaint to be filed in the court of CMM arises in two possible situations, viz.,

- (i) there has been a failure on the part of a person to “comply with the orders or directions” issued to him under the law or
- (ii) on account of failure to pay fine imposed for non-compliance with orders or directions of the CCI under specified provisions (i.e., Sections 27, 28, 31, 32, 33, 42A and 43A).