Coverage of Case Studies as per Syllabus

- Case Studies related to Companies ,Partnerships and LLP 6 marks

Coverage of Companies Act

Chapter III Prospectus and allotment of securities-Sections 23 to 42

- Chapter IV share capital and debentures-Sections 43 to 72-Three Case Studies
- Chapter V Acceptance of deposits by companies-Sections 73 to 76A-Two Case Studies
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- Chapter VII Management and administration –Sections 88 to 122-Two Case Studies
- Chapter IX Accounts of companies-Sections 128 to 138-Two Case Studies
- Chapter XV Compromises, arrangements and amalgamations-Sections 230 to 240-Five Case Studies
- Chapter XVII Registered valuer-Section 247
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CASE STUDY - 1

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

Fact of the case

The name of the Company (Viking Ship Mangers Pvt. Ltd.) was struck off by ROC Mumbai from the Register of Companies. The Principal Commissioner of Income Tax-15, Mumbai (Respondent No. 2 herein) challenged the order of ROC before the NCLT, Mumbai bench (Tribunal) under Section 252 of the Companies Act, 2013. It is stated before the Tribunal that the Company has certain Financial transactions that have been entered into by the Company for the Assessment year 2011-12 and information regarding this were received from the office of ITO Income Tax Officer 15 (3) (2) Mumbai. However, no return of income has been filed. Therefore, notice under Section 148 of the IT Act, 1961 has been issued for Assessment year 2011-12 proposing to assess/ reassess the income. The Company has been struck off from the Register of Companies. Therefore, it is difficult to assess the defunct Company and it will cause huge loss of revenue to the Government of India. Hence, it was prayed that the name of the Company be restore in the Register of Companies.

The Authorized representative for the Registrar of Companies submitted before the Tribunal that they do not have any objection to restore the name of the Company in the Register of Companies. The NCLT, Mumbai Bench by the impugned order allowed the Appeal and directed to restore the name of the Company in the Register of Companies. However, before passing of impugned order no notice has been served on the Company, but the Company was arrayed as the Respondent.

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

Issue

The main contention of Appellant was: Whether the order given by the Tribunal of restoring the name of the company in Register of Companies is sustainable in Law, as it has been passed without giving any reasonable opportunity of making representations or of being heard to the Appellant?

Judgement

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

CASE STUDY - 2

Person as a Nominee Director of the Company can't be summoned for offences in respect of Sections 128, 129, 448 read with Section 447 of the Companies Act, 2013, without any specific allegations against him in Investigation report of being complicit or having acted in bad faith, when he is not involved in the day to day affairs of the company as well as not assigned with any of executive work of the company

Fact of the case

The petitioner has filed the present petition impugning a summoning order dated August 16, 2019 issued by the learned ASJ in Complaint Case No. 770/2019 captioned "Serious Fraud Investigation Office (SFIO) vs. Bhushan Steel Limited and Ors.", to the limited extent that it directs issuance of summons to the petitioner. The learned Court had found that there was sufficient material placed on record against the petitioner for him to face prosecution in respect of offences under Sections 128, 129, 448 read with Section 447 of the Companies Act, 2013. The petitioner was Punjab National Bank Limited's nominee on the Board of Directors of Bhushan Steel Limited ('BSL') at the material time

Issue

The principal issue that arises for consideration is:

- Whether the petitioner can be prosecuted for the alleged fraud committed by BSL and/or promoters solely for the reason that the petitioner was a director of BSL and,
- Whether there is any material on record to indicate that the petitioner was complicit in the commission of the alleged offence.

The Petitioner submitted that there is no specific allegation in the SFIO report that the petitioner was even remotely connected or aware of the same and, therefore, his name does not feature as being involved in the fraudulent routing of funds. Further, it was submitted that merely mentioning the petitioner's name as being one of the persons who is allegedly liable to be prosecuted under Sections 128, 129 and 448 of the Companies Act, 2013, without ascribing any specific role or pointing out any culpable conduct would not constitute sufficient material to persuade any Court to issue summons. Hence, there was no allegation in the complaint that the petitioner has connived with the Promoters or any other person to falsify the accounts and, therefore, the impugned order is wholly erroneous.

The Respondent submitted that the petitioner was a Nominee Director appointed by PNB on the Board of BSL and was expected to be independent, vigilant and cautious against any fraudulent acts committed by BSL. He was also required to raise red flags and inform PNB of any fraudulent activity.

CASE STUDY – 3-REDUCTION OF SHARE CAPITAL

The Appellant / Company had filed a petition under Section 66(1)(b) of the Companies Act praying for passing of an order for confirming the reduction of share capital.

The pre-mordial plea of the Appellant is that the 'National Company Law Tribunal' had failed to appreciate the creeping in of an 'inadvertent typographical error' figuring in the extract of the 'Minutes of the Meeting' characterising the 'special resolution' as 'unanimous ordinary resolution'. Moreover, the Appellant/Petitioner had fulfilled all the statutory requirements prescribed u/s 114 of the Companies Act, 2013 and as such the impugned order of the Tribunal is liable to set aside.

The Appellant has also submitted that only due to a 'typographical error' in the extract of 'Minutes', a resolution passed unanimously by the shareholders will not ceased to be a 'special resolution'.

Issue:

Whether as inadvertent 'typographical error' in the extract of 'Minutes', characterising the 'special resolution' as 'unanimous ordinary resolution' will render a resolution passed as 'special resolution' as invalid?

Judgement

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

As the Appellant has admitted its typographical error in the extract of the Minutes of the Meeting characterising the ‘special resolution’ as ‘unanimous ordinary resolution’ and also taking into consideration of the fact that the Appellant had filed the special resolution with ROC, which satisfies the requirement of Section 66 of the Companies Act, 2013.

NCLAT allowed the Appeal, thereby confirming the reduction of share capital of the Appellant Company.

CASE STUDY - 4

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

Fact of the case

The Appellant K.V. Brahmaji Rao has preferred this Appeal under Section 421 of the Companies Act, 2013 against the order dated 31.01.2019 passed by National Company Law Tribunal, Mumbai Bench, at Mumbai in M.A. No. 406 of 2019 and M.A. No. 407 of 2019 in CP No. 277 of 2018. Whereby impleaded the Appellant in CP No. 277 of 2018 as Respondent No. 83 and passed the order of attachment of Appellant's Assets.

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

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

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

Issue:

Whether any person who is head of some other organizations can be roped and his/her Assets can be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013?

Judgement:

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

CASE STUDY - 5

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

Fact of the case

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

On 27.01.2016 the Registrar of Companies, West Bengal sent show cause notice and asking him as to why prosecution under Section 165(1) read with Section 165(3) of the Companies Act, 2013 should not be initiated against him on the ground that he was the Director of more than 20 Companies at once. The Respondent admitted the guilty and sent representation to the Registrar with a request to compound the offence under Section 441(1) of the Companies Act, 2013. ROC forwarded the representation along with his report to the Tribunal.

After hearing the parties the NCLT Kolkata Bench (Tribunal) allowed the compounding application under Section 441(1) of the Companies Act, 2013 subject to payment of compounding fees of Rs. 50,000/-. Being aggrieved with this order ROC has filed this Appeal. The contention of the Appellant is as per the provisions of Section 165 (6) of the Companies Act, 2013 Respondent is liable for minimum fine prescribed for the violation, whereas Tribunal has imposed compounding fees Rs. 50,000/- which is less than the minimum fine prescribed under Section 165 (6) of the Companies Act, 2013.

Issue:

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

Judgement:

The NCLAT has observed that the Respondent has violated the provisions under Section 165(1) read with Section 165(3) of the Companies Act, 2013 for a period 01.04.2015 to 28.12.2015 which is punishable under Section 165(6) of the Act, The NCLT, Kolkata bench has imposed compounding fees of Rs. 50,000/- which is less than minimum fees prescribed under Section 165(6) of the Companies Act, 2013.

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

The Respondent has contravened the provisions of 165(1) of the Companies Act, 2013 which is punishable under Sub-Section 6 of Section 165 of the Companies Act, 2013. Taking into consideration, the facts and circumstances of the case, NCLAT imposed minimum fine at the rate of 5000 rupees for every day for the period 01.04.2015 to 21.02.2016 i.e. 272 days. The NCLAT quantified the penalty amount to Rs. 13,60,000/-. The Respondent has already paid Rs. 50,000/- after adjustment, now he is liable to pay Rs. 13,10,000/-. Therefore, the Respondent is directed to pay such amount within a period of 60 days in National Company Law Tribunal, Kolkata.

CASE STUDY - 6

Section 248 of the Companies Act, 2013 in no manner will affect the powers of the Tribunal to wind up a company the name of which has been struck off from the register of companies. The question for consideration is that during the pendency of winding up petition the name of the company has been struck off under Section 248 of the Companies Act 2013. In such circumstances whether the NCLT can proceed with winding up petition or not?

This appeal was filed by Late Smt. Mona Aggarwal (since deceased) through her legal heirs Mr. Vijay Kumar Aggarwal and other shareholders of the Respondent No. 1 company against the order dated 7.8.2019 passed by NCLT, New Delhi in Company Petition No. 1176/2016 thereby dismissing the petition with liberty to file fresh one as and when the company's name is revived.

Fact of the case

Brief facts of this appeal are that on 22.11.2016, Appellants as shareholder of Respondent No.1 filed a petition before Hon'ble High Court of Delhi seeking winding up under the provisions of Section 433(c), (f) and (g) of the Companies Act, 1956

On 12.4.2017 the Hon'ble High Court as per notification Regd. No.D.L.-33004/99 dated 7.12.2016 issued by Ministry of Corporate Affairs transferred the said petition to NCLT Principal Bench, New Delhi. NCLT vide order dated 28.7.2017 directed the petition to be amended to refer to the relevant sections of the Companies Act, 2013. In compliance of the directions the petition was amended i.e. the petition treated as filed under Section 271 of the Companies Act, 2013. On 19.9.2017, NCLT issued notice on the petition for winding up of the Respondent No. 1 to the Respondents herein. During the pendency of the petition, ROC vide order dated 30.6.2017 exercising powers under subsection (5) of Section 248 of the Companies Act 2013 struck off the name of the Company from register of companies with effect from 7.6.2017. The Respondent No.2 filed an appeal before NCLT Delhi under Section 252 of the Companies Act, 2013 for revival of the Company which is pending for adjudication before the NCLT.

However, on 7.8.2019 NCLT rejected the petition for winding up with liberty to the petitioner (Appellants) to file a fresh one as and when the Respondent company is revived. Being aggrieved with this order the Appellants have filed this appeal. Appellant submitted that during the pendency of the petition before NCLT, the name of the company was struck off by the ROC under Section 248 of the Companies Act, 2013 for which an appeal under Section 252 of the Companies Act, 2013 for revival of the company is pending. However, the NCLT has rejected the company petition on the ground that the company's name has been struck off by the ROC and after revival the appellants herein are at liberty to file the petition.

CASE STUDY - 7

Remedies available for Preference shareholders in relation to redemption of preference shares

Fact of the case

The present Appeal has been filed by the Appellant w.r.t the NCLT, Chennai Bench (Tribunal) order who has dismissed the application of Appellant solely on the ground that the Appellant being preferential shareholders has no locus standi to file application for redemption of shares under Section 55(3) of the Companies Act, 2013 or even under Section 245 of the Companies Act, 2013.

The Appellant has submitted that the Respondent Company is a listed Company with Madras Stock Exchange Limited, Bombay Stock Exchange Limited and National Stock Exchange of India Limited. The Appellant has subscribed on various dates i.e.09.07.2005, 29.05.2007 and out of total subscription of Rs. 30,00,00,000/- worth of cumulative Redeemable Non-Convertible Preference Shares at varying coupon rate of 8% and 9% per annum; has also consented on 31.10.2011 for extended/rolled over of redemption of preference share for a period of 3 years from the date of original redemption date.

The Appellant has also submitted that the Respondent Company has not yet redeemed any preference shares inspite of they are paying equity dividend to the extent of 180% for the equity shareholders in the financial Year 2014-15. The Respondent has defaulted on the redemption as well as payment of dividend for the Financial Year 2015-16 onwards and the said defaults continues till date. The Appellant has also submitted that they have been made the remediless by the Tribunal for not considering the issue of redemption of preference shares either under Section 55 or Section 245 of the Companies Act, 2013.

The Respondent has submitted that the Appellant is only representing in these proceedings and none others representatives from the class of shareholders i.e. Preference shareholders class are representing. They are not eligible to file application under Section 245 of the Companies Act, 2013 because Section 245 clearly reflects that an application must be filed by minimum requisite members of the Company. They cannot unilaterally decide that they are empowered to represent a class of shareholders.

Further, the Respondent has submitted that they have every intention of redeeming its preference shares upon improvement in the financial situation as their business has gone drastically in rough weather. In view of uncertainty in crude oil prices and their cash flow position, they were under severe strain due to the nonrealization of receivables from the Middle East rendering them unable to redeem their preference share (Dividend in 2014-15 was paid to both Equity and Preference shareholders as per the terms and conditions of the issues).

Issue

Whether there is any remedy under law available to preference shareholders for filing application for redemption of preference shares?

Judgement

The NCLAT examined the intention of legislature for enacting Section 55 as well Section 245 of the Companies Act, 2013. Section 55(3) of the Companies Act, 2013 clearly states that the Company, when not in a position of redeem its preference shares, 'may' with the consent of 3/4th in value of such preference shares and the approval of the Tribunal (on a petition filed in this behalf), issue further redeemable preference shares equal to the amount due (including dividend, if any) in respect of such unredeemed shares. However, there is a proviso, in ordering such further issue, the Tribunal shall forthwith order redemption of preference shares held by such persons who do not consent to such further issue.

The Section stipulates that the Company only with the requisite consent of preference shareholders and filing a petition in this behalf before the Tribunal and its consequent approval - can issue further redeemable preference shares with regard to the unredeemed preference shares. The Section though requires prior consent of the shareholders, does not provide for any action that can be taken by the concerned preference shareholders prior to filing of such petition by the Company. Thus, remedies available to such preference shareholders are only by way of either consenting or dissenting with such further issue

However, intention of the legislature while promulgating Section 55 of the Companies Act, 2013 was to compulsorily provide for redemption of preference shares by doing away with the issue of irredeemable preference shares. Therefore, even though there is no specific provision stipulated under the Companies Act, 2013 through which relief can be sought by preference shareholders in case of non-redemption by the company or consequent non-filing of petition under Section 55 of the said Act, the intention of the legislature being clear and absolute, Tribunal's inherent power can be invoked to get an appropriate relief by an aggrieved preference shareholder(s).

Alternatively, preference shareholders coming within the definition of 'member(s)' under Section 2(55) read with Section 88 of the Companies Act, 2013, may file a petition under Section 245 of the said Act, as a class action suit, being aggrieved by the conduct of affairs of the company. Thereby, it was held that preference shareholders are not remediless and for redemption of preference shares, they can file an application under Section 55(3) of the Companies Act, 2013 or alternatively they may also file application under Section 245 of the Companies Act, 2013 as a class action suit and the NCLT while exercising the inherent power viz. Rule 11 of NCLT Rules, 2016 can pass appropriate order.

Hence, the findings of the NCLT that the Appellant being preference shareholders has no locus standi to file application for redemption of preference shares does not hold good. Thus, NCLT, Chennai Bench impugned order was set aside. The matter is remitted back to NCLT, Chennai Bench to decide the application as per law.

CASE STUDY - 8

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.

Fact 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.

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.

CASE STUDY - 9

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 waival 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 waival 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 waival 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.

CASE STUDY - 10

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, Rerecording, 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.

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

CASE STUDY - 11

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?

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.

Case Study:Acceptance of Deposits

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

CASE STUDY - 12

Companies Act, 2013 - Section 130 – Application by central government for reopening and recasting of accounts – Objection by ex-director of the company – NCLT allowed the application by Central Government - on appeal NCLAT concurred with NCLT.

Fact of the case

The facts leading to the present appeal in nutshell are as under: The Respondent No. 2 – IL&FS is a company incorporated under the provisions of the Companies Act, 1956. That the said company IL&FS has 348 group companies, including IFIN and ITNL. That the said IL&FS is a core investment company and systemically important Non-Banking Finance Company duly approved under the Reserve Bank of India Act, 1931.

Over the years, it had inducted institutional shareholders. That on 01.10.2018, the Central Government through the Ministry of Corporate Affairs filed a petition before the learned Appellate Tribunal under Sections 241 and 242 of the Companies Act alleging inter alia, mismanagement by the Board of IL&FS and that the affairs of IL&FS were being conducted in a manner prejudicial to public interest. It was found that the management of IL&FS and other group company/companies were responsible for negligence and incompetence, and had falsely presented a rosy financial statement.

To unearth the irregularities committed by IL&FS and its companies, the provisions of Section 212(1)(c) of the Companies Act were invoked for investigation into the affairs of the company. The investigation was to be carried out by the Serious Fraud Investigation Office (hereinafter referred to as 'the SFIO') in exercise of powers under Section 212 of the Companies Act. The SFIO submitted an interim report dated 30.11.2018 to the Central Government placing on record that the affairs in respect of IL&FS group Companies were mismanaged, and that the manner in which the affairs of the company were being conducted was against the public interest.

The Registrar of Companies also conducted an enquiry under Section 206 of the Companies Act, and prima facie concluded that mismanagement and compromise in corporate governance norms and risk management has been perpetuated on IL&FS and its group companies by indiscriminately raising long term and short terms loans/borrowings through Public Sector Banks and financial institutions.

This appeal was filed by Infrastructure Leasing & Financial Services Limited (referred to as 'IL & FS') before the Supreme Court of India against the order dated 31.01.2019 passed by the NCLAT, vide. the said order the Appellate Tribunal has dismissed the appeal preferred by the Appellant and has confirmed the order passed by the NCLT

Mumbai Bench dated 01.01.2019 by which the NCLT allowed the application preferred by the Central Government under Section 130(1) & (2) of the Companies Act, 2013 and has permitted recasting and reopening of the accounts of IL&FS, IL&FS Financial Services Limited ("IFIN") and IL&FS Transportation Networks Limited ("ITNL") for the last five years.

Issue

The question which is posed for consideration before the Hon'ble Supreme Court is, whether in the facts and circumstances of the case, can it be said that the order passed by the learned Tribunal is illegal and/or contrary to Section 130 of the Companies Act?

Judgement

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

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

Based on the facts and circumstances of the case, narrated hereinabove, and also in the larger public interest and when thousands of crores of public money is involved, the Tribunal is justified in allowing the application under Section 130 of the Companies Act, 2013 which was submitted by the Central Government as provided under Section 130 of the Companies Act, 2013.

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

CASE STUDY - 13

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

1st 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 1st 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 1st 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 deem 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 1st Respondent was not legally entitled to any compensation for the loss of office as Managing Director in the absence of any breach by the 1st Appellant and in the absence of any fixed period of appointment as Managing Director. The Appellants further stated that the removal of the 1st 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.

CASE STUDY - 14

The documents placed by the Appellant company failed to prove that it was carrying on business or was in operation when its name was struck off.

Fact of the case

The name of the appellant company was struck off by the Registrar of Companies, as the company had not been carrying on business or nor in operations for two immediately preceding years and the company had not obtained the status of dormant company under Section 455 of the Companies Act, 2013.

The Appellant filed the appeal before NCLT claiming that it had not been served with Notice under Section 248(1) of the Companies Act, 2013 and the Registrar of Companies (ROC) had proceeded to issue notice under Section 248(5) of the Companies Act, 2013 and the name of the appellant company was then struck off. The Appellant claimed that the company had been doing business and was in operation and audited financial statements for the year financial year 2012-13 to FY 2016-17 were filed.

The NCLT considered the case put up before it as well as the documents and came to the conclusion that the appellant company failed to prove that it was carrying on business or was in operation when its name was struck off and dismissed the appeal which was filed before it. Against the dismissal the present appeal has been filed and the same claim is put up by the Appellant referring to the documents which were filed before NCLT. The ROC filed reply before the NCLAT and affidavit of ROC claims that the Appellant company had not filed financial statements from the financial year ending 31.3.2004 till 31.3.2011. The balance sheet and annual return was filed for the year ending 31.3.2012 and thereafter again there was no filing and according to ROC, STK-1 notice was duly issued to company on 21.3. 2017 and the copy of the same has been filed. According to the ROC the Appellant did not respond to the notice and further steps to strike off the company were taken. Hence, later on public notice as per Section 248(5) was issued.

Issue

- Whether the ROC had served Notice under Section 248(5) of the Companies Act, 2013 before proceeding towards striking off the name of the Appellant Company?
- Whether Appellant company was in business or operation when it was struck off?

Judgement

The NCLAT held that there is no doubt, that the affidavit filed by the ROC attaching copy of the Notice dated 21.3.2017 as per STK 1 and the affidavit which claims that such notice was issued to the Appellant company as per the official records of the ROC. Apart from this the appeal filed before NCLT itself admitted that notice under Section 248 was published in the official gazette, copy of notice STK 5 also gave opportunity to the appellant to move the ROC if it was aggrieved by the proposed removal of the company name. After such notice the Appellant made no effort to move the ROC and put up its case that the Appellant was in business or in operation when the name was struck off. Thus, the contention that opportunity to the Appellant was not given is not accepted.

Regarding the merits of the claim that the Appellant was in business or in operation the documents filed before NCLAT include two income tax returns for the assessment years 2016-17 and 2017-18. The return for 2016-17 claims that the gross total income of the year was Rs.504 and the income tax return for 2017-18 claims that the gross total income was Rs.1473/-. If the invoices are seen, the seller is shown as Kanodia Hosiery Mills and buyer is Kanodia Knit (P) Ltd. If the address of the seller is perused in these invoices it is 35, North Basti Harphool Singh, Sadar Thana Road, Delhi. This is the same address of the Appellant, Kanodia Knits Pvt Ltd, also.

How much weight such documents should be given is a foregone consequence. Thus, claim of Appellant regarding such documents does not prove that the company was in business or in operation.

Having heard the Appellant, and seeing the documents findings and observations of the NCLT, NCLAT found no reason to differ from NCLT. Hence, there is no substance in this appeal. The appeal is rejected.

Case Study -15 Issue

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.

CASE STUDY - 16

NCLAT dismissed the objection raised by the Appellants on alleged non- receipt of notice regarding scheme of Amalgamation.

Fact of the case

These appeals arise out of the order of merger passed by NCLT Chennai and NCLT Mumbai. The appellants challenge the amalgamation of the companies on the ground that they were not put to notice of the amalgamation.

To put the case of the Appellants in a nutshell, their grievance is that they were holding 100% equity shares in the transferor Company No.1 - ASAP Info Systems Private Limited and there was Share Purchase Agreement ('SPA', in short) dated 04.07.2016 between them and the transferee Company whereby the 100% shareholding was to be transferred by them to the transferee Company. Their grievance is that the payments were to be made by the Transferee Company in tranches and after initial payment, there has been default.

Although it is argued that the Share Purchase Agreement being subsequent, the Auditors may not have known about the same and so did not refer, we find from the certified copy of record of proceedings before NCLT, Chennai filed with Diary No.4167 that the Official Liquidator in his Report noted that the **CA did record that there was change in management in the month of August, 2016** in respect of transferor Company No.1. The Report of Official Liquidator shows that both the transferor Companies were wholly owned subsidiaries of transferee Company.

What appears is that after the Appellants executed the SPA, they handed over their shares and admitted that they had resigned as Directors on 01.01.2017. In fact, the Appellants even approved the balance sheet of the transferor Company No.1, as on 31st March, 2016 by signing the same on 31.08.2016.

The NCLAT after going through such documents observed that it clear that the **Appellants were clearly aware of the proceedings relating to the scheme of amalgamation and had no difficulties initially but it appears that, as their transaction based on SPA landed in difficulties and so, now they want to raise grievances to the scheme of amalgamation on the plea that Notice to them also was necessary.** Going through the material on record, NCLAT did not find that there is any substance in the grievance raised by the Appellants. Dispute relating to SPA is before Arbitration and Transferee Company is facing it. If Appellants had difficulty, they never went before NCLT to raise Objections although they knew about the amalgamation process going on. This being so, both the Appeals are rejected.

The suit was filed on the basis of the following allegations.

a) That the Defendant Nos.5 to 9 were allotted shares of the Company in an illegal and clandestine manner on 5th October, 2013.

b) That the said allotment was made known by virtue of returns filed on 7th December, 2013

c) That the allotment of shares was done in an illegal and unlawful manner by transferring the moneys belonging to the Company and showing artificial deposit of Rs.1.6 crores. In fact, the same amount of Rs.48 Lakhs belonging to the Company was rotated repeatedly to show that the Defendant Nos.5 to 9 had paid the Company between 6th and 9th September, 2013, whereas in fact they had not made the said payments.

d) That in a fraudulent manner the shareholding of the Plaintiff in the Company, which was to the tune of 99.96%, was diluted to 21.44%.

e) That the share warrants, which were purportedly issued on 30th March, 2013, were illegal as the share capital did not permit issuance of share warrants. Moreover, share warrants could only be issued by a public limited company and not by a private limited company.

f) That by circulating the same amount on four different occasions and showing that the Defendant Nos.5 to 9 had subscribed to the share capital, allotment of share was made in their names, which is completely illegal.

The Defendants have filed their written statement and raised a preliminary issue as to the maintainability of the present suit. It is stated that the Company was in severe financial crisis due to a loan taken by the Company from India Bulls Housing Finance Ltd. In fact, it is stated that the only property of the Company has already been attached under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter, 'SARFAESI Act') and the same has, in fact, been sold. The purported sole asset of the Defendant No.1 Company is no longer an asset of the Plaintiff Company.

Case Study 17

Issues:

Whether civil court has jurisdiction over disputes regarding Allotment of shares under the Companies Act, 2013?

Judgement:

Before going into the question as to whether this Court has the jurisdiction to entertain and try the present suit and grant reliefs prayed for, it is necessary to analyse the scheme of the Companies Act, 2013, along with the constitution of the NCLT. The NCLT has been vested with powers that are far reaching in respect of management and administration of companies. The said powers of the NCLT include powers as broad as “regulation of conduct of affairs of the company” under Section 242(2) (a), as also various other specific powers.

NCLT is a tribunal which has been constituted to have exclusive jurisdiction in the conduct of affairs of a company and its powers can be contrasted with that of the CLB under the un amended Companies Act, 1956.

In the Companies Act, 2013, Sections 407 onwards deal with the constitution of the Tribunal. Section 420 has vested the Tribunal with powers to 'pass such orders thereon as it thinks fit'. The Tribunal is also vested with the power of review. Under Section 424 of the Companies Act, 2013, the Tribunal also has the same powers and functions as are vested with a Civil Court. In addition to the above, the Tribunal also has the power to punish for contempt which was hitherto not available with the CLB. In various ways, the NCLT is not merely exercising the jurisdiction of a Company Court under the new Companies Act, 2013, but is also vested with inherent powers and powers to punish for contempt. It is in this background that the court has to decide the issue of jurisdiction, which has been raised by the Defendant.

Under Section 62 of the Companies Act, 2013, a procedure has been prescribed for issuance of share capital. The said procedure involves sending of a letter of offer to existing shareholders [Section 62(1) (a)] and to employees [Section 62(1) (b)]. The manner of sending of the said offer is also prescribed. The said offer also has to contain the details as to the terms under which the offer is being made, including the terms for conversion of debentures or loans to shares. Upon this procedure being followed, the subscribed share capital can be increased by the company.

The effect of the increase in the share capital and allotment of the same to any person has an automatic effect, i.e., it results in the alteration of the register of members under Section 59 of the 2013 Act. Thus, while the power to issue share capital vests in the company, the said power, without the section implementing the said issuance, is of no effect, and has no consequence. Any dispute in respect of rectification of the register of members under Section 59 of the Companies Act, 2013, can be raised by any person aggrieved to the Tribunal i.e., the NCLT.

The bar contained in Section 430 of the Companies Act, 2013 is in respect of entertaining “any suit”, or “any proceedings” which the NCLT is “empowered to determine”. The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos.5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the Companies Act, 2013.

The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos.5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No.1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.

CASE STUDY - 18

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.

Issue:

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.

Issue:

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-19

Narmada Limited (The Company) is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, Gwalior, Madhya Pradesh. The company is having its registered office at Plot No.1, First Floor, West Chamber, Gwalior, Madhya Pradesh. Authorized share capital of the Company is Rs. 5,00,000/-. The Issued, subscribed and paid up share capital of the Company is Rs. 5,00,000/-. The main objects of the company are construction of building and housing and also educational.

A notice of struck off has been received from Registrar of Companies, Gwalior, Madhya Pradesh by the Narmada Limited. Registrar of Companies, Gwalior, Madhya Pradesh issued a notice on company for non- compliance of provisions of the Companies Act, 2013 in respect of filing of Annual Returns and Financial Statements for years 2014-15 to 2017-18 and subsequently the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Aggrieved by the order of Registrar of Companies, Gwalior, Madhya Pradesh, Narmada Limited filed an appeal before National Company Law Tribunal(NCLT), Gwalior under Section 252 of the Companies Act, 2013 and submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.

You are a Practicing Company Secretary and the Company has hired you as a Consultant to advise Narmada Limited on the following, considering the above facts:

(a) What would be the procedure regarding filing of appeal before National Company Law Tribunal (NCLT)?

b) State the grounds on which Registrar of Companies can remove the name of a company from Register of Companies.

c) Enumerate the categories of Companies which shall not be removed from the Register of Companies under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

Suggested solution- Case Study-19

a) Procedure regarding appeal before National Company Law Tribunal

- According to Rule 87A of the National Company Law Tribunal Rules, 2016, an appeal under Section 252(1) or an application under Section 252(3) may be filed before the National Company Law Tribunal (NCLT) in Form No. NCLT. 9, with such modifications as may be necessary.

- Following Documents shall be attached with Form No. NCLT.9: Copy of Memorandum and Articles of Association Copy of list of struck off companies issued by ROC. Evidence regarding payment of fee .Affidavit Verifying the Petition Memorandum of Appearance Copy of Board Resolution & Vakalatnam Sufficient evidence to prove that it has been in operation during striking off and therefore could not be termed as defunct company

- A copy of the appeal or application, shall be served on the Registrar of Companies and on such other persons as the National Company Law Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

- A copy of the appeal or application, shall be served on the Registrar of Companies and on such other persons as the National Company Law Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

- Where the National Company Law Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-

  The appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

  On such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;

  The appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

  The company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

b) Grounds on which Registrar of Companies can remove the name of a company from Register of Companies:

As per Section 248 of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—

- Company has failed to commence its business within one year of its incorporation

- Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013

viii. Companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;

ix. Companies having charges which are pending for satisfaction; and

x. Companies registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013.

Case Study-20

Under the scheme of amalgamation, M/S Pro-Prof Limited Liability Partnership (LLP) is proposing to amalgamate with M/S Queens Private Limited. The scheme of amalgamation filed before the National Company Law Tribunal (NCLT) for approval.

In view of the above fact, answer the following:

(a) Whether a Limited Liability Partnership can be allowed by the NCLT to amalgamate with a Private Limited Company under Scheme of Amalgamation? Justify your answer.

(b) Discuss the powers of NCLT to enforce compromise or arrangement of limited liability partnerships as mentioned under Limited Liability Partnership Act, 2008.

Suggested solution

(a) Yes, a Limited Liability Partnership may be allowed by the NCLT to amalgamate with a Private Limited Company under Scheme of Amalgamation.

Chapter XII (Section 60 to 62) of the Limited Liability Partnership Act, 2008 deals with compromise, or arrangement of limited liability partnerships. Further, Section 230 to 234 of the Companies Act, 2013 deals with provisions of compromise, or arrangement of companies.

In the matter of Amalgamation between M/s Real Image LLP (the transferor LLP) with M/s Qube Cinema Technologies Pvt Ltd. (Transferee Company) and Their Respective Partner Shareholders and Creditors (CP/123/CAA/2018/TCA/157/CAA/2017) the National Company Law Tribunal (Single Bench, Chennai) vide its Order delivered on 11th June, 2018 in Para 15 inter-alia observed that:

..... "the legislative intent behind enacting both the LLP Act, 2008 and the Companies Act, 2013 is to facilitate the ease of doing business and create a desirable business atmosphere for companies and LLPs. For this purpose, both the Acts have provided provisions for merger or amalgamation of two or more LLPs and companies.”..... ..... “If the intention of Parliament is to permit a foreign LLP to merge with an Indian company, then it would be wrong to presume that the Act prohibits a merger of an Indian LLP with an Indian company. Thus, there does not appear any express legal bar to allow/ sanction merger of an Indian LLP with an Indian company."....

(b) Section 61 of the Limited Liability Partnership Act, 2008 empowers the National Company Law Tribunal (Tribunal) to enforce compromise or arrangement. Where the Tribunal makes an order under Section 60 of the Limited Liability Partnership Act, 2008 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it—

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and
(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

If the Tribunal is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of the Limited Liability Partnership Act, 2008.

Case Study-21

Disqualification of Director

As on 30th November, 2018, the filing status of the financial statement or annual return of ABC Limited for the last 4 financial year is as under:

Financial Year ended 31st March	Filing of Financial Statement	Filing of Annual Return	Date of AGM
2017-18	Not Submitted	Not submitted	25th September, 2018
2016-17	Not submitted	Submitted	5th June, 2017
2015-16	Submitted	Not submitted	30th May, 2016
2014-15	Submitted	Not submitted	25th May, 2015

On the basis of above please advise:

i. Due date of the filing of the Financial Statement and Annual Return for the FY2015-16.
ii. On the basis of the above filing status, whether the directors of the company are being disqualified or not under section 164(2) of the Companies Act, 2013.
iii. Whether the company has made any non-compliance in calling of the AGM.
iv. Consequence to the company for the Non filing of the Financial Statement.

Suggested solution

Due date of the filing of the Financial Statement and Annual Return for the FY 2015-16. As per the Section 137 of the Companies Act, 2013, A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar **within thirty days of the date of annual general meeting.**

In the above case the AGM is held on the 30th May, 2016 accordingly, the financial statement of the company should be filed on or before the 29th June, 2016.

As per section 92 of the companies act, 2013 Every company shall file with the Registrar a **copy of the annual return, within sixty days from the date on which the annual general meeting** is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

In the above case the AGM is held on the 30th May, 2016 accordingly, the financial statement of the company should be filed on or before the 29th July, 2016.

ii. On the basis of the above filing status, whether the directors of the company are being disqualified or not under section 164(2) of the Companies Act, 2013. As per Section 164 (2) of the Companies Act, 2013, No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.]

As per the above filing status, the company has not filed the financial statement for the FY 2016 -17 and 2017-19 and the Annual return for the FY 2014-15 and 2015-16. Hence, all the Director of the company are disqualified. However, in case any director appointed during the FY 2016-17 and 2017-18 will not be disqualified for appointment or reappointment in any company.

iii. Whether the company has made any non-compliance in calling of the AGM. As per section 96 of the Companies Act, 2013 every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

From the above table it can be seen that the company has call AGM on 05th June, 2017 and the AGM for the FY 17-18 is called on 25th September, 2018, which is called after the gap of fifteen months which was expired on 05th September, 2018. However, if the company has taken the prior approval of the registrar of companies for extension of the date of the Annual general meeting, the company is in compliance with the law.

iv. Consequence to the company for the Non-filing of the Financial Statement. As per section 137 of the companies Act, 2013 If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupee.

The company has not filed the financial statement for the year 2016-17 and 2017-18 and company is liable to pay additional fees as per section 403 and the penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees.

Case Study-22

Acceptance of Deposit by Private Company

The Promoter of the ABC Private Limited (a Start-up Registered company) incorporated on 20th June, 2016 is willing to accept deposit from its members. The shareholding of Mr. A and Mr. B and Mr. C as on the 31st March 2017 is as under:

Mr. A Director of the company holding 4000 shares of Rupees 100 per share

Mr. B Friend of Mr. A

Mr. C 3000 Shares of Rupees 100 per share

The Company is not having investment in any Subsidiary Company and Associate Company, the borrowing from the Financial Institutions as on 31st March, 2017 is Rupees 10 Crores.

On the basis of the above information, Please advise on the following:

i. Whether the company can Accept deposit from Mr. A
ii. Whether the company can Accept deposit from Mr. B
iii. Whether the company can Accept deposit from Mr. C?
iv. What will be the maximum limits up to which the deposit can be accepted?
v. Describe the various compliance requirements for the company.

Suggested solution

i. Whether the company can Accept deposit from Mr. A

As per the Companies (Acceptance of Deposit) Rules, 2014 any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private Company is exempted under the deposit rules. However in such case the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

Hence the company can accept deposit from Mr. A as he is the Director of the company with No limit on the amount of deposit, further he need to give declaration on the same.

ii. Whether the company can accept deposit from Mr. B

No, the Company cannot accept deposit from Mr. B as he is not the director, relative of the directors of the company also he is not the members of the company. The definition of the private company prohibited for any invitation of the public to subscribe for any securities of the company.

iii. Whether the company can accept deposit from Mr. C

Yes, the company can accept deposit from Mr. C as per MCA notification dated 13th June, 2017, the provision the provision of clauses (a) to (e) of sub-section (2) of section 73 shall not apply to following class of private company-

(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or
(B) which is a start-up, for five years from the date of its incorporation; or
(C) which fulfils all of the following conditions, namely:-

(a) which is not an associate or a subsidiary company of any other company;
(b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

In the above case the company fits in the various conditions placed in the section for private limited companies for acceptance of deposit. Accordingly, the company can accept deposits from its members up to the one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account.

iv. What will be the maximum limits up to which the deposit can be accepted?

As per rule 3(3) of the Companies (Deposit)Rules, 2014 o No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account] of the company.

However maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-

(a) a private company which is a start-up, for five years from the date of its incorporation;
(b) a private company which fulfils all of the following conditions, namely:-
    (a) which is not an associate or a subsidiary company of any other company;
    (b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and
    (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

v. Filing requirement:

The companies accepting deposits is required to file the details of monies so accepted to the Registrar in Form DPT-3.

Case Study-23

Notice of Board Meeting

Mr. Sumit, an officer of the Corporate Secretarial Department of the Executive Limited has called the meeting of the members of the board of the director on 25th April, 2019, and served the notice on 17th April, 2019 on email as well as through Registered post, later on Mr. Ashok, one of the directors of the company has challenged the validity of the meeting on the following grounds.

(a) Mr. Sumit was not authorised person to call the meeting.
(b) The Notice was not sent on the letter head of the company.
(c) The Notice is not served as per the statutory requirements.
(d) The notice does not inform about the facility of the video conferencing being provided by the company.

In this back drop answer the following:

i. Whether Mr. Sumit was authorised person to call the meeting? If so give reasons.
ii. Whether it is mandatory to send Notice of the meeting on the letter head of the company?
iii. What are the statutory requirements for serving of notice of board meeting through emails and registered post?
iv. Whether the facility of the video conferencing is mandatorily required to be provided by the company?

Suggested solution- Case Study-23

i. Mr. Sumit was authorised person to call the meeting.

As a best practice and a measure of good governance, the Director desirous of summoning a Meeting for any purpose should send his requisition in writing to convene such Meeting, along with the agenda proposed by him for discussion at the Meeting, either to –

- the Chairman or in his absence, to the Managing Director or in his absence, to the Whole-time Director, or
- the Company Secretary or in his absence, to any other person authorised by the Board in this regard.

"any person authorised by the Board", whether an officer of the company or any person other than the officer of the company, should be clearly identifiable. It is advised to check whether Mr. Sumit fits under the criteria of the any person authorised by the board.

ii. The Notice was not sent on the letter head of the company

As per the secretarial standard on the meeting of the Board of Director (SS-1) and guidance note issued Theron, The Notice should preferably be sent on the letter-head of the company. Where it is not sent on the letter-head or where it is sent by e-mail or any other electronic means, there should be specified, whether as a header or footer, the name of the company and complete address of its registered office together with all its particulars such as Corporate Identity Number (CIN) as required under Section 12 of the Act, date of Notice, authority and name and designation of the person who is issuing the Notice, and preferably the phone number of the Company Secretary or any other designated officer of the company who could be contacted by the Directors for any clarifications or arrangements.

iii. The Notice is not served as per the statutory requirements.

In case the company sends the Notice by speed post or by registered post, an additional two days shall be added for the service of Notice.

Addition of two days in case the company sends the Notice by speed post or by registered post is in line with Rule 35(6) of the Companies (Incorporation) Rules, 2014 which provides that in case of delivery of Notice of a Meeting by post, the service shall be deemed to have been effected at the expiration of forty eight hours after the letter containing the same is posted.

However, the requirement of adding two days is applicable only if the Notice is sent to any of the Directors solely by speed post or by registered post and not by facsimile or by e-mail or any other electronic means.

In case the Notice is sent by facsimile or by e-mail or by any other electronic means to the Directors, and it is additionally sent by speed post or by registered post to all or any of the Directors, whether pursuant to their request or otherwise, the additional two days need not be added.

iv. The notice does not inform about the facility of video conferencing being provided by the company.

The Director who desires to participate through Electronic Mode may intimate his intention of such participation at the beginning of the Calendar Year and such declaration shall be valid for one Calendar Year [Clause 3(e) read with Clause 3(d) of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]. The Notice shall also contain the contact number or e-mail address (es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

The IBC contains a comprehensive scheme that deals with the revival of a company facing corporate death. Chapter II of the IBC pertains to the initiation of the Corporate Insolvency Resolution Process ("**CIRP**")**.** This process may either be initiated at the behest of financial creditor or at the behest of the operational creditor or even the corporate debtor. Chapter II also provides for the appointment of an interim resolution professional, the constitution of a committee of creditors, the submission of a resolution plan and the approval of the same. Whereas the liquidation process under the IBC forms a part of a distinct Chapter, i.e. Chapter III. Liquidation under Chapter III of the IBC requires that the proceedings contemplated under Chapter III are followed. One of the modes of revival for a company facing "corporate death" under liquidation are the provisions under Section 230 of the Act of 2013, to which recourse can be taken by the liquidator appointed under Section 34 of the IBC.

Power to Compromise

Section 230 of the Act pertains to the power of the National Company Law Tribunal ("**Tribunal**") to allow for a compromise. Under Section 230 of the Act, a compromise or an arrangement may take place between a company and its creditors or any subset of creditors; or between a company and its members or subset of members. Prior to November 15, 2016, an application for compromise or arrangement could be moved before the Tribunal by (i) the company; (ii) a creditor; (iii) a member of the company; and (iv) in the case of a company which is being wound up, by the liquidator. However, with the amendment to Section 230 of the Act which came into effect November 15, 2016, an application under Section 230 of the Act could either presented by a liquidator who has been appointed under the Act of 2013 or under the IBC. A liquidator appointed under the IBC, when invoking the provisions of Section 230 of the Act, attempts a revival of the corporate debtor to save it from the likeliness of a corporate death[2].

Retrospective Amendments to the IBC

When the IBC was first introduced, the provisions did not create any restrictions for any person in submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. However, certain concerns were raised that individuals could take advantage of the situation and participate in the resolution or liquidation process. As a result, Section 29A was inserted to the IBC to ensure individuals, who by their misconduct contributed to the defaults of the corporate debtor were prevented from gaining or regaining control of the corporate debtor[3]. Section 29A was inserted with retrospective effect from November 23, 2017 and provided a list of individuals who were ineligible to be resolution applicants. The insertion of Section 29A rectified a loophole in the IBC which allowed a backdoor entry in the CIRP[4].

Section 29A and the Impact on Liquidation

Ever since its insertion, Section 29A has played a vital role in ensuring that the objects of the IBC are not defeated by allowing “ineligible persons” to regain control of the corporate debtor. These values of Section 29A “continue to permeate” across to Chapter III of the IBC as the provision applies not only to resolution applicants, but to liquidation process as well[5].

The liquidator under Chapter III of the IBC is vested with several powers and duties. The liquidator exercises several functions which are of quasi-judicial in nature. For example, under Section 35(1)(f), the liquidator cannot 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. The liquidator, in other words, exercises functions which have been made amenable to the jurisdiction of the NCLT, acting as the Adjudicating Authority. Therefore, the ineligibility prescribed under the provisions of Section 35(1)(f) cannot be disregarded by the Tribunal for the purpose of considering an application for a scheme of compromise or arrangement under Section 230 of the Act of 2013, in respect of a company which is under liquidation under the IBC.

The Role of Regulation 2B

The Insolvency and Bankruptcy Board of India had issued the Liquidation Process Regulations ("**Regulations**"). The Regulations were amended on July 25, 2019, pursuant to which Regulation 2B was inserted in the Regulation. Regulation 2B (1) requires a compromise or arrangement proposed under Section 230 of the Act to be completed within 90 days of the order of liquidation issued under the IBC. On January 06, 2020, another amendment was introduced to the Regulations and a proviso was inserted to Regulation 2B (1) whereby it was expressly stated that a party ineligible to propose a resolution plan under the IBC could not be a party to a compromise or arrangement under Section 230 of the Act.

The Interplay

The Supreme Court has, over time, reiterated that the entire purpose behind the scheme of compromise or arrangement is to revive the company. It has emphasized that when a company is in liquidation, its assets are *custodia legis*, with the liquidator acting as the custodian for the distribution of the liquidation estate[6].

The object of the IBC is to serve as a beneficial legislation to put the corporate debtor back on its feet and does not serve merely as a recovery legislation for creditors. The IBC bifurcates the interests of the corporate debtor from that of its promoters or those who are in management. Further, with the insertion of provisions such as Section 29A, ensures a company may achieve a sustainable revival and that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution.

The Supreme Court through the Arun Kumar Decision clarified that even if Regulation 2B did not exist, upon a harmonious interpretation of the IBC and the Act, it would be clear that a scheme of compromise under Section 230 of the Act would take place in accordance of the underlying objects of the IBC. Therefore, the underlying object would then be to protect the company from a corporate death. The Supreme Court highlighted that it would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participate in the sale of assets of the company in liquidation, are somehow permitted to propose a compromise or arrangement under Section 230 of the Act.

CASE LAWS RELATING TO PARTNERSHIP ACT AND LLP ACT INCLUDING FOREIGN LLP

Partnership Firm –Registered Vs Unregistered

One is unregistered partnership firm: This is very simple and is incorporated simply by creating a partnership deed on stamp paper and getting it notarised, after which you may also apply for a PAN card.

- After obtaining PAN card, it simply means your firm has been incorporated and registered under income tax also. Yes, it is simple to create but this firm still does not have a legal existence. The main disadvantage of this type of firm is that there is a bar that unregistered firms cannot prosecute any person or a firm.
- Second type of partnership is **registered firm:** The registration of firm can be done in two ways, by the firm registering itself with Registrar of firm along with the requisite fees, or register LLP under the Ministry of Corporate affairs. The comparison between the two is explained below:

	Registered Partnership Firm in India	Limited Liability Partnership Firm in India
Creation	It's created by mutual understanding of partners	It's created by law i.e., under LLP Act, 2008.
Registration	Optional	Compulsory
Liability	It has no separate legal entity. Partners are collectively referred to as 'firm'.	It has separate legal entity. The liability of partners will be limited to their agreed contribution in the LLP.
Assets	Partnership firm can purchase assets in the name of partners only.	LLP can purchase assets in its name.
Legal	Only registered partnership firm can sue.	LLP can also sue and be sued.
Name	No such requirement	Suffix 'LLP' has to be added at the last.
Designated Partner Identification Number	No such requirement	Every partner of LLP must have a valid DIN
Voting Right	No such right	Each partner has one vote
Governing Law	The Indian Partnership Firm, 1932 and various rules made thereunder	The Limited Liability Partnership Act, 2008 and various rules made thereunder.
Annual Account and Annual Return	Not required	AA and AR to be filed with the ROC Annually.
Audit	As per Income Tax Act only.	As per LLP Act 2008, audit is compulsory except if turnover is less than Rs 40 lakh and for professional Rs 25 lakh. Income Tax Audit also as applicable
Members	Minimum 2 and maximum 50 vide Rule 10 of the Companies (Miscellaneous) Rules,2014	Minimum 2 and maximum has no limit

LLP is more preferable over registered partnership firm. Let's have a brief understanding of LLP:

- LLP has a legal existence under MCA only, just like a company. So it's a perfect mix of 'corporate structure' and 'partnership firm'. It can be said that LLP is a hybrid of a company and a partnership firm.
- The major advantage of **LLP registration** is flexibility with legal enactments. LLP Act is more flexible for conducting business over Companies Act.
- A partner is not liable on account of any decision or action taken by other partners jointly.
- LLP cannot be made for a charitable or non-profit organisation. It has to be the objective of profit earning only.
- As in company, where every director should have DIN , in the case of LLP, every partner needs to take a DPIN (Designated Partner Identification Number).
- Firm/Private Limited/ Unlimited Public Limited Company can be converted to LLP.

- Ministry of Corporate Affairs has provided us four entities, namely One Person Company, Private Limited Company, Limited Liability Partnership and Public Limited Company. Every entity has its own merits and demerits. The biggest drawback with **LLP registration** is that it cannot be converted to **Private Limited Company** due to which it cannot raise the fund from public as it has no equity which it can distribute in public.

- Link for Bare Act
  https://www.indiacode.nic.in/bitstream/123456789/4095/1/the_indian_partnership_act_1932.pdf
- Important Sections
- Section 6
  Section 13
- Section 44(g)
- Section 46
- Section 48
  Section 69(3)

Section 6- Mode of determining existence of partnership

- - in determining whether a group of persons is or is not a firm, or whether a person is or is not partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
-
- **Explanation-** 1. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.
-
- Explanation- 2 The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does *not* of itself make him a partner with the persons carrying on the business ;
- and in, particular, the receipt of such share or payment -
-
  - by a lender of money to persons engaged or about to engage in any business.
- - by a servant or agent as remuneration.
  - by the widow or child of a deceased partner, as annuity, OF
  - by a previous owner or part owner of the business , as
- consideration for the sale of the goodwill or share thereof. does not of itself make the receiver a partner with the persons
- carrying on the business.

Section 13- Mutual rights and liabilities

Subject to contract between the *partners* -

a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

b) The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm.

c) Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits.

d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent, per annum

e) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him.

(a)In the ordinary and proper conduct of the business, and

(b)In doing such act, in an emergency, for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances and

f) a partner shall indemnify the firm for any loss caused to it by his willful *neglect* in *the conduct* of the business of the firm.

- <u>Short note</u>
- -Sec 13- AII the partners are entitled & liable for equal share in loss & profit in absence of any agreement - Mandyala Govindu vs. C.I.T., AIR 1975 SC 2284 : (1976) 1 SCC 248" Asha Ram vs. Ram Chander, 1993 (1) WLN 388.

Section 44-Dissolution by the Court.

- At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :

a) That a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner.

b) That a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner.

c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.

d) that a partner, other than the partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business; or otherwise so conducts himself in matter relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him.

e) That a partner, other than the partner suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 or has allowed it to be sold in the recovery of arrears, of land revenue or of any dues recoverable as arrears of land *revenue* due by lhe partner.

f) **That the business of the firm cannot be carried on save at a loss.**

g) On any other ground which renders it just and equitable that the firm should be dissolved.

Section 46- Right of partners to have business wound by after dissolution

- - On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Section 48- Mode of settlement of accounts between partners

- - In seeking the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners , be observed.

a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and, lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.

b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:-

   i. In paying the debts of the firm to third parties
   ii. In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital:
   iii. in paying to each partner rateably what is due to him on account of capital and.
   iv. The residue, if any shall be divided among the partners in the proportions in which they were entitled to share profits.

Section 69- Effect of non-- registration

- (1) No suit to enforce a right arising from a contract of or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.
- (2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firrm as partners in the firm
- (3)The provisions of sub section (1) and (2) shall apply also to a claim of Set - off or other proceeding to enforce a right arising from a contract, but shall not affect -
    a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or
    b) The powers of an official assignee, receiver of Court under the Presidency, towns insolvency Act 1909, or the Provincial insolvency Act, 1920, to realise the property of an insolvent partner.
- (4)This section shall not apply
    a) To firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which by notification under section 56, this chapter does not apply, or
    b) to any suit or claim of set off not exceeding one hundred rupees in value which in the presidency towns, is not of a kind specified in section 19 of the Presidency shall cause Court Act, 1882 or outside the Presidency towns, is not of a kind specified in *lbe* Second Schedule to the Provisional small cause Courts Act 1887. or to any proceeding or execution in other proceeding incidental to or arising from any such suit or claim.
- <u>Short Note</u>
- -Sec 69- In case of unregistered firm, arbitration clause can be invoked for dissolution of firm & renditioin of accounts -AIR 1995 SC 715, AIR 1996, SC 2209: 1996 AIRT (SCW) 2696.

- By Agreement (section 40)
- Compulsory dissolution (section 41)
- By the happening of certain events (section 42)
- By the partnership at will(section 43)
- By the court (section 44)
  Lets us further understand each mode in detail

By Agreement

- The partnership can be dissolved when all the partners gives their consent to it.
- The partnership which was created for a particular purpose dissolved after the completion of such purpose.

Compulsory Dissolution

Sometimes an events make the partnership as unlawful to carry out his business. In such case the partners has no option except to dissolve. When a partnership firm carries more than one undertaking out of which one becomes unlawful then it is not compulsory to dissolve the partnership. It can withdraw from the illegal undertaking and can continue with other lawful undertaking

On happening of certain contingencies

The partnership is dissolved on the happening of certain contingencies. Certain contingencies includes:-

- On the expiration of fixed term; when the partnership is created for the fixed term,
- On the death of partner,
- On the completion of project or undertaking; when the partnership was created for the purpose of completing undertaking or project,
- On the adjudication of partners as a partner.

By notice of partnership at will

When any partners desire to dissolve partnership he serves a notice to all other partners expressing his intention to dissolve the partnership. If all the partners gives agrees then the partnership is dissolved.

The partnership is dissolved on the date prescribed in the notice and if no such date is mentioned in the notice then date of dissolution of firm is the date of communication of notice

By Order from the Court

The Court may dissolve the partnership on any of the following grounds:-

1) **Unsound mind/insanity**:-when any partners becomes unsound or insane then a suit is brought by a next friend of a partner who has become unsound or insane or any other partner.

2) **Incapability***:-* When the partners other than a suing partner become permanent incapable to perform his duties as a partner.

3) **Misconduct***:-*when the partners other than suing partner is guilty of any act which affect the carrying on a business with respect to the nature of business

4) Continuing Breach of Contract:- a partner may continuously, persistently or willfully committing a breach of contract with regard to

1) Management of affairs of its conduct

2) A reasonable conduct of its business

3) Conduct himself in such a manner that it is not possible for other partners to carry out the business of firm.

In such case the other partners may file a suit in a court and the court may order to dissolve the firm. Following acts are considered as breach of agreement:-

- Keeping wrong accounts
- Refuse to show the accounts in spite of requests
- Keeping more cash than is actually allowed
- Embezzlement.

5) Transfer of interest:-when a partner has transfer all his interest to the third party without the consent of other partners or gives a permission to Court to charge or sell his share for the recovery of arrear of land revenue and sit is filed by any other partners against such partners the court my dissolve the firm.

6) Perpetual or Continuous losses:- when the business is continuously suffering loss and the court believes that the firm can not survive in the future due to continuous loss and cannot revive to its original position the court may order to dissolve the firm.

7) ***Other grounds***:- The court may find other just and equitable grounds for the dissolution of the firm. Such grounds are as follows:-
Conflict between the partners
Deadlock in the management
Offence committed by any of its partner
Loss of foundation of business.

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S.NO	PARTICULARS	Personal Notes
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3	How, on dissolution of a partnership firm, the assets of the dissolved firm say Land are distributed among the partners?	
4	whether the power to dissolve a partnership firm under section 44(g) of the Partnership Act vests only in the Court and cannot be exercised by the arbitral tribunal or not.	

S.NO	PARTICULARS	Personal Notes
5	In case of a partnership firm providing international legal services, 90 days clause was applicable to individuals and not partnership firms . Distinction has to be made between profits directly attributable and profits indirectly attributable to the assesse.	
6	Writ filed by various legal forums to forebear foreign law firms to practice in India. Decision: BPO services not covered. Foreign firms can't practice in India. However there is no bar on foreign firms and lawyers visiting India and give legal advice to their clients.	
7	Company converted into LLP. Land was purchased in the name of the company through a director. It was sold through power of attorney held by a director. Issue of sale of agricultural land and agricultural crop. ITAT upheld decision of AO	
8	Two partners who were kartas of their respective HUFs were sharing profits of a firm run by them equally . Firm found genuine.	
9	Brothers along with their family members carrying on business jointly. Decision of the Arbitrator to award a sum of Rs.1 cr in four instalments and interest @ 18% on the Balance amount in capital account was upheld by the DHC on the reasoning that decision of the arbitral tribunal was not violative of Section 48 and 46 of Partnership Act 1932 or to the agreement between the parties	

S.NO	PARTICULARS	Personal Notes
10	Land of partner pledged as security .On account of non- cooperation from other partners, due to specific prohibition in the partnership deed as to seeking dissolution of a firm,what is the appropriate forum to seek remedy-Arbitrator or the court.	
11	Even an unregistered firm can enforce rights for accounts and dissolution of a firm through arbitration clause.	
12	No capital Gain arises because there is no exchange or transfer involved.	
13	LLP Failure to upload Statement of Solvency and Annual return by LLP despite carrying on business	

Income Tax Appellate Tribunal – Delhi
Income-Tax Officer vs Gimret And Co. on 15 May, 1987
Equivalent citations: 1987 22 ITD 407 Delhi
Bench: S Kapur, A Kalyanasundharam
ORDER A. Kalyanasundharam, Accountant Member

- In this appeal by the revenue the issue involved is whether the assessee could be granted registration though one of the three partners is not to share in the losses of the firm. Held yes. Section 6 and Section 13(b) of Partnership Act,1932

Allahabad High Court
Pavan Coal Company LLp Their Thru' ... vs. State Of U.P. & 2 Others on 15 May, 2015
Bench: Vikram Nath, Shashi Kant

Issue of coal coordinator/Coal handler in a contract warded by UPPCF.

Rival parties filed a petition on the following grounds:

Contesting the two writ petitions by filing counter affidavit by UPPCF in support of Pavan Coal Co.
Filing SLP before Supreme Court by UPPCF
Why the Partnership firm was allowed to execute the agreement on 10.10.2014.

Under what circumstances , letter dated 20.12.2014 was issued requiring Pavan Coal Co, to correspond as firm and not as LLP.
Probable question : If A partnership firm replies to EOI and is later converted into an LLP, what shall be the legal consequences

Andhra High Court
K. Laxminarayana Reddy, Since ... vs Vardhi Reddy Dasrath Ram Reddy ... on 9 April, 2012

An interesting, nay, an important question, arises for adjudication in this case. The question is, how, on dissolution of a partnership firm, the assets of the dissolved firm are distributed among the partners?

Partnership Firm was having land. Decision was that the remaining partners have two options: Pay price of 25% of Land to the outgoing partner or else the firm shall be dissolved by selling the land in auction

Bombay High Court
Yogendra N.Thakker vs Vinay Balse And Anr on 13 June, 2018
Bench: R.D. Dhanuka

A short question that arises for the consideration of this Court in this petition is whether the power to dissolve a partnership firm under section 44(g) of the Partnership Act vests only in the Court and cannot be exercised by the arbitral tribunal or not.

Decision : Depends whether Partnership is at Will or it has been specifically stated that the partnership shall not stand dissolved on the death or retirement of a partner. Arbitrator has the jurisdiction to dissolve a firm.

Income Tax Appellate Tribunal - Mumbai
Clifford Chance , Mumbai vs. Department Of Income Tax on 13
May, 2013

UK based partnership firm providing international legal services. India UK Treaty and PE issues . Partnership firm filed Return of Nil Income which was contested by the ITO on the premise that 90 days clause was applicable to individuals and not partnership firms . CIT (Appeals) favoured assesse's argument . He asked for time sheets which indicated 10 or more hours working . Distinction has to be made between profits directly attributable and profits indirectly attributable to the assesse.

Article 7(1) and 7(3) of India UK DTAA reg profits directly and indirectly attributable

Madras High Court
A.K. Balaji vs. The Government Of India on 21 February, 2012

Writ filed by various legal forums to forebear foreign law firms to practice in India. Decision: BPO services not covered. Foreign firms can't practice in India. However there is no bar on foreign firms and lawyers visiting India and give legal advice to their clients.

Income Tax Appellate Tribunal - Delhi
Magic Landcon Llp, New Delhi vs Pr. Cit-11, New Delhi on 26 February, 2020

Company converted into LLP. Land was purchased in the name of the company through a director. It was sold through power of attorney held by a director. Issue of sale of agricultural land and agricultural crop. ITAT upheld decision of AO

Andhra High Court
Commissioner Of Income-Tax vs Krishna Mining Co. on 24 August, 1979
Equivalent citations: 1980 122 ITR 362 AP
Author: Kondaiah
Bench: C Kondaiah, R Rao, C Reddy, G Rao, P Choudary
ORDER Kondaiah, C.J.

Whether assesse entitled to benefits of registration under section 26A of the Income Tax Act. Two partners who were kartas of their respective HUFs were sharing profits of a firm run by them equally . There was a genuine partition of HUF whereby members of the divided families including minors became partners in the business of the firm. For AY 1959-60 the assesse firm filed an application under section 26A.ITO refused registration since loss sharing was not specified . Supplementary deed executed on 15 th August 1959 was not acted upon in the AY 1959-60 as it was executed after the end of the accounting year.

ITO was of the view that if the firm wanted the benefit of registration , the accounts should have been closed by august.30,1959 and the profits should have been distributed between the partners . On appeal , AAC found the firm genuine . Andhra HC concurred with the views of AAC.

Delhi High Court
Subhash Chander Chachra And Ors. vs Ashwani Kumar Chachra And Anr. on 1 February, 2007
Equivalent citations: 2007 (1) ARBLR 288 Delhi, 137 (2007) DLT 401
Author: V Sanghi
Bench: V Sanghi
JUDGMENT Vipin Sanghi, J.

Disputes are essentially between two families. Appellant Subhash Chander Chachra is the elder brother while the respondent Sh. Ashwani Kumar Chachra is the younger brother. The brothers along with their family members were carrying on business jointly. Decision of the Arbitrator to award a sum of Rs.1 cr in four instalments and interest @ 18% on the Balance amount in capital account was upheld by the DHC.DHC found that the decision of the arbitral tribunal was not violative of Section 48 and 46 of Partnership Act,1932 or to he agreement between the parties.

Andhra High Court
Tetali Chinna Krishna Reddy vs Konala Nagalakshmi And Ors. on 28 February, 2006
Equivalent citations: 2006 (4) ALD 596, 2006 (3) ARBLR 575 AP
Author: C Ramulu
Bench: C Ramulu
ORDER C.V. Ramulu, J.

In this case the plaintiff whose land was pledged as security was not getting cooperation from other partners. There was a specific prohibition in the partnership deed as to seeking dissolution of a firm. Question was in such a case what is the appropriate forum to seek remedy-Arbitrator or the court.
AP HC held that the aggrieved party can approach the court.

Delhi High Court
Columbia Holdings Private ... vs Ssp Developers Pvt. Ltd. on 11 August, 2016

By this order, I shall decide a preliminary objection taken by the respondents on the maintainability of the four petitions which have been filed by the petitioner under Section 11 (5) and 11 (6) of the Arbitration and Conciliation Act, 1996 (Act of 1996 in short) being Arbitration Petitions No. 212/2016 and 213/2016 and Petition under Section 9 of the Act of 1996 being OMP (I) (COMM) Nos. 94/2016 and 96/2016 on the ground that the petitions are hit by Section 69 (3) of the Partnership Act, 1932 (Partnership Act in short).Even an unregistered firm can enforce rights for accounts and dissolution of a firm through arbitration clause.

Bombay High Court
Commissioner Of Income-Tax, ... vs H.R. Aslot on 3 November, 1977
Equivalent citations: 1978 115 ITR 255 Bom
Author: Chandurkar
Bench: Desai, M Chandurkar
JUDGMENT Chandurkar, J.

At the instance of the revenue, the following question has been referred to this court under section 66(1) of the Indian Income-tax Act, 1922 :

"Whether, on the facts and in the circumstances of the case, any capital gains arose to the assessee when he received an amount of Rs. 4,67,529 in terms of the award of the arbitrator ?“

Held No capital Gain arises because there is no exchange or transfer involved.

LLP Case Law

Source CASEMINE

5. It is the case of the petitioner that the petitioner is a Limited Liability Partnership (LLP) which is engaged in the business of consultancy in the FENG SHUI (in Chinese thought) a system of laws considered to govern spatial arrangement and orientation in relation to the flow of energy (chi) and whose favourable or unfavourable effects are taken into account when designing buildings. It is further contended that the petitioner (LLP) had a nominal revenue of Rs.3,54,000/- till 2016. However, due to financial crisis, it failed to earn any revenue in the year 2017. Since the petitioner was very much occupied in developing its business activity and since it had no revenue for the year 2017, it failed to upload its Statement of Account and Solvency (i.e. LLP-8) and Annual Returns (i.e. LLP-11) for the period of 2016 and 2017. Even today the petitioner LLP is an ongoing concern and is actively involved in business.

6. It is further case of the petitioner that on 16.03.2018, since the petitioner LLP failed to upload its Statement of Account and Solvency and Annual Returns for the period of 2016 and 2017, the respondents were under the impression that the petitioner has stopped its operation and also business and had issued a notice vide Annexure-A seeking representation form from the petitioner, failing which, the name of the petitioner would be removed from the register of Limited Liability Partnership. On receipt of the said notice, the petitioner within a period of 30 days, has filed the Statement of Accounts and Solvency and Annual Returns for financial year of 2016 and 2017 within the

time notified, it was under the bonafide impression that it has complied with the statutory provisions and as such, did not find it necessary to give reply to the said notice dated 16.03.2018.

7. It is further case of the petitioner that on 23.05.2018, when the petitioner tried to file Statement of Accounts and Solvency and Annual Returns for the year 2018, the petitioner came to know that the respondents without issuing any notice and thereby without providing any opportunity of hearing have changed the petitioner LLP from active to defunct status. Therefore, the petitioner is before this Court for the relief sought for.

8. I have heard learned counsel for the parties to lis.

9. Sri Vivekananda, learned counsel for Smt.V.Gangabai, learned counsel for the petitioner reiterating the grounds urged in the writ petition contended that inspite of the representation made by the petitioner as per Annexure-B dated 14.08.2019, requesting the respondents to restore the status of the company from defunct to active, till today, the respondents have not taken any action. Because of the inaction of the respondents, the petitioner LLP is driven before the Court for the relief sought for. Therefore, he sought to allow the writ petition.

10. Per contra Sri Thimmanna Bhat, learned CGC for respondents rightly and fairly submits that the representation of the petitioner will be considered by respondent Nos.1 and 2 and appropriate orders

of the petitioner will be considered by respondent Nos.1 and 2 and appropriate orders will be passed in accordance with law. Said submission is placed on record.

11. Having heard learned counsel for the parties, it is the case of the petitioner that though the petitioner LLP is on going concern and actively involved in the business, due to financial problems, not uploaded Statement of accounts, Solvency and Annual Returns for the period of 2016 and 2017. The respondents under the impression that the petitioner has stopped its operation and also business issued a notice to the petitioner LLP. In response to the said notice, the petitioner filed the Annual Returns and intimated that the petitioner has complied the statutory provisions. The respondent without giving an opportunity, changed petitioners status from active to defunct. Therefore, the petitioner made representation to the respondents as per Annexure-B. It is well settled that whenever an aggrieved party made representation to the concerned Registrar of Companies, requesting the authority concerned to restore the petitioner company status as active from defunct, it is the duty and obligation on the part of the respondent to consider the representation and pass appropriate order in accordance with law. Same has not been done in the present case. Therefore, the petitioner has made out a case to issue writ of mandamus as prayed for in the writ petition.

12. In view of the above, the writ petition is allowed. The respondent No.2 is hereby directed to consider the representation of the petitioner dated 14.08.2019 as per Annexure B and pass appropriate order in accordance with law within a period of one month from the date of receipt of copy of this order. Accordingly, the writ petition is disposed off. Sd/- JUDGE