

"It always seems impossible unless it is DONE!"

CS-Professional (Module-III, Paper B)

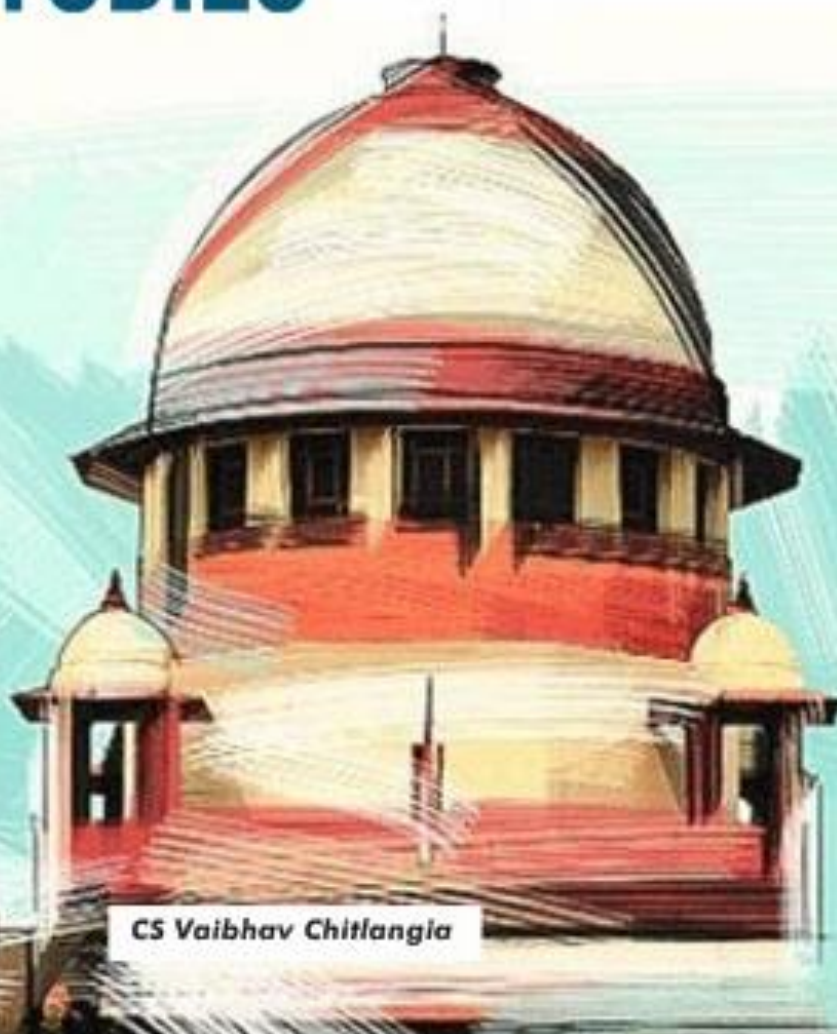
MULTIDISCIPLINARY CASE STUDIES

CS Vaibhav Chitlangia



CS-Professional
(Module-III)

MULTIDISCIPLINARY CASE STUDIES



CS Vaibhav Chitlangia

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CORPORATE LAWS (INCLUDING COMPANIES ACT, 2013)



I. 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.

2. PR. COMMISSIONER OF INCOME TAX, DELHI v. REGISTRAR OF COMPANIES, DELHI & ORS

[NCLAT]

Company Appeal (AT) No. 405 of 2018

Facts :

- A. A company name "M/s Nexus Marketing Pvt. Ltd" applied for striking off its name under 'Fast Track Exit Scheme, 2011' [FTE]. This application was processed by the Respondent (ROC).
- B. The Respondent issued notice to the Appellant (Revenue) for seeking objections, if any within 30 days but received no objections from them within the stipulated period. Resultantly, the name of the Company was struck off.
- C. Subsequently, the Appellant filed an appeal to the NCLT seeking restoration of the name of the company on the ground that the tax dues against the company were not determined, which was dismissed by the Tribunal.
- D. Aggrieved, the preferred the instant appeal.

Decision -

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

Legal Principles held / Observations made -

1. That the relevant documents filed by the Respondent satisfactorily established that the procedure laid down for striking off the name of Company from Register of Companies had been observed in letter and spirit.
2. That the relevant company was eligible to apply for striking off of its name under the FTE, 2011 as they qualified all the criteria for being adjudged as a defunct company.
3. That the plea of Appellant of them being a 'Creditor' of the company could not be accepted when admittedly they had not raised any demand or passed any assessment order prior to passing of the order of striking off the Company.
4. That as per Section 179 of the Income Tax Act, 1961, striking off the name of a Private Company from the Register of Companies does not absolve its erstwhile Directors from the liability to pay the amount of Tax leviable in respect of income of any previous year. In such

a scenario, there is no requirement for restoring the name of the company for the mere purpose of collection of tax.

Conclusion -

The Court held that the name of the company could not be restored.

3. 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.

4. JOHN THOMAS v. Dr. K. JAGADEESAN [SC]

Appeal (Crl.) 688 of 2001

Facts :

- A. The Respondent (Dr. Jagadeesan) was the director of a renowned Hospital in Chennai. A caricature had been published in a newspaper showing the Hospital as the abattoir of human kidneys for trafficking purposes. The Respondent filed a suit for defamation against the publisher of the Newspaper who is the Appellant (John Thomas) herein.
- B. The Appellant contended that the libel was not against the Respondent personally, but against the hospital only and hence the Respondent has no locus standi. This contention was accepted by the Trial Court and the case was dismissed.
- C. Aggrieved, the Respondent approached the High Court which disapproved the action of the Magistrate and directed the trial to proceed. Aggrieved, the Appellant has preferred the instant appeal.

Decision -

The Court decided in favour of the Respondent (Dr. Jagadeesan).

Legal Principles held / Observations made-

1. That who can file a complaint against a person defaming an artificial judicial person is dealt with under Section 499 of the Indian Penal Code, 1860. It says that a complaint can be filed by "some person aggrieved by the offence."
2. That the section indicates that the complainant need not necessarily be the defamed person himself. In case of the defamed person being a company, the directors would be equally affected by the defamatory article and hence, will fall under the purview of the word "some person aggrieved" as envisaged in Section 499(1) of the Code.

Conclusion -

The Court held that the Respondent had the locus to make the complaint.

S. JAIPUR METALS & ELECTRICALS EMPLOYEES ORGANISATION v. JAIPUR METALS & ELECTRICALS LTD & ORS [SC]

Civil Appeal No. 12023 of 2018

Facts :

- A. Winding up proceedings against the **Respondent (Jaipur Metals Ltd.)** were pending before the High Court.
- B. In the meanwhile, the financial creditors of the Respondent made an application to the NCLT to initiate a CIRP against the Respondent. The NCLT accepted this application.
- C. The **Appellant (Employee Union)** filed a petition in the High Court to transfer the winding up proceedings to the NCLT. The High Court refused to transfer the proceedings and also set aside the order passed by NCLT accepting the application made under the IB Code, 2016 by the financial creditors.
- D. Aggrieved, the Appellants preferred the instant appeal.

Decision –

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

Legal Principles held / Observations Made–

1. That the proceedings under the IB Code, 2016 are independent proceedings which have nothing to do with the transfer of pending winding up proceedings before the High Court. Thus, an application for initiation of CIRP against a company can be initiated even if winding up proceedings are pending before the High Court.
2. That once an application filed under the IB Code, 2016 for initiation of CIRP against a company is accepted, any winding up proceeding pending before the High Court cannot be proceeded with.

Conclusion –

The Court held that the NCLT could proceed with the application filed under the IB Code, 2016.

**6. BANK STREET SECURITIES PVT LTD & ORS. v. REGIONAL DIRECTOR, NORTHERN REGION
[NCLAT]**

Company Appeal (AT) No.340 of 2018

Facts :

- A. The Appellant (Bank Street) had filed the first motion petition in the High Court as required during the process of Merger and Amalgamations under the Companies Act, 1956. The High Court had dispensed with the requirement of conducting meetings of equity shareholders, secured and unsecured creditors of the Companies in view of their consent being obtained.
- B. The Appellant then filed joint petition for sanction of scheme of amalgamation before the Court by way of a second motion under the Companies Act, 1956. Accordingly, Notices were issued to the RoC, the Respondent (Regional Director) and Official Liquidator.
- C. However, before it could be decided, the second motion petition got transferred to the NCLT in view of the powers getting vested with NCLT. When the matter came up before NCLT, they considered report of the Respondent and concluded the petition required to be rejected. Aggrieved, the instant appeal was preferred.

Decision -

The Court decided in favour of the Respondent (Regional Director).

Legal Principles held -

1. That based on certain documents, the Respondent was satisfied that the Appellant Companies were engaged in investment activities or extending loans and advances to certain parties without getting any registration with RBI as required.
2. That the contention of the Appellant that they had "ZERO" income and hence, did not fulfill the eligibility of being an NBFC was not reliable as their accounts still showed huge investments in the form of their assets.

Conclusion -

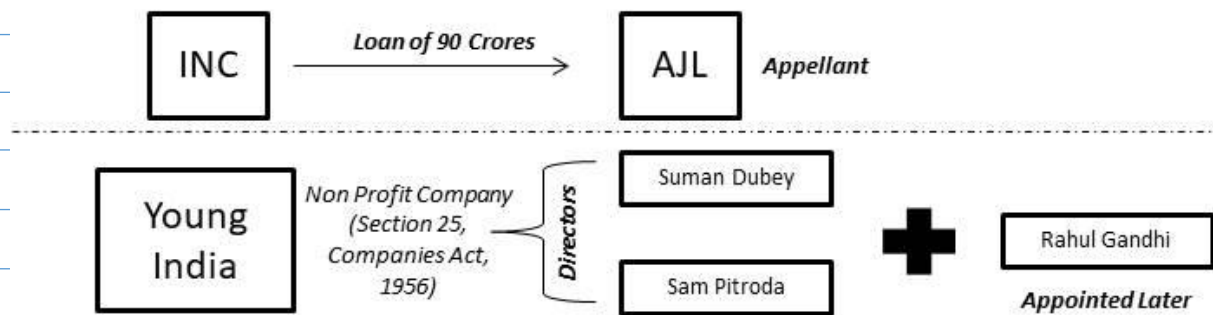
The Court held that the Appellants were liable to get registered as NBFCs with the RBI.

7. THE ASSOCIATED JOURNALS LTD & ANR v. LAND & DEVELOPMENT OFFICE [Del]

LPA 10/2019 & CM Nos. 566/2019 & 649/2019 W.P. (C) 11879 of 2015

Facts :

A. The factual matrix is as follows -



- B. Subsequently, the loan of 90 Crores as given to AJL by the INC was assigned by INC in favour of Young India. Another loan of Rs. 1 Crore was given to Young India by a company called M/S Detox.
- C. A few months later, Sonia Gandhi, Motilal Vohra and Oscar Fernandes were appointed as Directors and the shares of the existing shareholders of Young India - Suman Dubey and Sam Pitroda were transferred to Sonia Gandhi and Oscar Fernandes
- D. On the same day, fresh allotment of Young India shares were made to the following people : (a) Rahul Gandhi, (b) Sonia Gandhi, (c) Motilal Vohra and (d) Oscar Fernandes.
- E. On receiving the PAN, Young India opened a bank account with Citibank and deposited Rs. 1 Crore received from M/S Detox therein. They further paid Rs. 50 Lakhs to INC as a consideration for assignment of the loan receivable from the Appellant.
- F. Thereafter, the Appellant allotted 99% of its shares in the name of Young India.
- G. Young India applied for exemption under Section 12-A of the Income Tax Act, 1961 wherein the Authorities granted the said exemption with effect from the F.Y. 2010-11.
- H. The **Respondent (Land and Dev.)** herein alleged that these transactions are not genuine and sought to lift the corporate veil. Aggrieved, the Appellant filed the instant Appeal.

Decision -

The Court decided in favour of the **Respondent (Land and Dev.)**.

Legal Principles held / Observations made-

1. That in public interest and for assessing the actual nature of a transaction or the *modus operandi* employed in carrying out a particular transaction, the theory of lifting of the corporate veil is permissible and a Court can always apply this doctrine to see as to what is the actual nature of transaction that has taken place.
2. That the purpose for which the doctrine of lifting of the veil is applied is nothing but a principle followed to ensure that a corporate character or personality is not misused as a device to conduct something which is improper and not permissible in law, fraudulent in nature and goes against public interest and is employed to evade obligations imposed in law.
3. That in the instant case, within a period of about three months of Young India being constituted, it took over the right to recover a loan of more than 90 Crores from INC for a consideration of Rs.50 Lakhs, thereafter replaced the original shareholders of Young India by four new entities including Moti Lal Vohra, Chairman of AJL and acquired 99% of shares in the Appellant Company.
4. That the entire transaction of transferring the shares of Appellant to Young India was nothing but a clandestine and surreptitious transfer of the lucrative interest in the premises to Young India

Conclusion -

The Court held that the corporate veil could be lifted and pierced in the instant case.

8. STEEL AUTH OF INDIA LTD. V. SHRI AMBICA MILLS LTD. & ORS [SC]

Civil Appeal NO.2889 OF 1985

Facts :

- A. The Respondent (Shri Ambica) had obtained an advance license under a special scheme and had submitted it to the Appellant (SAIL) for the supply of rolled strips in coils. The Appellant rejected the license and refused to supply the goods at concessional price stating that the license was defective.
- B. The Respondent contended that the license issuing authority and the major shareholder of Appellant were the same government and therefore, the Appellant could not have rejected the defective advance license.
- C. The main contention that arose was whether a company in which the major shareholder is the government itself becomes a department of the government or remains as a separate entity.

Decision -

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

Legal Principles held / Observations made-

1. That a company, even though fully owned by the Government, when incorporated, takes its own entity/identify and cannot be considered as department of the Government.

Conclusion -

The Court held that the Appellant was not a department of the Government and rather had a separate entity.

9. USHA MARTIN VENTURES LTD. & ORS. v. USHA MARTIN LTD. & ANR [NCLAT]

Company Appeal (AT) No. 94 of 2019

Facts :

- A. The Appellant (Usha Martin Ventures) had filed a Petition under Section 241 & 242 of the Companies Act, 2013 alleging oppression and mismanagement against the Respondents (Usha Martin).
- B. The State Bank of India filed an intervention application, which was allowed by National Company Law Tribunal.
- C. Aggrieved, the Appellants challenged the impleadment of SBI in the instant appeal.

Decision -

The Court decided in favour of the Respondent (Usha Martin).

Legal Principles held -

1. That the State Bank of India had a nominee as one of the Director of the Company and the Appellant had alleged mismanagement of the company. This would have a direct impact in the Nominee Director and hence, SBI was a necessary party.

Conclusion -

The Court held SBI had been rightly impleaded in the suit.

10. MEL WINDMILLS PVT. LTD. v. MINERAL ENTERPRISES LTD. [NCLAT]

Company Appeal (AT) No. 04 of 2019 with connected appeals

Facts :

- A. The Appellant (MEL Windmills) filed a first motion petition with the NCLT for convening a meeting of the members and creditors of the company in order to get a scheme of demerger sanctioned by them.
- B. The NCLT passed an order declining to sanction the scheme of demerger on the ground that several issues were pending finalization and certain investigations were pending in relation to the mining business of the demerged company.
- C. The demerged company contended that the pending investigations were those which had been stayed by the High Court. Therefore, the said proceedings had no bearing and could not be an impediment in considering approval of the scheme of demerger.

Decision -

The Court decided in favour of the Appellant (MEL Windmills).

Legal Principles held / Observations made -

1. That at the stage of calling of meeting of creditors/members for consideration of the scheme of compromise or arrangement the Tribunal is not required to examine the merits of the scheme qua the proposed compromise.
2. That the merits of the proposed scheme of demerger which had to be examined only after obtaining the consent of creditors/members with requisite majority
3. That the pending issues could not be construed as an impediment in sanctioning the proposed scheme of demerger because the demerger scheme proposed by the Appellants was not with regard to business of Mining which would continue with the Demerged Company and the pending investigation would continue unhindered without having any impact on the proposed scheme of demerger.

Conclusion -

The Court remanded the matter back to the NCLT for fresh adjudication.

II. BACHA F. GUZDAR v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No.104 of 1953

Facts :

- A. The Appellant (Bacha F. Guzdar) was a Shareholder in a company that was engaged in the business of production and manufacture of Tea. The Company was eligible for certain benefits under the Income Tax Act, 1922 by the virtue of which 60% of income from the business of production and manufacture of tea was exempt as it was held to be Agricultural Income. The remaining 40% was subject to tax.
- B. The appellant received certain amount as dividend on the said shares. The Income Tax department sought to impose tax on the amount received as dividend.
- C. The Appellant denied payment of tax on the ground that the dividend received was out of profits from the business of production and manufacture of tea and hence, 60% of it was exempt from tax.
- D. The Department disagreed.

Decision -

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

Legal Principles held -

1. That the shareholders are not the owners of the assets of the company. They merely have a right to participate in the profits accrued by the company by using such assets. Assets are held by the company in its own name.
2. That in order to avail benefit under the said section, there has to be a direct nexus between the income and the Agricultural land. In the instant case, income from dividend did not accrue from the land directly. It accrued from the shares of the company. Therefore, the benefit cannot be granted.
3. That accepting the contention of the appellant would defeat the intention of the legislature in enacting the said section.

Conclusion –

The Appellant was not given the benefit of the exemption and the whole amount of dividend was added to his total income.

12. UNION OF INDIA & ANR v. MAHALAXMI SAW MILLS P. LTD [DEL]

LPA No.2514-15/200

Facts :

- A. The Appellant (Govt. of India) gave a piece of land on lease to Mr. Jagjodh Singh. The lease deed contained a clause which said that the lessee would have to seek approval from the lessor if the leasehold rights were to be assigned / transferred to a third party. It also said that the lessee would be liable to pay some amount as "unearned income" to the lessor in such cases.
- B. Jagjodh Singh became a partner in a firm (MSM Partnership) and transferred the leasehold rights to the firm. The firm was subsequently converted into a private limited company called Mahalaxmi Saw Mills (Respondent).
- C. By the virtue of the conversion, the leasehold rights in the said land stood transferred to the company. For this purpose, the lessee sought permission from the lessor.
- D. The lessor allowed the transfer of leasehold rights on the condition that certain amount be paid as "unearned income" and also as penalty for giving permission for the transfer.
- E. The lessee challenged this in a Writ petition which was allowed. Hence, the instant appeal.

Decision -

The Court decided in favour of the Appellant (Govt. / Lessor)

Legal Principles held -

1. That on conversion, all the properties of a firm vests in the company. It does not matter if all the partners of the firm become the shareholders of the company; since a company has a separate legal entity, the assets stand transferred to the company.
2. That such a transaction resulted in the transfer of leasehold rights to the Company. Therefore, approval was required and "unearned income" was rightly demanded for.

Conclusion -

The Respondent was directed to pay the unearned income as well as the penalty amount.

13. SIDDHARTH GUPTA v. THE DELHI GOLF CLUB LIMITED & ANR [DEL]

I.A. No. 19355/2015 in C.S (OS) No. 2805/2015

Facts :

- A. The Petitioner (Siddharth Gupta) had acquired membership in the Delhi Golf Club Ltd (Respondent) after paying the requisite fees and was enjoying the rights and privileges guaranteed to the members of the Club.
- B. One day, he got to know that a resolution had been passed in the AGM of the Club wherein his membership was cancelled.
- C. He filed a Petition against the said resolution in the Delhi High Court.

Decision -

The Court decided in favour of the Petitioner (Siddharth Gupta)

Legal Principles held -

1. That the membership of a person can be cancelled only after following the related provisions of the MoA and AoA of the Club and also the Principles of Natural justice.
2. That neither any notice was given to the appellant nor any opportunity of being heard was provided to him. Further, the provisions related to expulsion of members as provided in the MoA and AoA were not followed. In such a scenario, the resolution could not be sustained.

Conclusion -

The club was directed to reverse the Resolutions and were refrained from cancelling the membership of the Petitioner.

14. MADHUSUDAN GORDHANDAS & CO v. MADHU WOOLLEN INDUSTRIES PVT. LTD [SC]

Civil Appeal No. 1113 of 1970

Facts :

- A. The Appellant (Madhusudan) was a partnership firm with the three brothers from the Katakia Family as its Partners. The Appellants carried on their partnership business in the name of Madhu Wool Spinning Mills in which the Katakias brothers had 3 shares and the other 1,100 shares were owned by N.C. Shah and the group of Bombay Traders.
- B. An agreement had been entered into between the Bombay Traders and the Appellants. The Bombay Traders were floating a new Company, the Respondents (Madhu Woollen), for which they agreed to pay Rs. 6,00,000 for acquisition of machinery and installation charges to the Appellants. It was agreed that the erection charges were to be treated as the loan to the Respondents.
- C. The appellants had imported some machinery and were in the process of importing some more. It was decided that the amount which the Bombay Traders had advanced as loan to the Respondent was to be converted into Equity capital of the company.
- D. Soon after its incorporation, the Respondent started defaulting in repayment of the dues. Aggrieved, the Appellant filed a petition for winding up of the Respondent.

Decision -

The Court decided in favour of the Respondent (Madhu Woollen).

Legal Principles held -

- 1. That the alleged debts of the Appellants are barred by limitation, disputed, denied, doubted and at least in one instance proved to be dishonest by the production of a receipt granted by the Appellants.
- 2. That the mere fact that the company has suffered trading losses will not destroy its substratum unless there is no reasonable prospect of it ever making a profit in the future. However, the court was reluctant to hold that the Respondent had no such prospect.
- 3. In the absence of loss of substratum, winding up order can not be passed.

Conclusion -

The court held that the Respondent should NOT be wound up.

15. MADRAS PETROCHEM LTD & ANR v. BIFR & ORS [SC]

Civil Appeal Nos.614 - 615 of 2016

Facts :

- A. The Appellant (Madrass Petrochem Ltd.) filed a reference before the BIFR (Respondent) to formulate a rehabilitation scheme. All attempts to revive the company failed. Pursuant to this, on recommendation of BIFR, the Bombay High Court passed an order of winding up against the appellant. The company filed an appeal with the AAIFR.
- B. While the matter stood pending before the AAIFR, ICICI issued a notice under Section 13(2) of the SARFESI Act to the appellant company and followed it up with a possession notice.
- C. Such an interplay of petitions filed under SICA as well as the SARFAESI Act resulted in conflict between the two Acts. The instant Petition was filed in order to understand the correct position of law as to which Act would prevail over the other.

Decision -

The Court decided in favour of the Respondents (BIFR).

Legal Principles held -

1. That the following is the correct position of law when there is a conflict between the SARFAESI Act and SICA-

Unsecured Creditors	Secured Creditors			
	If there is a single secured creditor	If there is more than one creditor		
		Less than 60% of Creditors agree to enforce Security	More than 60% of Creditors agree to enforce Security	More than 75% of Creditors agree to enforce Security
SICA will prevail	SARFAESI will prevail	SICA will have full play	SICA will have no play	Proceedings under SICA will abate

Conclusion –

The Court held that since more than 75% of the Secured Creditors had agreed to enforce their security interests, the proceedings under SICA shall abate.

16. REGISTRAR OF COMPANIES v. RAJSHREE SUGAR & CHEMICALS LTD & ORS [SC]

Civil Appeal No. 485 Of 2000

Facts :

- A. Certain share transfer certificates were submitted with the **Respondent Company (Rajshree Sugar)** in order to register the transfer in the Register of members. The company, however, failed to comply with section 113 of the Companies Act, 1956 which prescribes for the time period within which the company has to issue fresh certificates to the transferee(s).
- B. On perusal of records of the company, the **Appellant (RoC)** found the alleged violation after a span of 2 years. He filed a case against the company which was dismissed on grounds of (i) limitation period and (ii) that the RoC had no locus to bring a petition under the said section.
- C. The RoC filed an appeal with the Supreme Court.

Decision -

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

Legal Principles held -

1. That the Government Officers are obliged to work with reasonable expedition and within the time frame prescribed by the Act. However, in the instant case, the delay to file the petition was condoned but heavy costs were imposed on the appellant (RoC).
2. That the words "any person aggrieved" used in section 113 of the Act should be interpreted in such a manner so as to bring it in conformity with other provisions of the Act. If the words are interpreted to include only the transferee of the shares, it will go against the other provisions of the Act.
3. That the words "any person aggrieved" used in section 113 of the Act includes the registrar of Companies and hence, the RoC had the locus to file the instant petition.

Conclusion -

The Court held that the RoC could file the complaint and remanded the matter back for fresh adjudication.

17. OM PRAKASH PARASRAMPURIA & ORS v. UNION OF INDIA & ORS [DEL]

W.P. (C) 8617 and 8732/2015

Facts :

- A. In the case of "KSL & Industries Ltd. vs. Arihant Threads Ltd. & Ors (2015) 1 SCC 166" the Supreme Court held that provisions of section 22 of SICA will prevail over section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act). This was based on the legal principle that "coercive recovery proceedings could not be initiated against a sick company."
- B. The Petitioners (Om Prakash Parasrampuria) were guarantors to a loan obtained by a sick company and recovery proceedings under the RDDBFI Act, 1993 were initiated against them.
- C. The Petitioners argued that since the company had been declared as a Sick company, no action under other Acts like RDDBFI could be brought against them.

Decision -

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

Legal Principles held -

1. That Section 22 of the SICA puts a bar on the continuation or institution of proceedings for the winding up of or on the continuation or institution of suits for the recovery of money or for the enforcement of any security against any sick company without the consent of BIFR.
2. That the word 'suit' as used u/s 22 cannot be understood in its broad and generic sense to include any action before a legal forum involving an adjudicatory process. Thus, the bar would apply only to proceedings in a civil court and not on actions for recovery proceedings filed before a Tribunal, such as, the 'DRT.

Conclusion -

The Court held that the petition under RDDBFI Act can be maintained against the guarantors of a sick company.

18. B.I.F.R. & ORS v. KMA LTD & ORS [Bom]

Company Application No. 593 of 2011 and 620 of 2011 in 778 of 2005

Facts :

- A. The company had a total of 1162 workmen out of which 1099 workmen were members of one Union (say, A) and the rest 63 were members of a rival Union (say, B).
- B. Member of Union A accepted payment of their dues from the company as per the Consent Terms reached between them and the Secured Creditors. Members of the Union B did not agree to the said terms.
- C. Members of the Union B argued that they are not bound by the consent terms accepted by Union A and must be paid in accordance with the adjudication originally made by the Industrial Court or in accordance with their entitlement under Sections 529A and 530 of the Companies Act, 1956.
- D. Further, the members of Union B demanded wages upto the date on which winding up order was passed by the court against the company.

Decision -

The Court decided upon a number of principles in favour of different parties.

Legal Principles held -

- 1. That the dissenting workmen, i.e; members of Union B were not bound by the consent terms entered into by the members of Union A.
- 2. That the workmen who did not become members of the Company as per the consent terms and did not work must be treated as having refused to offer themselves for service and accordingly, ceased to be workmen. Thus, they cannot claim wages for the days after which the factory was closed and were entitled to wages only upto the date of closure of the factory.
- 3. That the workmen were entitled to payment of gratuity and leave encashment upto a maximum permissible limit of 30 days, in priority. However, they were not entitled to payment of bonus, interest on gratuity or leave encashment beyond 30 days as preferential payment.

Conclusion -

The Court held the abovementioned principles regarding the various questions involved.

19. SHRI GOPAL PAPER MILLS CO. LTD. v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No. 1669 of 1966

Facts :

- A. The Appellant company (Shri Gopal) passed a resolution on 30/12/1954 resolving to capitalize and distribute its accumulated profits to its shareholders as Bonus shares. However, the dividend was to be calculated on the said shares from 01/01/1955.
- B. The Income Tax Department, while calculating the tax liability of the company, held that since dividend was to be calculated on the bonus shares from 01/01/1955, they will be deemed to have been allotted on 01/01/1955. Therefore, the amount for which bonus shares were issued to the shareholders would not be considered as the share capital of the company and would rather be added to the income of the company for the assessment year 1954.
- C. The company contested this on the ground that the ownership of bonus shares vested in the shareholders on the day on which resolution was passed i.e; on 30/12/1954. Thus, the amount for which the bonus shares were issued should not be added to the profits of the company and should rather be added to its equity.

(PLEASE NOTE that the assessment year used to be the same as calendar year back then)

Decision -

The Court decided in favour of the Appellant (Shri Gopal).

Legal Principles held -

1. That under the AoA of the company, the shareholders did not have any rights to reject the allotment of bonus shares. Thus, the company had full powers to issue and allot bonus shares to the shareholders.
2. That in the above scenario, it did not matter that the dividend on the shares was calculated from 01/01/1955. The ownership in the shares transferred with the passing of the resolution.

Conclusion -

The Court held that the shareholders became the holders of the bonus shares from 30/12/1954.

20. CHIEF CONTROLLING REVENUE AUTH. & ANR V. RELIANCE INDUSTRIES LTD [BOM-FB]

Civil Reference No.1 of 2007 in Writ Petition No. 1293 of 2007

Facts :

- A.** The Respondent Company (Reliance Industries Ltd.), situated in Mumbai, planned to amalgamate with its group company Reliance Petroleum Ltd, which was situated in Gujarat. In accordance with the provisions of the Companies Act, 1956, both the companies approached their respective High Courts in order to get their schemes of amalgamation sanctioned.
- B.** Both the High Courts sanctioned the schemes of amalgamation. Subsequently, the Respondent Company paid stamp duty of Rs.10 crores in the State of Gujarat on the order passed by the Gujarat High Court and requested for the remission/ deduction/ setoff of this sum on the stamp duty payable on the order passed by the Bombay High court.
- C.** This request was rejected by the Bombay High Court and the company was ordered to pay stamp duty of Rs. 25 crores in the State of Maharashtra on the order passed by the Bombay High Court.

Decision -

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

Legal Principles held -

- 1.** That any order passed by the High Court sanctioning a scheme of amalgamation is an instrument chargeable to stamp duty because it is that order that effects transfer of assets. In case orders sanctioning the scheme of amalgamation are passed by two different High Courts, then the orders of both the High Courts will be the separately chargeable to stamp duty.
- 2.** That the orders sanctioning the scheme of amalgamation are not incidental to the transaction but are rather the most important part as it is these orders which effectuate the transfer of assets.
- 3.** That no waiver / rebate can be given to the company on the stamp duty to be paid in one state based on the duty paid in another state.

Conclusion -

The Court held that the company has to pay separate Stamp Duties in both the states.

"It always seems impossible unless it is DONE!"

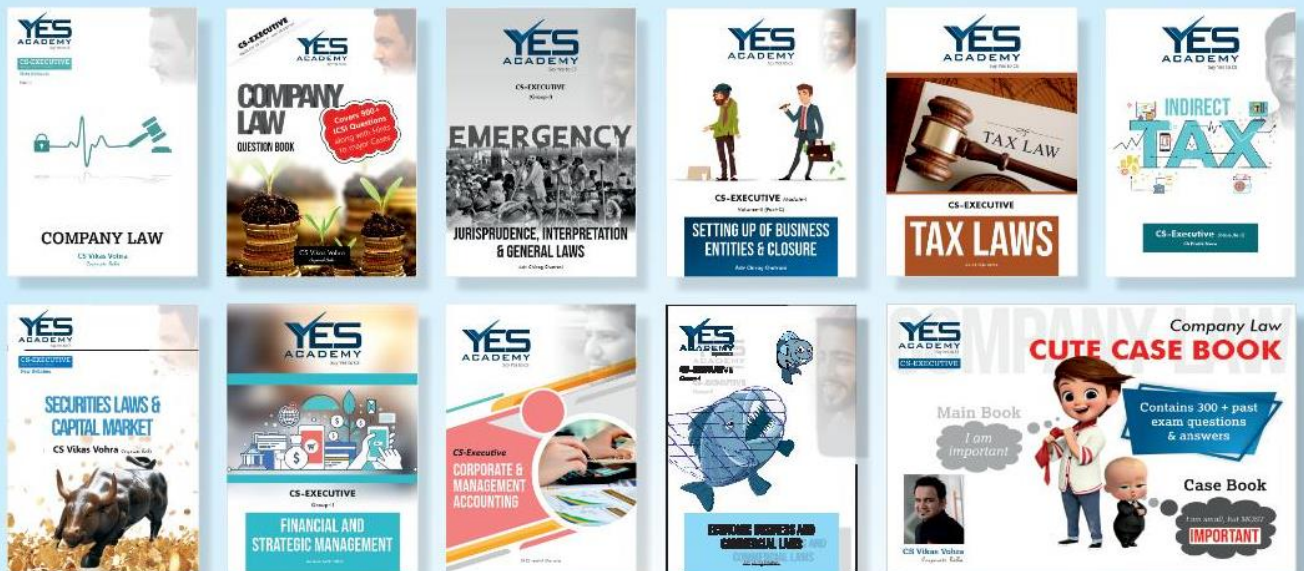
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CS Vaibhav Chitlangia

CS Vaibhav Chitlangia is one of the very few people to have completed the Company Secretary Course at the age of 21 with All India Ranks at all the three levels. He got the 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's 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

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