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Module 3, *Paper 8*

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On behalf of **TEAM YES**

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"When all the dust is settled and the crowd is gone, all that matters are faith, family and friends"

To

My Parents – for being my pillar of strength

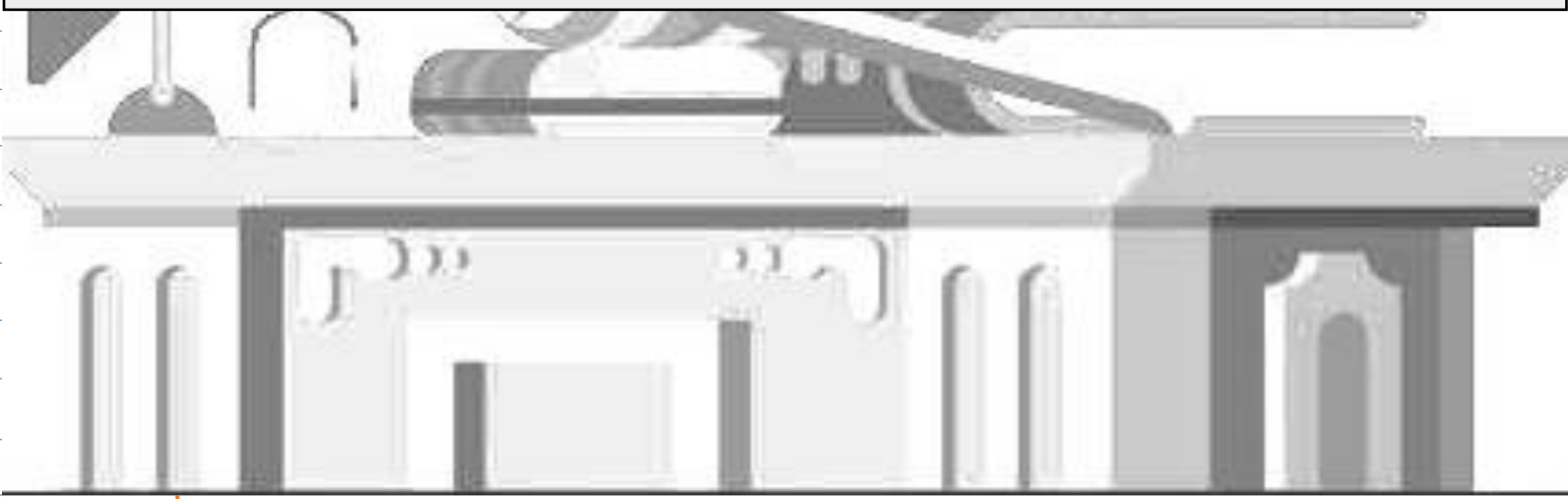
My Sister – for being my pillar of faith

My Friends – for being my pillar of stability

And the entire YES family, for all the love, trust and confidence.

Multidisciplinary Case Studies

Module III



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CORPORATE LAWS (INCLUDING COMPANIES ACT, 2013)

1. TATA CONSULTANCY SERVICES v. CYRUS INVESTMENTS PVT. LTD. [SC]

Civil Appeal No. 940 of 2020

Facts :

A. NCLT upheld the action of removal of CPM from the post of chairman taken by Tata sons while, NCLAT on appeal, turned down the decision of the NCLT.

B. NCLAT held that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground.

C. Aggrieved by the same, both the groups i.e., Tata and Tata trust companies on one hand and SP Group on the other hand challenged the decision of NCLAT. In total there were 15 Civil Appeals, 14 of which are on Tata's side, assailing the Order of NCLAT in entirety.

Decision –

The Court decided in favour of the **Appellant (Tata).**

Legal Principles held / Observations made –

1. That Tata Sons is a principal investment holding Company, of which the majority shareholding is with philanthropic Trusts. The majority shareholders are not individuals or corporate entities having deep pockets into which the dividends find their way if the Company does well and declares dividends. The dividends that the Trusts get are to find their way eventually to the fulfilment of charitable purposes.
2. That the finding of NCLAT that the facts otherwise justify the winding up of the Company under the just and equitable clause, is completely flawed.
3. That the object cannot be to provide a remedy worse than the disease. The object should be to put an end to the matters complained of and not to put an end to the company itself, forsaking the interests of other stakeholders. That the Tribunal should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions.

Conclusion –

The Court held that all the questions of law were liable to be answered in favour of the appellants Tata group and the appeals filed by the Tata Group are liable to be allowed and the appeal filed by S.P. Group was liable to be dismissed.

2. AMIT KUMAR JAGATRAMKA v. JINDAL STEEL AND POWER LTD & ANR. [SC]

Facts :

A. By its judgment dated 24 October 2019, the National Company Law Appellate Tribunal held that a person who is ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 to submit a resolution plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013.

B. The same principle came in question in this appeal.

Decision –

The Court decided the case and settled this below principle.

Legal Principles held / Observations Made–

1. That the purpose of the ineligibility under Section 29A is to achieve a sustainable revival and to ensure 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. Section 29A, it must be noted, encompasses not only conduct in relation to the corporate debtor but in relation to other companies as well.
2. That the consequence of the approval of the scheme of revival or compromise, and its sanction thereafter by the Tribunal under Subsection (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC.
3. That a harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As such, the company has to be protected from its management and a corporate death. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a compromise or arrangement under Section 230 of the Act of 2013.

Conclusion –

The Court held that the prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the IBC must also attach itself to a scheme of compromise or II arrangement under Section 230 of the Act of 2013.

3. BRILLIO TECHNOLOGIES PVT. LTD. v. RoC & ANR. [NCLAT]

Company Appeal (AT) No. 293 OF 2019

Facts :

A. The Board of Directors of the Company resolved to reduce the equity share capital, by reducing equity shares from non- promoter equity shareholders out of the Securities Premium Account. Thereafter, an Extraordinary General Meeting was held on 04.02.2019, wherein by special resolution duly passed in accordance Section 66 (1) read with Section 114 of the Companies Act, the 100% members present, voted in favour of the resolution for reduction of share capital of the Company. NCLT observed that no objections had been received from creditors and consent affidavits on their behalf had not been produced.

B. NCLT held that selective reduction in equity share capital to a particular group involving non-promoter shareholders and bringing the company as a wholly owned subsidiary of its current holding company and also return excess of capital to them was an arrangement between the company and shareholders or a class of them and hence, not covered under Section 66 of the Companies Act. However, the case may be covered under Sections 230-232 of the Act.

C. Since the current petition was filed under section 66, NCLT dismissed the same.

Decision –

The Court decided in favour of the **Appellant (Brillio).**

Legal Principles held –

1. That there is no law that a Company can reduce its capital only to reduce any kind of accumulated loss. With the aforesaid it cannot be said that the Appellant Company has not given any genuine reason for reduction of share capital.
2. That after service of notice, no representation had been received from the creditors within three months. Therefore, as per proviso to Section 66(2) of the Act, it shall be presumed that they have no objection to the reduction.
3. That the SPA can be utilized for making payment to non-promoter shareholders.
4. That majority shareholders have decided to reduce the share capital. Normally, decision of the majority is to prevail. It is also their right to decide the manner in which the shareholding is to be reduced and, in the process, they can decide to target a particular group (of course it

is to be seen that this is not with mala fide and unfair motive which aspect is discussed hereinafter).

Conclusion –

The Court held that the petition filed by the Appellant was maintainable.

4. VIJAYA SAI POULTRIES PTV. LTD. v. VEMULAPALLI SAI PRAMELLA & ORS. [NCLAT]

Company Appeal No. 296 of 2019

Facts :

A. National Company Law Tribunal, Amaravati Bench, passed an order allowing the application filed by the **Respondents** herein (Vemulpalli) and directed that forensic audit be conducted of the **Appellant (Vijaya)** since 31.03.2004.

B. Aggrieved the Appellant filed the instant appeal.

Decision –

The Court decided in favour of the **Appellant (Vijaya)**.

Legal Principles held / Observations made–

1. That there is nothing in the order to justify the directions for conducting forensic audit of accounts of the Company that too for more than 15 years. The Adjudicating Authority must record reasons in support of conclusions. However, in the impugned order no reasons were mentioned for the said directions. The order was cryptic and non-speaking; therefore, it cannot be sustained.

Conclusion –

The Court held that the order for forensic audit could not be sustained.

S. Kaledonia Jute & Fibres Pvt Ltd v. Axis Nirman & Industries & Ors [SC]

Civil Appeal No. 3735 of 2020

Facts :

A. On the winding up petition the High Court passed the winding up order against the Respondent (Axis)and appointed the Official Liquidator. Thereafter, the Respondent paid the entire amount due to the petitioning creditor along with costs. However, the Company Court kept the winding up order in abeyance, directing the Official Liquidator to continue to be in custody of the assets of the Company.

B. Subsequently, the Appellant (Kaledonia), claiming to be a creditor of the Respondent, moved an application before the company court seeking a transfer of the winding up petition to the NCLT, Allahabad. This application was rejected by the Company Court, on the grounds that a winding up order had already been passed and that the creditor did not have any locus to get the atter transferred to NCLT as it was not a party to the winding up petition.

C. Aggrieved by this order of the High court refusing to transfer the winding up proceedings from the Company Court to the NCLT, the Appellant has come up with this appeal.

Decision –

The Court decided in favour of the Appellant (Kaledonia).

Legal Principles held / Observations made–

1. That the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The proceeding might have been initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, all creditors can be considered to be a party to the winding up petition.
2. That if the High Court is allowed to proceed with the winding up and NCLT is allowed to proceed with an enquiry into the application under Section 7 IBC, two parallel proveedings would get initiated and therefore, the entire object of IBC will be thrown to the winds.

Conclusion –

The Court held that the petitions be transferred to the NCLT.

6. Ashish O Lalpuria v Kamuka Industries Ltd. & Ors. [NCLAT]

Company Appeal (AT) No. 136 of 2020

Facts :

A. The Respondent (Kumaka) presented a Scheme of Arrangement under Sections 230-232 of Companies Act, 2013 for sanction of the Arrangement before the NCLT, Mumbai.

B. The Appellant (Ashish), who is a shareholder of Respondent Company raised the objections that the Scheme of Arrangements was a mere rectification of action taken by the Respondent without obtaining approval of the Tribunal and other Regulatory Authorities as required under the provisions of Companies Act.

C. NCLT passed an order approving the scheme. Aggrieved the Appellant filed the instant appeal.

Decision –

The Court decided in favour of the Appellant (Ashish).

Legal Principles held / Observations made–

3. That under section 230 (5) of the Companies act, 2013 the applicant is required to send a notice to all the sectorial regulators or authorities which are likely to be affected by the compromise or arrangement. Representations, if any, are required to be made within a period of thirty days from the date of receipt of such notice, failing which, it is presumed that they have no representations to make on the proposals. The basic intent behind this provision is that these authorities play a vital role in the overall legal structure and should work harmoniously with the Tribunal in order to ensure that the proposed scheme is not violative of any provision of law and is also not against the public policy.

4. That certain objections were made which were rejected by the NCLT on the ground that the objections were procedural in nature.

5. That it is the duty of the Tribunal to ensure that such procedural aspects are duly complied with before sanctioning of the scheme, as it would lay down a wrong precedent which would allow companies to do whatever acts without the compliances and confirmation of the Court and other sectoral and regulatory authorities.

Conclusion –

The Court held that the NCLT could not have rejected the objections raised by the authorities on the ground that they were procedural in nature.

7. ARUNA OSWAL v. PANKAJ OSWAL & ORS. [SC]

Civil Appeal No.9340, 9399 & 9401 of 2019

Facts :

A. Mr. Abhay Oswal was a shareholder of a company X where he held a certain number of shares. In his nomination form, he had named his wife, the **Appellant (Aruna Oswal)** as his nominee. Subsequently Mr. Oswal died and the company transferred his shares in the name of the Appellant in accordance with the nomination form which was duly filed by him.

B. Subsequently, **Respondent (Pankaj)**, son of the deceased, filed a partition suit in the High court seeking 1/4th of the shares which were held by the deceased. While tis suit was pending, the Respondent filed a petition under section 241 against the company alleging oppression and mismanagement.

C. The Appellant challenged this petition on the ground that the respondent held just 0.03% of shares. The Respondent replied that he had the right to hold 1/4th of the shares of the deceased which, when added to his 0.03% shares, reached the limit of 10% required to file a petition under the said sections.

D. NCLT accepted this contention. Aggrieved the Appellant filed the instant appeal challenging the maintainability of the petition.

Decision –

The Court decided in favour of the **Appellant (Aruna).**

Legal Principles held / Observations made–

1. That the holding of the Respondent and his rights with respect to his share in the estate of his deceased father could be decided by the civil court as it was a civil matter. Only after such rights and entitlements with respect to the shares were ascertained could the Respondent file the instant suit.
2. That company court can not decide upon the ownership of the shares and will therefore have to wait for the orders of the civil courts in order to ascertain if the Respondent held the requisite amount of shares.

Conclusion –

The Court held that the Respondent should approach the court after ascertainment of his rights with respect to the shares.

8. Sandeep Agarwal & Anr. V UOI & Anr. [Del]

W.P. (C) 5490/2020

Facts :

A. The Petitioners (Sandeep) was the director in two companies namely Koksun Papers Pvt Ltd and KushalPower Projects Pvt Ltd. The name of Kushal Power was struck off from the Register of the Companies on 30th June, 2017, due to non-filing of financial statements and annual returns. As a consequence to this, and pursuant to Section 164(2)(a) of the Companies Act, 2013, the Petitioner was disqualified from acting as a director for a period of five years and their DIN and DSC were cancelled.

B. In view of cancellation of the DIN and DSC, the Petitioner was unable to carry on the business and file returns etc. in the active company Koksun Papers.

C. Aggrieved by this, the petitioner filed the instant petition.

Decision –

The Court decided in favour of the **Appellant (Sandeep).**

Legal Principles held / Observations made–

1. The Companies Fresh Start Scheme (CFSS) is a new scheme, which has been launched by the Government in order to give a reprieve to such companies who have defaulted in filing documents. The Scheme also envisages non-imposition of penalty or any other charges for belated filing of the documents. It futher provides Directors of such companies a fresh cause of action to challenge their disqualification with respect to the active companies.
2. In the present situation, the disqualification and cancellation of DIN would be a severe impediment for the petitioner in availing remedies under the Scheme, in respect of the active company. In order for the Scheme to be effective, Directors of these companies ought to be given an opportunity to avail of the Scheme.
3. The Petitioner is a director of an active company Koksun Papers in respect of which certain documents are to be filed. Since the said company is entitled to avail of the Scheme, the suspension of the DINs would affect the company which is active.

Conclusion –

The Court directed the Petitioner to continue the business of the active company and directed that their DIN and DSC be re-activated.

9. PANKAJ KUMAR MISHRA v. ROC, MUMBAI [NCLAT]

Civil Appeal No. 121 of 2020

Facts :

A. The name of a company was struck off by the **Respondent (ROC)**. Subsequently, the IT Department observed that there were certain transactions which were entered into by the company before its name was struck off and the company had failed to pay taxes on the said transactions.

B. Accordingly, the Respondent filed a petition with the NCLT seeking restoration of the name of the company in the register of companies. NCLT agreed to the same and the name of the company was restored.

C. Aggrieved, the director of the company, the **Appellant (Pankaj)** filed the instant appeal. The appellant contended that NCLT had not given any notice to the company before restoring the name and therefore, there was a violation of principles of natural justice.

Decision –

The Court decided in favour of the Appellant (Pankaj).

Legal Principles held / Observations made –

1. That NCLT had passed the order of restoration of name of the company without giving any opportunity of being heard to the company.
2. That the action amounted to violation of principles of natural justice.

Conclusion –

The Court held that the NCLT give proper notice to the company and then decide on restoration of the name.

10. ALIBABA NABIBASHA VS. SMALL FARMERS AGRIBUSINESS CONSORTIUM & ORS.

[Delhi HC]

CRL. M.C. 1602/2020, CRL. M.A. 9935/2020

Facts :

A. A company had entered into 5 agreements with the **Respondent (Small farmers)** for the payment of which certain cheques were issued to them by the company. When these cheques were presented for payment, they got dishonoured. Aggrieved, the Respondent filed an action against the **Petitioner (Alibaba)** who was a director of the company.

B. The petitioner filed the instant petition seeking quashing of the complaints filed by the Respondent on the ground that he had resigned from the post of director 8 years before the cheques got dishonoured and hence, was not a director/officer of the company when the default took place.

C. The Respondent opposed this by saying that the director had participated during the rounds of discussions when the agreements were being signed and hence, was responsible of the acts of the company with respect to the said agreements.

Decision –

The Court decided in favour of the Petitioner (Alibaba).

Legal Principles held / Observations made –

1. That in cases where the accused has resigned from the Company and Form 32 has also been submitted with the Registrar of Companies then in such cases if the cheques are subsequently issued and dishonoured, it cannot be said that such an accused is in-charge of and responsible for the conduct of the day-to-day affairs of the Company
2. Petitioner after his resignation cannot continue to be held responsible for the actions of the Company including the issuance of cheques and dishonour of the same.

Conclusion –

The Court held that the complaints filed against the petitioner be quashed.

II. DR. RAJESH KUMAR YADUVANSHI (PETITIONER) VS. SERIOUS FRAUD INVESTIGATION OFFICE (SFIO) & ANR [DELHI HC]

CRL. REV. P. 1308/2019

Facts :

A. The **Petitioner (Rajesh)** was a nominee director on the board of directors of Bhushan steels Ltd. representing PNB. The petitioner received notice from the **Respondent (SFIO)** in a case against Bhushan Steel Ltd.

B. The Petitioner challenged this notice on the ground that he was merely a nominee director on the board of Bhushan Steel Ltd. And that there was no material on record to show that he should be prosecuted against.

Decision –

The Court decided in favour of the **Petitioner (Rajesh).**

Legal Principles held / Observations made –

1. That there was no allegation that the petitioner was involved in the affairs of BSL except in his capacity as a Nominee Director of PNB. In such capacity, he was not assigned any executive work of BSL but was merely required to attend and participate in the Board Meetings of BSL.
2. That there is a material difference between the allegation that a Nominee Director has been negligent or has failed to discharge his responsibility and an allegation that he has connived or has been complicit in approving financial statements, which he knows to be false or conceal material information

Conclusion –

The Court held that the notice against the Petitioner was illegal and hence quashed the same.

12. QVC EXPORTS PVT. LTD. & ORS. VS. COSMIC FERRO ALLOYS LTD. & ORS. [NCLAT]

Company Appeal no. 93 of 2020

Facts :

A. The **Appellant (QVC)** and another company jointly entered into a Consortium Agreement and agreed to form a partnership to submit a Resolution Plan to take over the **Respondent (Cosmic)**. Resolution plan was submitted and approved by the COC as well as ratified by NCLT.

B. As per the Resolution Plan, Appellants were 34% shareholders and the other company held 51% shares. Accordingly, as per the mutual understanding nominee directors of both the parties were appointed in the Respondent Company.

C. Appellant argued that due to several disputes which arose between both the parties, special notice was issued for removal of nominee director of Appellant from directorship and the resolution was passed in an EGM, thereby ousting the appellant from the consortium without giving a fair opportunity to give representation.

D. The Respondents argued that there is no bar for removal of nominee of minority shareholder under the Companies. NCLT accepted the contention of the Respondents. Aggrieved, the Appellants filed the instant appeal.

Decision –

The Court decided in favour of the **Respondent (Cosmic)**.

Legal Principles held / Observations made–

1. That proper notice was issued to convene EGM and the same was received by the appellants including the nominee director, but they did not make any representation and the EGM voted for removal of nominee director with majority.
2. That there was no illegality in this process and dismissed the appeal

Conclusion –

The Court held that the dismissal of the Appellant's nominee was valid.

13. ECONOMY HOTELS INDIA SERVICES PRIVATE LIMITED v. ROC [NCLAT]

Company Appeal No. 97 of 2020

Facts :

A. The **Appellant (Economy)** filed an application with NCLT under section 66 of the Companies Act, 2013 seeking approval for reduction of share capital NCLT rejected the said petition stating that the minutes of meetings filed by the Appellant did not mention about passing of any special resolution and rather spoke about passing of a unanimous ordinary resolution.

B. Aggrieved, the Appellant filed the instant appeal. According to the appellant, it was a typographical error that led to the mistake and that they had followed proper procedure prescribed under law for reduction of the share capital.

Decision –

The Court decided in favour of the **Appellant (Economy).**

Legal Principles held / Observations Made–

1. 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.
2. That the Appellant had agreed that the mistake was merely typographical in nature and they had filed the special resolution with ROC, satisfying the requirement of Section 66 of the Companies Act, 2013.

Conclusion –

The Court held that the NCLT had wrongly rejected the petition.

14. K V BRAHMAJI RAO v. UOI [NCLAT]

Company Appeal (AT) No. 196 OF 2019

Facts :

D. The **Respondent (UOI)** filed a petition against certain persons and alleged them to be perpetrators of the huge Financial Scam against PNB. The Respondent ordered investigation into the affairs of 107 Companies and 7 LLPs and also sought to supplement the investigation by seeking indulgence of the Tribunal.

E. At the relevant time the **Appellant (K V)** was Executive Director, PNB, Head Office, New Delhi. NCLT, by the impugned order, passed orders for freezing Assets of the Appellant and injuncted him from disposing movable and immoveable Properties/Assets.

F. Aggrieved, the Appellant filed the instant appeal alleging violation of principles of natural justice.

Decision –

The Court decided in favour of the **Appellant (KV Brahmaji).**

Legal Principles held –

S. 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 the Companies Act, 2013.

Conclusion –

The Court held that the order passed by NCLT freeing the assets of the Appellant was wrong in the eyes of law.

IS. VIJAY GOVERDHANDAS KALANTRI & ANR. V. UOI (P&H HC)

CWP-11209-2020

Facts :

A. The **Petitioner (Vijay)** filed a writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for setting aside the decision of the **Respondent (UOI)** disqualifying the Petitioner to act as Director of a company.

B. The Respondent challenged the maintainability of the writ petition stating that both the Petitioners were residents of Mumbai and the Company itself was also registered with the Registrar of Companies, Mumbai and has no connection with the Registrar of Companies, Punjab and Chandigarh.

Decision –

The Court decided in favour of the **Respondent (UOI).**

Legal Principles held / Observations made–

1. That the jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. Article 226 of the Constitution of India, in clear terms, empowers the High Court to entertain a writ petition if the cause of action to file such a writ petition against the Respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of the High Court.
2. That there was no ground whatsoever made out for invoking the jurisdiction of the P&H High Court under Articles 226/227 of the Constitution of India in as much as neither the Petitioners were residents of Punjab, Haryana or UT Chandigarh nor was the Company registered with the RoC of the said places.

Conclusion –

The Court held that the petition could not be maintained before the Punjab and Haryana High Court.

16. ROC, MUMBAI v. KISHORE KUMAR SAMTANI [NCLAT]

Company Appeal (AT) No. 13 of 2019

Facts :

A. The **Respondent (Kishore)** was a Director of more than 20 companies at the same time. He he tendered his resignation from one such company on 29.12.2015. However, the intimation of his resignation was sent to the **Appellant (RoC)** vide Form DIR-12 on 10.02.2016.

B. The Appellant sent a notice to the respondent asking why proceedings should not be initiated against him under Section 165(1) read with Section 165(3) of the Companies Act, 2013 on the ground that he was the Director of more than 20 Companies at the same time. The Respondent pleaded guilty and filed a compounding application under Section 441 of the companies Act, 2013.

C. After hearing the parties, NCLT allowed the compounding application subject to payment of compounding fees of Rs. 50,000/-. Being aggrieved with this order, the Appellant filed the instant appeal.

D. The Appellant contended that NCLT had imposed compounding fees of Rs. 50,000/- which was less than the minimum fine prescribed under Section 165 (6) of the Companies Act, 2013. This, as per the Appellant, was not right in the eyes of law.

Decision –

The Court decided in favour of the **Appellant (RoC).**

Legal Principles held –

1. That NCLT had 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.
2. That while compounding an offence, the court has to impose at least the minimum fine prescribed as the compounding fees.

Conclusion –

The Court held that the Respondent were liable to pay an amount of Rs. 13,60,000/- as the compounding fees.

17. S. P. VELUMANI & ANR. VS. MAGNUM SPINNING MILLS INDIA PVT. LTD. & ORS. [NCLAT]

Company Appeal (AT) No. 299 of 2019

Facts :

A. The **Appellant (S P Velumani)** pointed out the bogus transactions and siphoning of funds taking place in the **Respondent Company (Magnum)** was an act of Oppression and Mismanagement and filed a company petition in NCLT. NCLT dismissed the Company Petition stating that the acts complained of did not fall within the purview of Oppression and mismanagement.

B. Aggrieved, the Appellants filed the instant appeal. The Appellants contend that during the financial year 2017-18, an amount of Rs. 48,41,801/- was written off as bad debts, while in the previous year it was nil and the details as to identity of the party, whether related party or otherwise was not disclosed.

C. The Appellant further contended that the Respondents with a malafide intention to put an end to the intervention of the Appellant changed the mandate for operating the bank accounts of the Respondent Company and passed a resolution by which any two directors could operate the account.

Decision –

The Court decided in favour of the **Respondent (SP Velumani).**

Legal Principles held / Observations made –

1. That the records showed that the Appellant had attended the meeting in which the alleged resolution changing the mandate of operating the bank accounts was passed and did not raise any objection at that point of time.
2. That decision of the Board of Directors to write off the bad debt is a commercial decision, which did not warrant any judicial interference. The allegations madeby Appellants were baseless.

Conclusion –

The Court held that the decision of the directors could not be interfered with.

18. LATE MONA AGGARWAL THROUGH HER LEGAL HEIR MR. VIJAY KUMAR AGGARWAL & ANR. VS. GHAZIABAD ENGG. COMPANY LTD. & ORS. [NCLAT]

Company Appeal No. 320 of 2019

Facts :

A. The **Appellant (Mona)** along with other shareholders of the **Respondent Company (Ghaziabad)** filed a petition for winding up under section 271 of the companies Act, 2013. During the pendency of the winding up petition, the RoC struck off the name of the respondent from the register of companies. An appeal against this action of the RoC was filed before the Tribunal.

B. Owing to the fact that the name of the company has been struck off, NCLT dismissed the winding up petition along with the liberty to file any fresh suit.

C. Aggrieved, the Appellants filed the instant appeal. The Appellants contend that an appeal to restore the name of the company is pending and therefore, neither the winding up petition nor the liberty to file a fresh winding up petition should be dismissed.

Decision –

The Court decided in favour of the **Appellant (Mona).**

Legal Principles held –

1. That Section 248 clealry states Section 248 in no manner will affect the powers of the Tribunal to wind up the company, the name of which has been struck off from the register of companies.
2. That even after removal of the name of the company from the register of companies the NCLT can proceed with the petition for winding up under Section 271 of the Companies Act, 2013

Conclusion –

The Appellant can proceed with the winding up petition as the fact that the name of the company has been truck off does not affect the powers of NCLT to wind up the company..

19. BANK OF BARODA v. ABAN OFFSHORE LTD. [NCLAT]

Company Appeal no. 35 of 2019

Facts :

A. The **Appellant (Bank of Baroda)** held certain non convertible redeemable preference shares issued by the **Respondent (Aban)** which were due to be redeemed from 2014 onwards.

B. The Respondent failed to redeem the preference shares at the appropriate time. Aggrieved, the Appellant filed a suit under Sec 55 and sec245 of the Companies Act, 2013 with the NCLT.

C. The Appellant contended that the Respondent failed to redeem their preference shares at the decided time and also filed to pay dividend. The Appellant further contended that throughout the duration of default in redemption, the Respondent has been paying dividend to the equity share holders @ 180%.

D. The Respondent contended that the Appellant did not have any locus to file the suit under the given sections. NCLT accepted this contention and dismissed the suit filed by the Appellant. Aggrieved, the instant appeal was preferred by the Appellant.

Decision –

The Court decided in favour of the **Appellant (Bank of Baroda)**

Legal Principles held –

1. That Section 55 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. However, they are required to redeem the shares of those holders who do not consent to the same.
2. That 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 shareholders.

3. That 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.

Conclusion –

The Tribunal held that the preference shareholders had proper remedies under the Act and they could use those to file the said suit.

20. Joint Commissioner of Income Tax, Mumbai vs. Reliance Jio Infocomm Ltd. & Ors.

[NCLAT]

Company Appeal (AT) Nos. 113 & 114 of 2019

Facts :

A. Reliance (**Respondents**) filed Company Application seeking dispensation of the meeting of Equity Shareholders of the companies for the purpose of demerger of the Respondent companies. NCLT agreed to the same and issued notices to statutory regulators to file their representations within 30 days of the said notice.

B. Income Tax Department (**Appellant**) raised an objection which was not accepted by the NCLT. Aggrieved, they preferred the instant appeal contending that the Tribunal had not dealt with specific objection that conversion of preference shares by cancelling them and converting them into loan by the respondent would substantially reduce the profitability of Demerged Company which would act as a tool to avoid and evade taxes.

Decision –

The Court decided in favour of the Respondent (Reliance).

Legal Principles held / Observations made –

I. 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 resulted in tax avoidance.

Conclusion –

The Court held that mere allegations of tax avoidance cannot render a scheme of amalgamation bad in the eyes of law.

21. Registrar of Companies, Kerala vs. Ayoli Abdulla [NCLAT]

Company Appeal (AT) No.145 of 2019

Facts :

A. Ayoli **(Respondent)** was under the management dispute in the year 2011 onwards and the same was settled before the NCLT Chennai Bench in the year 2017. 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.

B. NCLt allowed re filing of the abovementioned documents but waived off the additional fee in filing of balance sheet and Annual Return.

C. Aggrieved by the waiver, RoC **(Appellant)** filed the instant appeal.

Decision –

The Court decided in favour of the Appellant (RoC).

Legal Principles held / Observations made –

I. That NCLT per se had no power to waive the filing fee & additional fee.

Conclusion –

The Court directed the Roc to charge minimum fees for filing.

22. Regional Director, Southern Region and Ors. vs. Real Image LLP and Ors. [NCLAT]
Company Appeal (AT) No. 352 of 2018

Facts :

A. M/s. Real Image LLP (**Respondent**) 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 for the amalgamation of the Respondent with the transferee company.

B. NCLT after considering the scheme found that all the statutory compliances had been made under 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 existed no such provision in the Companies Act, 2013.

C. NCLT further found that the Companies Act 2013 permitted a foreign LLP to merge with an Indian company and led to the conclusion that it would be wrong to presume that the Companies Act, 2013 prohibits of a merger of an Indian LLP with an Indian company.

D. Aggrieved by this interpretation, the Appellant (**RD**) filed the instant appeal.

Decision –

The Court decided in favour of the Appellant (RD).

Legal Principles held / Observations made –

1. That Section 366 of the Companies Act, 2013 provides that for the purpose of Part I of Chapter XXI the word company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity which can applyf or registration under this part.
2. That under this part LLP will be treated as company and it can apply for registration and once the LLP is registered as company then the company can be merged in another company as per Section 232 of the Companies Act, 2013.

Conclusion –

The Court held an LLP cannot per se be merged with a company without being registered as a company.

23. G. Vasudevan vs. Union of India [Mad HC]

Writ Petition No. 32763 of 2019

Facts :

A. Section 167 of the Companies Act gives instances where the office of a Director shall become vacant. Section 167(1)(a) states that if a Director incurs any disqualification specified in Section164, then he vacates his seat as a Director. The proviso to this section states that when a company commits a default as stipulated in subsection 2 of Section 164, then a Director of such defaulting company must vacate of all such companies in which he is Director except for the company in which the default has been made.

B. G Vasudevan **(Petitioner)** challenged this proviso stating that it led to unequal treatment being met out to Directors of a defaulting company based on whether they are Directors in other companies or not.

Decision –

The Court decided in favour of the Respondent (UOI).

Legal Principles held / Observations made –

1. That the proviso to Section 167(1)(a) must be interpreted in ordinary terms and would apply to the entirety of Section 164 including sub-section 2.
2. That the underlying object behind the proviso to Section 167(1)(a) is seen to be the same as that of Section 164(2) both of which exist in the interest of transparency and probity in governance.
3. That the exclusion of Directors from vacating their posts in the defaulting company while doing so in all other companies where they hold Directorship has been done in order to prevent the anomalous situation wherein the post of Director in a company remains vacant in perpetuity owing to automatic application of Section 167(1)(a) to all newly appointed Directors.

Conclusion –

The Court held that the impugned provisions were constitutionally valid.

24. Mukut Pathak & Ors. vs. Union of India & Anr. [Del HC]

Writ Petition (C) 9088/2018

Facts :

A. Mukut Pathak (**Petitioners**) were directors in various companies and were disqualified from being appointed/ reappointed as directors for a period of five years u/s 164(2)(a), for default on the part of their concerned companies, in filing of the annual returns and financial statements for the financial year 2014-2016. The said list of directors, who were disqualified, was published in 2017.

B. The petitioners challenged the list of disqualified directors, for defaults, pertaining to the financial years 2012-2014 and 2013-2015 before the High Court given that the said provisions had not been enforced during these years.

Decision –

The Court decided in favour of the Appellant (Mukut).

Legal Principles held / Observations made –

1. That the provisions of Section 164(2) would apply prospectively and that it a well settled law, that no statute should be construed to apply retrospectively, unless such construction appears clear from the language of the enactment.
2. That the directors of a company are disqualified from being re-appointed as directors in other non-defaulting companies in which they were directors at the time of incurring the disqualification.

Conclusion –

The Court laid down the above principles of law.

25. Jindal Steel and Power Limited vs. Arun Kumar Jagatramka and Ors. [NCLAT]
Company Appeal (AT) No. 221 of 2018

Facts :

A. Gujarat NRE Coke Limited ('Corporate Debtor'/ 'Corporate Applicant') moved an application under the I&B Code for initiation of 'Corporate Insolvency Resolution Process' on account of various defaults committed by it. It was admitted by the Adjudicating Authority CIRP was initiated. In absence of any 'Resolution Plan', the Adjudicating Authority passed order of 'Liquidation' after the expiry of 270 days.

B. Arun Kumar **(Respondent)** who was a promoter of the corporate debtor 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 which was allowed by the NCLT.

C. Aggrieved, Jindal Steel **(Appellant)** being a creditor of the corporate debtor, preferred the instant appeal.

Decision –

The Court decided in favour of the Appellant (Jindal).

Legal Principles held / Observations made –

1. That during a Liquidation proceeding under Insolvency and Bankruptcy Code, 2016, a petition under Section 230 to 232 of the Companies Act, 2013 is maintainable.
2. However, even during the period of Liquidation, for the purpose of Section230 to 232 of the Companies Act, 2013, the 'Corporate Debtor' is to be saved from its own management.
3. That 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.

Conclusion –

The NCLAT held that the liquidation proceedings should be continued.

26. M/s Ind-Swift Limited vs. Registrar of Companies (Punjab & Chandigarh) [NCLAT]

Company Appeal (AT) No. 52-53 of 2018

Facts :

A. M/S Ind-Swift **(Appellant)** had accepted deposits since 2002 and regularly paid back till 2013 when it started facing liquidity problems and incurred losses. The Appellant filed application before CLB and obtained relief under the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits.

B. Appellant again sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi bench under the Companies Act, 2013. NCLT rejected the application.

C. Aggrieved, the Appellant filed the instant petition.

Decision –

The Court decided in favour of the Respondent (RoC).

Legal Principles held / Observations made –

1. 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.
2. That once a scheme had been settled by CLB, default on the part of the Appellant would attract penal provisions as the earlier scheme itself had laid down.

Conclusion –

NCLAT held that there was no ground for extension of time or repayment and that penal proceedings be initiated against the Appellants.

27. S. Gopakumar Nair & Anr. vs. Obo Bettermann India Pvt. Ltd. [NCLAT]

Company Appeal (AT) No. 272 of 2018

Facts :

A. S Gopakumar **(Appellant)** held 100% shares in Cape Electric India Pvt. Ltd. ("CEIPL"). OBO Bettermann Holdings- GMBH Ltd. ("OBO Germany") acquired 76% of the shares in CEIPL, pursuant to a shareholder's agreement entered into with the appellants. Over the course of time, the name of CEIPL was changed to OBO Bettermann India Pvt. Ltd. ("OBO India") **(Respondent)** and the shareholding of the appellant was reduced to 0.36% in OBO India.

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

C. Aggrieved by the order, an appeal was filed before the NCLAT.

Decision –

The Court decided in favour of the Appellant (S Gopakumar).

Legal Principles held / Observations made –

1. That One of the criteria u/s 241 stated that the petition was maintainable if not less than one-tenth of the total number of members had filed an application making grievances of oppression and mismanagement. Thus, it was held that appellants were eligible to file petition on the basis of the number of members since OBO India had a total of three members only
2. That Section 236 could be invoked only in case of amalgamation, share exchange and conversion of securities and for any other reasons. It was observed that the words "for any other reasons" had to be read 'ejusdem generis' with the preceding word and must take the same or similar colour.
3. That if this was not the intention of the legislature, then it could have generally mentioned that, in the event of any person or group of persons becoming 90% shareholder of the issued equity share capital of the company, such members could express their intention to buyout the remaining stake.

Conclusion –

The Court held that the respondents could not have invoked Section 236 to acquire the minority shares of the Appellants as the said provision wasn't applicable to their case.

28. HARI SANKARAN v. UNION OF INDIA [SC]

Civil Appeal No. 3747 of 2019

Facts :

A. On the basis of the Reports submitted by the ICAI and SFIO, the Central Government sought permission from the NCLT under section 130 of the Companies Act, 2013 to reopen the books of accounts and re cast the financial statements of the Infrastructure Leasing and & Financial Services Ltd. (the company in which the **Appellant (Hari Shankar)** is a director) and other two companies for 5 years, viz., F.Y 2012-2013 to 2017-2018.

B. After perusal of the Reports, the NCLT passed an order allowing the reopening of the accounts. This decision was upheld by the NCLAT. C. Aggrieved, the Appellant preferred the instant appeal.

Decision –

The Court decided in favour of the Respondent (UOI).

Legal Principles held / Observations made –

1. That while allowing the application, the NCLT had considered the preliminary report submitted by the ICAI and SFIO and the observations made in the aforesaid reports/preliminary reports and had satisfied itself that the conditions precedent for invoking powers under Section 130 of the Companies Act, 2013 stated in Section 130 (i) OR (ii) of the Act were satisfied.
2. That in the facts and circumstances of the case and keeping in mind the larger public interest where thousands of crores of public money was involved, the Tribunal was justified in allowing the application.

Conclusion –

The Court held that the Central Government could reopen the accounts as specified by the order of the NCLT.

29. CADS Software India Pvt. Ltd. and Ors vs. Mr. K.K. Jagadish & Ors. [NCLAT]

Company Appeal (AT) No. 320 of 2018

Facts :

A. K K Jagadish (**Respondent**) was removed as Director of CADS (**Appellant Company**) pursuant to the Management losing confidence in him which resulted in him filing a company petition before the NCLT for relief against oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. The Respondent alleged five acts of oppression while alleging three acts of mismanagement. The Appellants pleaded that the Company Petition was filed with the ulterior motive of extracting money from the Company.

B. 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 together with interest @ 10% to the Respondent herein by the Appellants.

C. Being aggrieved by the impugned order the Appellants preferred this appeal.

Decision –

The Court decided in favour of the Respondent (K K Jagadish).

Legal Principles held / Observations made –

1. That the Respondent was functioning as Managing Director of the company since 17.4.1996 and was not appointed for a fixed tenure.
2. That the term loss of confidence did not appear in the Companies Act and accordingly, the NCLT Chennai bench had rightly given its findings and arrived at to impugned order of compensation.

Conclusion –

The Court held that the Respondent had the right to receive the said compensation.

30. KANODIA KNITS PVT LTD v. RoC DELHI & HARYANA [NCLAT]

Company Appeal (AT) No.216 of 2018

Facts :

A. The **Respondent (RoC)** had struck off the name of the **Appellant (Kanodia)** on the ground that the company had not been carrying on business nor were in operations for two immediately preceding financial years and had failed to obtain the status of a dormant company under the Companies Act, 2013.

B. The Appellant contended that it had not been served with Notice as provided under the Act. Pursuant to this, the Respondent issued notice as required under the Act and then proceeded to strike off the name of the Appellant.

C. The Appellant filed an appeal against this action of the RoC in the NCLT which was dismissed on the ground that the company failed to prove that it was carrying on business or was in operation when its name was struck off. Aggrieved, the Appellant preferred the instant appeal.

Decision –

The Court decided in favour of the **Respondent (RoC).**

Legal Principles held / Observations made –

1. That the Respondent had duly sent the Notice to the Appellant as required under the Act and had also got the Notice published in the Official Gazette. This shows that the Appellant had previous notice of the action taken by the Respondent.
2. That the documentary evidence produced by the Appellant in order to prove that it was carrying on business and was in operation are not reliable in the sense that the documents contain invoices which failed to prove that the Appellant were doing any business

Conclusion –

The Court held that the name of the Appellant was rightly struck off.

31. Shashi Prakash Khemka (Dead) Through LRs. and Anr. vs. Nepc Micon & Ors. [SC]

Civil Appeal Nos. 1965-1966 of 2014

Facts :

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

B. Subsequently, an appeal was filed by the respondent before the High Court of Madras, which reversed the decision of the CLB and in effect, relegated the parties to a civil suit.

C. Aggrieved, the appellant filed the instant appeal.

Decision –

The Court settled the relevant provision of law.

Legal Principles held / Observations made –

1. 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 relating to transfer of shares, the matter could be relegated to a civil suit.
2. Further, the 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.
3. That as per Section 430 of the Companies Act, 2013 jurisdiction of the civil courts in matters in respect of which the power had been conferred on the NCLT was completely barred.

Conclusion –

The Court held that appropriate forum to adjudicate the matter was NCLT.

32. S. AHAMED MEERAN v. RONNY GEORGE & ORS [NCLAT]

Company Appeal (AT) No. 162 of 2018

Facts :

A. NCLT granted waiver to the **Respondent (Ronny George)** under Proviso to Sub-section (1) of Section 244 of the Companies Act, 2013 for entertaining a petition alleging oppression and mismanagement in the company without the requisite number of members.

B. Aggrieved, the **Appellant (S Ahamed Meeran)** preferred the instant appeal.

Decision –

The Court decided in favour of the **Appellant (S Ahmed Meeran).**

Legal Principles held –

1. That except two members all the member are individually eligible to maintain application under Section 241-242 having more than 10% of the share of the company.
2. That the petitioner needs to show exceptional circumstances in order to take advantage of the said proviso.

Conclusion –

The Court held that no waiver could be granted to the Respondent with respect to the required number of members.

33. K. J. SUWRESH & ANR v. TEAMLEASE STAFFING SERVICE PVT. LTD. [NCLAT]

Company Appeal (AT) No.30 of 2018 & CA 167 of 2018

Facts :

A. The **Appellants (K J Suwresh)** were holders of 100% equity shares in a Company called ASAP Info Systems Private Limited. There was Share Purchase Agreement between them and the **Transferee Company (Teamlease Staffing)** whereby the 100% shareholding was to be transferred by them to the transferee Company. Payments by the transferee company were to be made in tranches which did not happen after initial payment.

B. Subsequently, the transferee company formulated a scheme of amalgamation wich got sanctioned by the NCLT.

C. Aggrieved, the Appellants contended that they ought to have been treated either as shareholder or creditors of the transferee Company and in either case they were entitled to Notice. However, no Notice was given to them.

Decision –

The Court decided in favour of the **Respondent (Teamlease Staffing).**

Legal Principles held –

1. That the Appellants had knowledge and information regarding the scheme of amalgamation of the Companies and had given their No Objections with respect to the said transaction.
2. That the Appellants had no difficulties initially but as their transaction based on SPA landed in difficulties they started raising grievances to the scheme of amalgamation on the plea that Notice to them also was necessary.

Conclusion –

The Court held that the objections raised by the Appellants were all baseless.

34. SAS HOSPITALITY PVT LTD & ANR v. SURYA CONSTRUCTIONS PVT LTD & ORS [DEL]

CS (Comm) 1496 of 2016

Facts :

A. The **Plaintiff (SAS Hospitality)** filed a suit seeking a declaration that the allotment of shares in favour of the Defendants was null and void and sought against them, a permanent injunction from giving effect to the allotment.

B. The **Defendant (Surya Constructions)** contested the suit on the ground that the High court has no jurisdiction to try the suit and the proper forum to adjudicate the dispute is NCLT

Decision –

The Court decided in favour of the **Defendant (Surya Constructions).**

Legal Principles held –

1. That 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. NCLT is a tribunal which has been constituted to have exclusive jurisdiction in the conduct of affairs of a company
2. That non-compliance of any conditions contained in Section 62 of the 2013 Act constitutes mismanagement of the company. The jurisdiction to go into these allegations, vests with the Tribunal under the 2013 Act. NCLT has the power to pass "such order as it thinks fit", including providing for "regulation of conduct of affairs of the company in future". These powers are extremely broad and are more than what a Civil Court can do.
3. That in the present case, the reliefs sought can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.

Conclusion –

The Court held that the matter was to be filed with the NCLT.

35. Karn Gupta vs. Union of India & Anr. [Del HC]

W.P.(C) 5009/2018

Facts :

A. Karn gupta **(Petitioner)** contended that he had been appointed as a director in a company from where he resigned on 05.12.2012. The company failed to submit Form 32 regarding his resignation in accordance with the provisions of the erstwhile Companies Act, 1956 with the ROC

B. Subsequently, MCA notified a list of directors who had been disqualified as directors with effect from 1.11.2016. Petitioner's name featured in this list, irrespective of his resignation. As a result, he stood prohibited from being appointed or re-appointed as a director in any other company for a period of five years.

C. Aggrieved, the Petitioner filed the instant writ petition.

Decision –

The Court decided in favour of the Petitioner (Karn).

Legal Principles held / Observations made –

1. That the petitioner who had resigned from the directorship of the company in question could not incur a disqualification under Section 164 of the Companies Act, 2013.

Conclusion –

The Court held that Petitioner was not disqualidfied from acting as a director under the Companies Act, 2013.

36. Rishima SA Investments LLC vs. Registrar of Companies, West Bengal & Ors. [Cal HC]

W.P. No. 20044 (W) of 2016

Facts :

A. Rishima **(petitioner)** challenged the decision of the Registrar of Companies **(Respondent)** to strike 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, which is required to apply for recall of the order of the Registrar.

B. RoC **(Respondent)** challenged the above petition stating that the Petitioner had no locus standi to file the writ petition. Respondent contended that the Petitioner is neither the company itself nor is a member or creditor of the company and therefore, cannot be allowed to achieve something indirectly which is not permitted to it directly.

Decision –

The Court decided in favour of the Appellant (Rishima).

Legal Principles held / Observations made –

1. That the petitioner was not the company nor its member or creditor & it was not the person named in relevant provision of the Companies Act and therefore did not have the statutory right to apply under the said provision. However, there is a remedy for every violation of a right.
2. That 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.

Conclusion –

The Court held that the Petitioner had a locus to file the instant writ petition.

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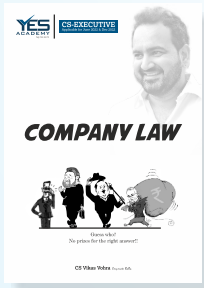

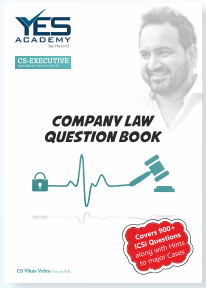

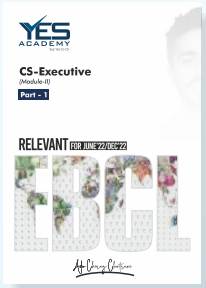

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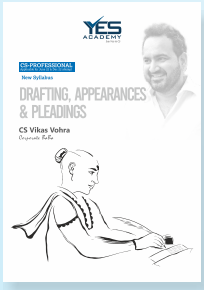

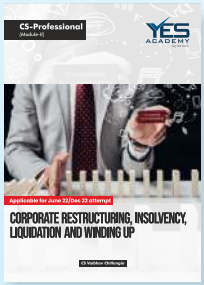

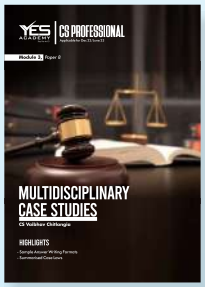

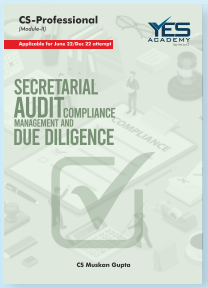

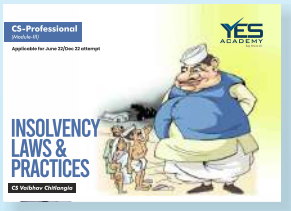

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CS Vaibhav Chitlangia is a law graduate from ILS Law College, Pune and a Company Secretary with All India Ranks at all the three levels. He got All India Rank 15 in Foundation Programme (June 2016), All India Rank 22 in Executive Programme (June 2017) and All India Rank 04 in the Professional Programme (June 2018).

Vaibhav has an experience of working with one of India's best law firms for over 1.5 years where he dealt with the practical implications of corporate laws. He has also been guiding company secretary students since 2018 and has had an opportunity of teaching a number of students from across the country. His interests include Mergers and Amalgamations, Competition Laws and Insolvency and Bankruptcy Code, amongst others. He also has prior experience in teaching subjects like Corporate Restructuring and Resolution of Corporate Disputes to the students of CS Professional Programme. He believes that

"the only impediment in the path of success is a person's own mindset; if that is controlled, every feat is achievable"

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