

1. EMAAR MGF LAND LIMITED v. AFTAB SINGH [SC]

Hint: Buyer agreement entered into between Buyer and Seller and it contained arbitration clause that provides for settlement of disputes between the parties under the Arbitration and Conciliation Act, 1996. However, in the present case, buyer file complaint to the NCDRC on account of deficiency of services on the side of the seller. Issue arise in the case whether Consumer filed complaint under the Consumer Protection Act, 1986 even he is binding as per Arbitration clause contained in Buyers' Agreement to file complaint under Arbitration.

Decision: The SC decide the case in favour of the Respondent (i.e. Aftab). The SC held that the **respondent is entitled to seek additional special remedy provided under the statutes (i.e. Consumer Protection Act, 1986) even if he is binding on ARBITRATION CLAUSE.**

Fact of the Case	☆ A Buyer's agreement was entered into between the appellant and the respondent. In the Buyer's agreement, there was an arbitration clause providing for settlement of disputes between parties under the Arbitration and Conciliation Act, 1996. ☆ On 27.07.2015, the respondent filed a Consumer Complaint before the NCDRC against the appellant praying for ☛ delivery of possession of the built up Villa, ☛ adjustment of excess payment and ☛ compensation for deficiency of service. ☆ Appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to arbitration for and on behalf of the appellant. The single judge referred the issue to the larger Bench and the larger bench dismissed the application on the ground that the consumer dispute is not arbitrable. ☆ Appellant filed appeal to the SC.
Legal Principles held—	☆ The Supreme Court observed the following: 1. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above. 2. Not only the proceedings of Consumer Protection Act, 1986 are special proceedings which were required to be continued under the Act despite an arbitration agreement, there are large number of other fields where an arbitration agreement can either stop or stultify the proceedings. (a) For example, any action of a party, omission or commission of a person which amounts to an offence has to be examined by a criminal court and no amount of agreement between the parties shall be relevant for the said case. (b) For example, there may be a commercial agreement between two parties that all issues pertaining to transaction are to be decided by arbitration as per arbitration clause in the agreement. In case where a cheque is dishonoured by one party in transaction, despite the arbitration agreement party aggrieved has to approach the criminal court. 3. Similarly, there are several issues which are non- arbitrable. There can be prohibition both express or implied for NOT deciding a dispute on the basis of an arbitration agreement. We have already noted several categories of cases, which are not arbitrable. 4. While referring to judgment of this Court in <i>Booz Allen & Hamilton Inc v. SBI Home Finance Ltd & Ors</i> (2011) those principles have again been reiterated by this Court in <i>A. Ayyasamy v .A. Paramasivam & Ors</i> (2016) 10 SCC 386.

	5. The amendment in Section 8 cannot be given such expansive meaning and intent so as to inundate (i.e. fill in) entire regime of special legislations where such disputes were held to be not arbitrable. 6. Something which legislation never intended cannot be accepted as side wind to override the settled law. The submission of the petitioner that after the amendment the law as laid down by this Court in National Seeds Corporation Limited (supra) is no more a good law cannot be accepted. ★ The words “notwithstanding any judgment, decree or order of the Supreme Court or any Court” were meant only to those precedents where it was laid down that the judicial authority while making reference under Section 8 shall entitle to look into various facets of the arbitration agreement, subject matter of the arbitration whether the claim is alive or dead, whether the arbitration agreement is null and void. The words added in Section 8 cannot be meant for any other meaning. ★ However, we may hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does NOT opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition (i.e. barrier) in disputes being proceeded in arbitration. ★ It is only the case where specific/ special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration. ★ Thus, we do not find that any error has been committed by the NCDRC.
Decision	★ The SC decide the case in favour of the Respondent (i.e. Aftab). ★ The SC held that the respondent is entitled to seek additional special remedy provided under the statutes (i.e. Consumer Protection Act, 1986).

2. CARLSBERG BREWERIES A/S v. SOM DISTILLERIES AND BREWERIES LTD [Del-FB]

Hint: The question arise “whether Infringement of design and passing off of the plaintiff’s trade dress can be combined in a composite suit”.

Decision: YES, one composite suit can be filed by a plaintiff against one defendant by joining two causes of action, one of infringement of the registered design of the plaintiff and the second of the defendant passing off its goods as that of the plaintiff on account of the goods of the defendant being fraudulent or obvious imitation i.e. identical or deceptively similar, to the goods of the plaintiff

Fact of the Case	★ The present suit is filed by the Appellant, which sought the reliefs of infringement of design and a decree for injunction against passing off. ★ The learned Single Judge, by the order dated 02.05.2017, referred the question as on the whether the decision in Mohan Lal v. Sona Paint, 2013 (55) PTC 61 (Del) (FB) - hereafter “Mohan Lal” on the aspect of maintainability of a composite suit in relation to infringement of a registered design and for passing off, where the parties to the proceedings are the same needs re-consideration by a larger bench in the light of Order II Rule 3 CPC, which permits joinder of causes of action. The decision in Mohan Lal (supra) was by a Full Bench of three judges, which held that “infringement of design” and “passing off” cannot be combined in a composite suit. ★ The present suit (out of which this reference arose) was filed, complaining of infringement of a registered design as well as passing off (of the plaintiff’s trade dress) in respect of the bottle and overall get up of the “Carslberg” mark. ★ The defendant objected to the frame of the suit, pointing out that per Mohan Lal (supra), the two claims (for passing off and reliefs regarding design infringement) could not be combined in one suit.
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	☆ The single judge analysed parties "submissions and felt that the issue decided in Mohan Lal (supra) required a second look; he therefore, referred the matter for appropriate orders to the Chief Justice.
Legal Principles held –	☆ The issue which is required to be squarely addressed by this Full Bench is as to whether there would arise common questions of facts and law in the two causes of action of infringement of registered design and passing off so that these two causes of action can be joined under Order II Rule 3 CPC, and which is an issue which was NOT decided either in Dabur India Limited v. K.R. Industries, (2008) 10 SCC 595 or in the case of Dhodha House v. S.K. Maingi, (2006) 9 SCC 41. ☆ However, before we go on this aspect, the general law w.r.t. joinder of causes of action under Order II Rule 3 CPC can be usefully referred to and as held in the case of Prem Lata Nahata & Anr v. Chandi Prasad Sikaria, (2007) 2 SCC 551. ☆ The ratio of the judgment in the case of Prem Lata Nahata & Anr (supra) is that w.r.t. ☛ entitlement or otherwise of joinder of causes of action, ☛ the question to be asked is as to whether the evidence to be led in the two causes of action would be common, and ☛ if the substantial evidence of two causes of action would be common, then there can be joinder of causes of action under Order II Rule 3 CPC. Putting it negatively if the evidence is for the most part different of the two causes of action, then there cannot be joinder of causes of action. ☆ The crux of the matter for joinder of causes of action under Order II Rule 3 CPC is to see if common questions of law and facts arise in two separate causes of action and whereupon there can be joinder of causes of action under Order II Rule 3 CPC in one composite suit which joins two causes of action. Therefore, we now proceed to examine as to whether there would exist common questions of law and fact in the two causes of action of infringement of registered design and passing off. For so deciding, first it would be necessary to refer to the meaning of cause of action. ☆ Let us now accordingly examine ☛ as to what are the bundle of facts, or the bundle of material facts, in the two causes of action of infringement of a registered design and passing off, and ☛ as to whether there would arise common questions of law and fact in the two bundle of facts of the two causes of action of infringement of registered design and passing off. ☆ To decide the issue of existence of common questions of law and fact in the two causes of action of infringement of a registered design and passing off, at this stage it would be instructive to refer to a judgment passed by the Division Bench of this Court in the case of M/s. Jay Industries v. M/s. Nakson Industries, 1992 SCC Online Del 84; AIR 1992 Del 338 because this judgment lays down the ratio for the issue at hand as to when there can be joinder of causes of action. ☆ A reading of the observations made in the judgment of M/s. Jay Industries (supra) shows that the Division Bench was of the view that two different causes of action in fact can be a part of the same transaction. ☆ The same transaction is that transaction of the selling of goods by the defendant by packing and labelling them in such a manner which infringes the trademark and the copyright of the plaintiff. ☆ In such facts there would be common bundle of facts in the two causes of action of infringement of trademark and copyright, because there is a single and same transaction of sale of the goods by the defendant of its goods in cartons under being similar to the cartons in which the plaintiff sells its goods and which as per plaintiff results in violation of his rights in his registered trade mark and copyright in his label.

Decision	☆ The Delhi HC held that Infringement of design and passing off of the plaintiff's trade dress can be filed by composite suit to avoid multiplicity of the suit. ☆ The Division Bench has concluded that since the transaction of sale by the defendant in effect results in the infringement of both the trademark rights and violation of copyright of the plaintiff under Order II Rule 3 CPC it is permissible to join the two causes of action against the same defendant and that in fact in such cases the joinder of causes of action would result in avoidance of multiplicity of proceedings. ☆ Therefore, it is seen that once a transaction of sale which is impugned by the plaintiff results in infringement of two rights of the plaintiff of infringement of plaintiff's trademark and violation of plaintiff's copyright, since there would be common questions of law and facts because it is the transaction of sale with its bundles of facts which is impugned being common in both the causes of action. Therefore, joinder of causes of action can take place under Order II Rule 3 CPC, and ought to be done because this will avoid multiplicity of proceedings. ☆ <u>The reference is answered by holding that one composite suit can be filed by a plaintiff against one defendant by joining two causes of action, one of infringement of the registered design of the plaintiff and the second of the defendant passing off its goods as that of the plaintiff on account of the goods of the defendant being fraudulent or obvious imitation i.e. identical or deceptively similar, to the goods of the plaintiff.</u>
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3. HINDUSTAN INFRASTRUCTURE CONSTRUCTION CORPORATION LTD. v. M/S. R.S. WOODS INTERNATIONAL & ORS [DEL]

Hint: Unregistered partnership filed complained under the Negotiable Instrument Act, 1881 on account of dishonoured of the cheques received from the party. Issue arise in the given case, whether unregistered is barred to file suit under the Negotiable Instrument Act, 1881 by virtue of the Section 69 of the Indian Partnership Act, 1932.

Decision:

- ☆ The Delhi HC decide the case in favour of the Respondents.
- ☆ The Delhi HC held that the bar under Section 69(2) of the Indian Partnership Act would apply only where the suit is sought to be laid on a contract and NOT in a case where statutory right/liability is sought to be enforced.

Fact of the Case	☆ In the present case, Respondent is an unregistered Partnership Firm which received 5 cheques from the appellant, amounting to Rs. 24,41,967/-. Later on, all the cheques was dishonoured. ☆ Petitioner filed a complaint application against the appellant on account of dishonoured of the aforesaid cheques. However, the learned ADJ dismissed the application of the petitioners by relying upon a judgment of the Kerala High Court in Afsal Baker vs. Maya Printers 2016. The Ld. ADJ held that "Keeping in view the fact that the present case is also based on dishonoured cheque and not a contract between the parties, the application under Order 7 Rule 11 CPC is hereby dismissed inasmuch as the suit cannot be said to be NOT maintainable by virtue of provision of Section 69 (2) of the Indian Partnership Act. Ordered accordingly".
Applicable Law	1. Section 69 of the Indian Partnership Act, 1932 deals with the effect of non-registration: (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm: (2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the

	persons suing are or have been shown in the Register of firms as partners in the firms.
Legal Principles held –	★ The Delhi High Court observed the following: 1. The aforesaid provision i.e. Section 69 of the Indian Partnership Act, 1932 deals with the effect of non-registration of a partnership firm and bars filing of a suit by or on behalf of such firm to enforce a right arising from a contract by or on behalf of such firm against any third party. 2. The Kerala High Court in Afsal Baker (surpa) observed as under :- ☛ In the instant case, as noticed above, by virtue of Section 30 and 37 of the Negotiable Instruments Act, on the dishonour of a cheque, the statute creates a liability on the drawer in addition to the general law of contracts. The right to sue on the contract is available and open to the party. However, in addition to that, the statute creates a liability as against the drawer of the instrument. (a) If the suit is on the original cause of action based on the original contract between the parties, there is no doubt, the suit would be hit by Section 69(2) of the Indian Partnership Act. (b) But, in the instant case, what is sought to be enforced is the liability created under the Negotiable Instruments Act. It is NOT a case where suit is filed on the original cause of action by producing the cheques as a piece of evidence to prove the liability under the original contract. Here, the suit itself is laid on the instrument. A reading of the plaint leaves no room for doubt regarding that. 3. The bar under Section 69(2) of the Indian Partnership Act would apply only where the suit is sought to be laid on a contract and NOT in a case where statutory right/liability is sought to be enforced. (CRUX OF THE WHOLE CASE) 4. In the instant case, the suit being purely based on the liability under Section 30 and 37 of the Negotiable Instruments Act, it is a suit based on statutory liability dehors the contract between the parties. The suit cannot be held to be barred under Section 69(2) of the Indian Partnership Act.
Decision	★ The Delhi HC decide the case in favour of the Respondents. ★ The Delhi HC held that the bar under Section 69(2) of the Indian Partnership Act would apply only where the suit is sought to be laid on a contract and NOT in a case where statutory right/liability is sought to be enforced. ★ Hence, unregistered Partnership is eligible to file suit against the drawer on account of statutory right/liability is sought to be enforced.

4. M/S. SICAGEN INDIA LTD v. MAHINDRA VADINENI & ORS [SC]

Issue: Whether a criminal complaint based on a subsequent or successive statutory notice, filed under Section 138 of the Negotiable Instruments Act, 1881 is maintainable.

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that complaint filed on the basis of second statutory notice is tenable in law.

Fact of the Case	★ In the present case, M/s. Sicagen India Ltd (hereinafter referred to as 'the Appellant') was involved in business dealings with Mahindra Vadideni (hereinafter referred to as 'the Respondent'). ★ In the course of business dealings, the Respondent issued three cheques in favor of the Appellant. These three cheques were presented for collection and they were dishonoured due to insufficient funds. ★ Hence, the Appellant issued the first statutory notice to the Respondent on 31.08.2009, demanding the refund of the cheque amounts. The cheques were presented again and dishonored again.
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	★ Hence, on 25.01.2010 the Appellant issued a statutory notice to the Respondent and filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. This complaint was based on the second statutory notice dated 25.01.2010. ★ The Respondent filed a petition before the High Court of Judicature at Madras under Section 482 of CrPC seeking to quash the criminal complaint on the ground that the complaint was NOT filed based on the first statutory notice dated 31.08.2009. Hence the complaint filed on the basis of the second statutory notice dated 25.01.2010 was NOT maintainable. ★ The Hon'ble Madras HC quashed the criminal complaint filed by the Appellant. The Hon'ble Court held that it was NOT maintainable since the amount had been specifically mentioned in the first statutory notice dated 31.08.2009, but the complaint was filed on the basis of the second statutory notice dated 25.01.2010 by postponing the matter. ★ Further, the Hon'ble Court held that since the complaint had been filed on the same cause of action as the first statutory notice, it was not maintainable.
What is the issue in dispute.	The issue involved whether the prosecution based upon second or successive dishonour of the cheque is permissible or not, is no longer res integra.
Legal Principles held –	★ In Sadanandan's case, ☛ It was held that while second and successive presentation of the cheque is legally permissible so long as such presentation is within (a) the period of 6 months or (b) the validity of the cheque whichever is earlier, ☛ The second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. ☛ The correctness of the decision in Sadanandan's case was doubted and referred to the larger bench. ★ In MSR Leathers v. S. Palaniappan & Anr 2013, the Court held that there is nothing in the provisions of Section 138 of the Act that forbids the holder of the Cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation. ★ In the present case as pointed out earlier that cheques were presented twice and notices were issued on 31.08.2009 and 25.01.2010. Applying the ratio of MSR Leathers (supra) the complaint filed based on the second statutory notice is not barred. ★ Accordingly, the HC ought NOT to have quashed the criminal complaint and the impugned judgment is liable to be set aside.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that complaint filed on the basis of second statutory notice is tenable in law.

5. UNION OF INDIA v. KHAITAN HOLDINGS (MAURITIUS) & ORS [DEL]

Hint: BIT Agreement referred to as an agreement entered into between the Republic of India and the Republic of Mauritius for the Promotion and Protection of Investments. Investment made by Mauritius entity in India has initiate arbitration proceedings initiated under BIT. In view of this, Government of India sought anti-arbitration injunction on various grounds as given below is tenable in law.

Decision:

- ★ The SC decided in favour of the Respondent (Khaitan).
- ★ The SC reject the adinterim relief seeking stay of the arbitral proceedings commenced by Khaitan Holdings under the BIT.

Fact of the Case	★ Arbitration as a means for resolution of disputes is well entrenched in most judicial systems. In the context of commercial arbitration, there are two types - domestic arbitration and international commercial arbitration. In all these disputes, minimum judicial interference in the conduct of arbitral proceedings is the norm. ★ There is yet another species of arbitration which is the subject matter of the present case i.e., Arbitral proceedings under Bilateral Investment Treaties (BITs).
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	☆ While traditional arbitrations arise out of commercial contracts entered into between individuals and companies, and arbitrations under BITs arise out of agreements signed between two sovereign nations. ☆ Under these agreements, each of the States, signatory to the Agreement agrees to provide Fair and Equitable Treatment to investors from the other State, as also extend protection against arbitrary, discriminatory and unfair practices. ☆ The investments made by investors of the State are to be safeguarded against any expropriation and remedies are also provided for adjudication of disputes through international dispute settlement mechanisms. ☆ The dispute settlement mechanisms can be triggered both by the aggrieved State as also an aggrieved investor from a State which is party to the Agreement, against the other State. ☆ Interference by domestic courts in arbitral proceedings that may be commenced under BITs is permissible but only in 'compelling circumstances, in 'rare cases. Courts are hesitant to interfere in the arbitral process once the Tribunal is constituted and is seized of the dispute. ☆ The Union of India seeks an anti-arbitration injunction against the arbitral proceedings initiated by Defendant No.1 - M/s Khaitan Holdings (Mauritius) Ltd. a Mauritius based company, under the BIT Agreement. ☆ BIT Agreement referred to as an agreement entered into between the Republic of India and the Republic of Mauritius for the Promotion and Protection of Investments.
Legal Principles held—	☆ The genesis of the dispute, which has been encapsulated in the notice invoking arbitration is the judgement of SC in CPIL (supra) of the SC by which the SC cancelled the licences granted to various companies including Loop Telecom. ☆ The judgment of the SC resulted in fresh recommendations being made by the TRAI, and thereafter an auction being conducted for allocation of the spectrum and award of licenses. It can be seen that in the era of BIT agreements, even judgements of Courts could trigger investment disputes under the BITs resulting in enormous claims being raised against the Government. ☆ This is so because under public international law which primarily governs BIT agreements, the Articles of State Responsibility specifically provide that the conduct of any organ of the State can be called to question. ☆ The grounds on which the Republic of India seeks an anti-arbitration injunction are as under: 1. That Khaitan Holdings is not a genuine investor due to the clear link and control by Sh. Ishwari Prasad Khaitan and Smt. Kiran Khaitan of both Khaitan Holdings (Mauritius) and Loop Telecom; 2. That the BIT cannot be invoked by an entity, though incorporated in Mauritius, but is actually controlled by Indian citizens; 3. That there has been no expropriation as due process has been followed and the decision to cancel the licences was rendered by the SC in public interest; 4. That the entire foreign investment, being through the automatic route, was subject to Indian laws under the UASL; 5. That Loop Telecom has already availed of its remedies against the cancellation of its licences under Indian law and hence rights under the BIT stand waived; 6. Overlapping nature of the claims raised by Loop Telecom before TDSAT and Defendant no.1 in the arbitral proceedings; ☆ All the above grounds, are those that can be that with and decided by the Arbitral Tribunal. The arbitration having been invoked in 2013 and the Tribunal having been constituted and being seized of the dispute, it is not for this Court to adjudicate on these issues. ☆ The above issues ought to be raised by the Republic of India before the Arbitral Tribunal, which under Article 21, would rule upon the same.

	☆ The proceedings which are already underway cannot be termed as being oppressive, vexatious or an abuse of process at this stage. ☆ Accordingly, the prayer for adinterim relief seeking stay of the arbitral proceedings commenced by Khaitan Holdings under the BIT is rejected at this stage.
Decision	☆ The SC decided in favour of the Respondent (Khaitan). ☆ The SC reject the adinterim relief seeking stay of the arbitral proceedings commenced by Khaitan Holdings under the BIT.

6. BIR SINGH v. MUKESH KUMAR [SC]

Hint: In the given case, the respondent issued a cheque **as a security** in the name of the appellant towards repayment of a **"friendly loan" of Rs.15 lakhs advanced by the appellant to the respondent.** The appellant deposited the said cheque in his bank, **but the cheque was returned unpaid with the endorsement "Insufficient Fund".** The respondent raised objection that appellant filled the cheque, which was given as security.

Decision: The SC decide the case in favour of Appellant on the basis of various grounds as given below.

Fact of the Case	☆ In the present case, the respondent issued a cheque in the name of the appellant towards repayment of a "friendly loan" of Rs.15 lakhs advanced by the appellant to the respondent. ☆ On 11-4-2012, the appellant deposited the said cheque in his bank, but the cheque was returned unpaid with the endorsement "Insufficient Fund". The appellant again presented the cheque to his bank, but it was again returned unpaid with the remark "Insufficient Fund". ☆ The appellant filed a Criminal Complaint against the respondent, where the Judicial Magistrate convicted the respondent. ☆ On appeal by the accused, the Appellate Court upheld the conviction of the respondent accused and confirmed the compensation of Rs.15 lakhs directed to be paid to the appellant. However, the sentence of imprisonment was reduced to 6 months from one year. ☆ On the one hand, the respondent filed a Criminal Revision Petition in the HC challenging the Judgment and order of the Appellate Court and on the other hand, the appellant also filed a Criminal Revision Petition challenging the reduction of the sentence from one year to six months. ☆ Finally, the HC has reversed the concurrent factual findings of the Trial Court and the Appellate Court and acquitted the respondent, observing that there was fiduciary relationship between the appellant, an Income Tax practitioner, and the respondent, who was his client.
Legal Principles held –	☆ The SC observed the following: (a) A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. (b) The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. (c) Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. (d) The onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

	(e) In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant, it may reasonably be presumed that the cheque was filled in by the appellant being the payee in the presence of the respondent being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. (f) There was no change in the amount of the cheque, its date or the name of the payee.
Decision	★ The SC held that ☛ The High Court misconstrued Section 139 of Negotiable Instruments Act, which mandates that unless the contrary is proved, it is to be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability. Needless to mention that the presumption contemplated under Section 139 of the Negotiable Instruments Act, is a rebuttable presumption. ☛ However, the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque. ☛ If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. It is not the case of the respondent that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent that the unfilled signed cheque had been stolen. ★ The SC held that the Respondent was guilty under section 138 of the NI Act, 1881. ★ The SC decide the case in favour of the Appellant (Bir).

7. ROHITBHAI J PATEL v. THE STATE OF GUJARAT [SC]

(V. Imp.) **Hint:** In this case, presumption as to cheque drawn in favour of the Complainant and Trial Court **put the onus on the complainant (i.e. not on the accused) to prove the liability.** Trial Court acquit the Appellant-accused on the ground that complainant **failed to explain source of funds for advancing money to the Appellant-accused.** HC reversed that order of the Trial Court and disapproved the accused acquit order.

Decision: The SC decide the case in favour of the Respondent and held that HC was rightly justified in reversing the Trial Court Order.

Fact of the Case	★ The Gujarat HC has reversed the judgement and orders passed by the Trial Court (or district Court) in 7 criminal cases pertaining to the offence of dishonour of 7 cheques in the sum of Rs. 3 lakhs each and disapproved the acquittal of the accused appellant. ★ Gujarat HC hold the accused appellant guilty of offence under section 138 of the Negotiable Instrument Act, 1881 and has awarded him the punishment of simple imprisonment for a period of 1 year with fine to the extent of double the amount of cheque (i.e., a sum of Rs. 6 lakhs) with default stipulation of further imprisonment for a period of 1 year in each case. ★
Legal Principles held—	★ The SC examined the finding of both the Trial Court and the High Court, and SC observed the following: (a) The Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the Trial Court had been at variance with the principles of presumption in law. (b) The observations of the Trial Court

	☛ that there was NO documentary evidence to show the source of funds with the respondent to advance the loan, or ☛ that the respondent did NOT record the transaction in the form of receipt of even kachcha notes, or ☛ that there were inconsistencies in the statement of the complainant and his witness, or ☛ that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. (c) These considerations and observations do NOT stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. (d) Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were NOT of relevant consideration while examining if the accused has been able to rebut the presumption or not. (e) After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance (i.e. supremacy) of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant. (f) The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been of irrelevant factors for consideration of a probable defence of the appellant. (g) On perusing the order of the Trial Court, it is noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. In the scheme of the NI Act, mere creation of doubt is not sufficient. (h) We are of the considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. (i) We have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity (i.e. deliberate desire to behave in an unreasonable way) and fundamental error of approach; and (j) In view of the above it was observed that the fundamental flaw (i.e. fault) on the part of the Trial Court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. (k) The High Court was justified in reversing the judgment of the Trial Court. ★ As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the Trial Court and after examining the evidence on record as a whole, found that the findings of the Trial Court are vitiated by perversity. ★ Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that findings of the High Court convicting the accused appellant deserves to be, and are, confirmed.

(V. Imp.) Hint: The Chairman & Managing Director (CMD) of the Appellant (Bharat) had the right to **appoint the arbitrator as** provided under Purchase Order. However, the Appellant's CMD was disqualified and became ineligible to appoint as arbitrator, therefore CMD **nominated one Shri K.H. Khan as the sole arbitrator to adjudicate and determine disputes that had arisen between the parties.** Question arise "whether such disqualified person can appoint an arbitrator".

Decision:

- ★ The SC set aside the order of the HC and held that the appointment of the arbitrator by the MD is **void-ab-initio in pursuance of TRF Ltd (Judgment).**
- ★ The SC decide the case in favour of the Appellant (Bharat).

Fact of the Case	★ The Chairman & Managing Director (CMD) of the Appellant (Bharat), had the right to appoint the arbitrator as provided under Purchase Order (i.e. contract). Since disputes and differences arose between the parties, the Respondent (i.e. United) invoked the aforesaid arbitration clause. The Appellant's CMD nominated one Shri K.H. Khan as the sole arbitrator to adjudicate and determine disputes that had arisen between the parties. ★ Subsequently, in pursuance of SC judgment "TRF Ltd. v. Energo Engineering Projects Ltd", the Appellant made an application to the sole arbitrator praying that since he (arbitrator) was de jure unable to perform his function as arbitrator, he should withdraw from the proceedings to allow the parties to approach the High Court for appointment of a substitute arbitrator in his place. ★ The application was rejected and on appeal High court also rejected the appeal stating that the very person who appointed the arbitrator is estopped from raising a plea that such arbitrator cannot be appointed after participating in the proceedings. ★ The appellant filed appeal before the SC against the order of HC.
Applicable Law	1. Section 12(1) of the Arbitration and Conciliation (Amendment) Act, 2015 makes it clear that when a person is approached in connection with his possible appointment as an arbitrator, it is his duty to disclose in writing any circumstances which are likely to give rise to justifiable doubts as to his independence or impartiality. 2. The disclosure is to be made in the form specified in the Sixth Schedule, and the grounds stated in the Fifth Schedule are to serve as a guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator. 3. Once this is done, the appointment of the arbitrator may be challenged on the ground that justifiable doubts have arisen under section 12(3) subject to the caveat entered by section 12(4). The challenge procedure is then set out in Section 13, together with the time limit laid down in Section 13(2). 4. However, in case of post award, the parties that challenge the appointment of an arbitrator may make an application for setting aside such an award in accordance with Section 34 of the Act, 1996. 5. On the other hand, Section 12(5) is a new provision which relates to the de jure inability of an arbitrator to act as such. 6. Any prior agreement which is contrary to this provision is wiped out by the non- obstante clause in Section 12(5), the moment any person whose relationship with the parties or the counsel or the subject matter of the dispute falls under the Seventh Schedule. Then, this sub-section declares that such person shall be "ineligible" to be appointed as arbitrator. 7. The only way in which this ineligibility can be removed is by the proviso, which again is a special provision which states that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) by an express agreement in writing.
Judicial Decision	★ TRF Ltd. v. Energo Engineering Projects Ltd.

	☛ The SC in this case held that since a MD of a company which was one of the parties to the arbitration, was himself ineligible to act as arbitrator. ☛ Therefore, such ineligible person could not appoint an arbitrator, and any such appointment would have to be held to be null and void.
Legal Principles held –	★ The SC observed that (a) Section 12(5) of the Arbitration and Conciliation Act, 1996 contained non-obstante clause in relation to any prior agreement contrary to this provision and stated that any person whose relationship with the parties or the counsel or the subject matter of the dispute falls under the Seventh Schedule. Then, this sub-section declares that such person shall be “ineligible” to be appointed as arbitrator. However, such ineligibility can be remove in pursuance of the Proviso to Section 12(5) of the said Act, parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) by an express agreement in writing. (b) Therefore, the scheme of Sections 12, 13, and 14 is that where an arbitrator makes a disclosure in writing, which is likely to give justifiable doubts as to his independence or impartiality, the appointment of such arbitrator may be challenged under Sections 12(1) to 12(4) read with Section 13. (c) However, where such person becomes “ineligible” to be appointed as an arbitrator, there is no question of challenge to such arbitrator, before such arbitrator. (d) The given case falls under section 12(5), Section 14(1)(a) of the Act gets attracted inasmuch as the arbitrator becomes, as a matter of law (i.e., de jure), unable to perform his functions under Section 12(5), being ineligible to be appointed as an arbitrator. It amounts to automatic termination of Arbitrator. (e) Questions which may typically arise under Section 14 may be as to whether such person falls within any of the categories mentioned in the Seventh Schedule, or whether there is a waiver as provided in the proviso to Section 12(5) of the Act. ★ The SC held that in the present case: (a) It is clear that the MD of the appellant could not have acted as an arbitrator himself, being rendered ineligible to act as arbitrator under Item 5 of the Seventh Schedule. (b) It is also clear that ineligible person cannot appoint another arbitrator in pursuance of SC judgment “TRF Ltd. v. Energo Engineering Projects Ltd” i.e. said appointment is void-ab-initio. The Judgment of TRF will be applied only prospectively i.e. the appointments that have been made of persons such as Shri Khan would be valid if made before the date of the judgment. (c) Section 26 of the Amendment Act, 2015 makes it clear that the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after 23.10.2015. (d) SC set aside the order appointing the arbitrator, which was an order dated 27.01.2016, by which the MD of the respondent nominated a former Judge of this Court as sole arbitrator in terms of clause 33(d) of the Purchase Order.
(3)Decision	★ The SC set aside the order of the HC and held that the appointment of the arbitrator by the MD is void-ab-initio in pursuance of TRF Ltd (Judgment). ★ The SC decide the case in favour of the Appellant (Bharat).

9. ANJUM HUSSAIN & ORS v. INTELICITY BUSINESS PARK PVT LTD & ORS [SC]

Hint: In the given case, the appellant has filed the class action suit against the Respondent Since the respondent **had failed to honour its commitments of delivering possession in four years and as the project was still at the stage of excavation.** However, National Commission dismissed the case on the ground that class action suit is not maintainable. Issue arises “whether the action of the SC is tenable in law.

Decision:

★ The SC decide the case in favour of the Appellants.

★ Therefore, **we allow this appeal and set aside the Order of National Commission under appeal.**

- ★ The application preferred by the appellants is held to be maintainable. **Case No.2241 of 2018 is restored to the file of the National Commission and shall be proceeded with in accordance with law.**

Fact of the Case	★ The Appellant No.1 had booked an office space admeasuring about 440 sq. ft. in a project consisting of residential units, shops and offices launched by the respondent. ★ The Builder – Buyer Agreement was executed between the Appellant No.1 and the respondent on 02.12.2013, where under the respondent was to deliver possession of the office unit within four years. ★ Similar such Agreements were entered between the appellant Nos. 2 to 44 and the respondent in respect of various units from the same project. ★ Since the respondent had failed to honour its commitments of delivering possession in four years and as the project was still at the stage of excavation. ★ Consumer complaint Case No.2241 of 2018 was filed, as class action, by the appellants 1 to 44 seeking refund of the amounts paid by them to the respondent along with interest and compensation. ★ The National Commission vide the impugned judgement/order concluded that the case could NOT be accepted as class action and dismissed the same. ★ The dismissal of the case as class action is questioned in this appeal.
Legal Principles held—	★ According to the National Commission, the respondent was deficient in rendering service and though all the appellants had a common grievance that the respondent had not delivered possession of the respective units booked by them. ★ However, it was not shown how many of the allottees had booked the shops/commercial units solely for the purchase of earning their livelihood by way of self-employment. ★ Chairman, Tamil Nadu Housing Board, Madras v. T. N. Ganapathy (1990): ☛ In this case, the Court held that the persons who may be represented in a Suit under Order 1 Rule 8 of Civil Procedure Code, 1908 need not have the same cause of action and all that is required for application of said provision is that the persons concerned must have common interest or common grievance. ★ What is required is sameness of interest. The same issue was dealt with by Full Bench of the National Commission in Ambrish Kumar Shukla and Ors. v. Ferrous Infrastructure Pvt. Ltd. ☛ The National Commission relied upon the decision of this Court in T.N. Housing Board (supra) It was observed by this Court in T.N. Housing Board (supra) that the provision must receive an interpretation which would subserve the object for its enactment. ☛ It is in this light that the Full Bench of the National Commission held that oneness of the interest is akin to a common grievance against the same person.
Decision	★ The SC decide the case in favour of the Appellants. ★ The SC held that the National Commission in the instant case, completely lost sight of the principles so clearly laid down in the decisions referred to above. In our view, the approach in the instant case was totally erroneous. ★ Therefore, we allow this appeal and set aside the Order under appeal. ★ The application preferred by the appellants is held to be maintainable. Case No.2241 of 2018 is restored to the file of the National Commission and shall be proceeded with in accordance with law.

10. RESERVE BANK OF INDIA v. JAYANTILAL N. MISTRY [SC]

Hint: In the given case, Informants asked information as to investigation, audit, bad debts, FEMA violations etc. of various banks from RBI and **RBI refused to furnish the same on the ground of information obtained from these banks on fiduciary relationship** in exemptions from disclosure under section 8 of the RTI. **Whether the action of RBI w.r.t. refusal to provide the information to the informant is tenable in law.**

Decision: The SC decide the case in favour of the Respondent (Jayantilal) and upheld the decision of the CIC. Further, require the RBI to provide the information demanding by the Informant.

Fact of the Case	- The main issue which come before the Supreme Court for the as to whether all the information sought for under the RTI Act, 2005 can be denied by the RBI and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. - If the answer to above question is in negative, then up to what extent the information can be provided under the 2005 Act. - The following information were sought by various respondents from the RBI: - Details of the reports of pertaining to investigation and audit carried out by RBI. - Details of past 20 years" investigation with respect to cooperative banks. - Details of the report sent by RBI to the Finance Minister with respect to FEMA violations committed by several commercial banks. - Details of the inspection reports of apex cooperative banks. - Details of the loans taken by the industrialists that have not been repaid, and the names of the top defaulters who had not repaid their loans to public sector banks. - Details of the show cause notices and fines imposed by the RBI on various banks. - RBI had refused to provide the requested information on the ground that they are exempted from disclosure. - The applicants moved the CIC and got orders in favour of them, which were being challenged by the RBI in various High courts. - Ultimately, all these appeals were transferred to the SC and the SC had decided the cases by passing a common order.
Legal Principles held –	★ In the impugned order, the CIC has given several reasons to state why the disclosure of the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. ★ By relying the provision of Section 8(1)(e), the respondent Bank contends that RBI having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure. ★ Therefore, the primary question before the SC is whether the RBI has rightly refused to disclose information on the ground of its fiduciary relationship with the banks. ★ The SC examined the term "Fiduciary relations" in various angles: - The RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case, neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrorem effect. - That RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far- reaching statutory powers.

	(c) RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. (d) RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. ★ In pursuance of the above, SC held that it is duty of the RBI to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. ★ RBI's raised argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless. ★ Even if we were to consider that RBI and the FIs shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny. We have surmised that many FIs have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. ★ It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices. ★ That RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought therein. ★ RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is ☞ whether giving information to the general public would be detrimental to the economic interests of the country? ☞ To what extent the public should be allowed to get information? ☞ The RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". ☞ This attitude of the RBI will only attract more suspicion and disbelief in them. ☞ RBI as a regulatory authority should work to make the Banks accountable to their actions.
Decision	★ The SC decide the case in favour of the Respondent (Jayantilal) and ★ The SC held that there is no need to interference in the impugned order of Central Information Commissioner [CIC].

11. GAUTAM KUNDU v. MANOJ KUMAR ASSISTANT DIRECTOR, DOE [SC]

Hint: Appellant has committed Schedule offences viz. appellant floating as many as 27 companies, Monies collected through front company routed through these companies etc. under section 3 of the PMLA and file application before HC for Bail under section 439 of the CRPC, 1973. Application rejected by HC and Appellant filed special leave against the order of the HC. **Whether appellant entitled for bail.**

Decision: No. The SC decide the case in favour of the Respondent.

Fact of the Case	★ The appellant is the Chairman of Rose Valley Real Estate Construction Ltd. (hereinafter referred to as the “Rose Valley”), a public company incorporated in the year 1999 and registered under the Companies Act, 1956. ★ Certain non-convertible debentures (NCD) were issued by the Rose Valley by ‘private placement method.’ No advertisements etc. were issued to the public. The said debentures were issued to the employees of the Company and to their friends and associates after fulfilling the formalities for private placement of debentures. Thus, the appellant collected money by issuing secured debentures by way of private placement in compliance with the guidelines issued by the SEBI from time to time. ★ Further the appellant had floated as much as 27 companies and routed the monies collected by his front companies through these companies. ★ The appellant was arrested in relation to an offence alleged to have been committed under Section 3 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as “PMLA”). ★ The appellant filed application before the Calcutta HC for bail under Section 439 of the Code of Criminal Procedure, 1973. However, Calcutta HC reject the application for bail. ★ As a result, the appellant filed Special Leave before the SC against the order of the HC.
Legal Principles held –	★ The SC consider the following before dismissing the Special Leave: 1. We cannot forget that this case is relating to “Money Laundering” which we feel is a serious threat to the national economy and national interest. 2. We cannot brush aside the fact that the schemes have been prepared in a calculative manner with a deliberative design and motive of personal gain, regardless of the consequence to the members of the society. 3. We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of the PMLA. The contention raised on behalf of the appellant that NO offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of SEBI Act is still pending for hearing before the High Court. 4. We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person (a) is under the age of 16 years or (b) is a woman or (c) is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure, 1973.

	5. We cannot brush aside the fact that the appellant floated as many as 27 companies to allure the investors to invest in their different companies on a promise of high returns and funds were collected from the public at large which were subsequently laundered in associated companies of Rose Valley Group and were used for purchasing moveable and immoveable properties. 6. We have further noted that the High Court at the time of refusing the bail application, duly considered this fact and further considered the statement of the AGM of RBI, Kolkata, seizure list, statements of directors of Rose Valley, statements of officer bearers of Rose Valley, statements of debenture trustees of Rose Valley, statements of debenture holders of Rose Valley, statements of AGM of Accounts of Rose Valley and statements of Regional Managers of Rose Valley <u>for formation of opinion whether the appellant is involved in the offence of money laundering</u>. In these circumstances, we do not find that the High Court has exercised its discretion capriciously or arbitrarily in the facts and circumstances of this case. 7. We further note that the High Court has called for all the relevant papers and duly taken note of that and thereafter after satisfying its conscience, refused the bail. ☆ Therefore, we do not find that the HC has committed any wrong in refusing bail in the given circumstances. ☆ Accordingly, we do not find any reason to interfere with the impugned order so passed by the HC and the bail, as prayed before us, challenging the said order is refused. Consequently the appeal is dismissed.
Decision	☆ The SC decide the case in favour of the Respondent.

12. KOTAK MAHINDRA BANK LTD. v. ANUJ KUMAR TYAGI [DEL]

Hint:- ICICI Bank grant vehicle loan to borrower and borrower default in payment of the EMIs. As a result, ICICI bank filed suit against respondent before the Trial Court. **The Trial court dismissed the suit as time barred in pursuance of Section 3 of the Limitation Act, 1963 but without appreciating articles 55 and 113 of the Limitation. Question arise “whether the rejection of suit by Trial Court is tenable”.**

Decision:

- ☆ The Delhi HC decide the case in favour of the Appellant.
- ☆ The Delhi HC set aside impugned judgement of the Trial Court.

Fact of the Case	☆ The respondent had approached ICICI Bank Ltd. in July, 2007, for grant of credit facility of Rs.3.28 lacs to purchase a TATA INDICA Vehicle, which was granted. Details of the loan agreement are as mentioned below: (a) The respondent was required to repay the sum borrowed, in 59 Equated Monthly Instalments (EMIs), amounting to Rs. 7544/- each. (b) The first due date, as stipulated in the loan agreement, was 10.08.2007, with the date of maturity indicated as 10.06.2012. (c) The repayment clause contained in the loan agreement provided that the due date would be the tenth day of each successive month. (d) Additional security in the form of four post-dated cheques, was also given. (e) The respondent also hypothecated the subject vehicle in favour of ICICI Bank Ltd., by executing an unattested deed of hypothecation. (f) Furthermore, an irrevocable power of attorney was also executed in favour of ICICI Bank Ltd. ☆ It appears that the loan account became irregular, as the respondent failed to adhere to the financial discipline in the payment of the EMIs. Since, the respondent, failed to regularize the account, a loan recallcum- demand notice dated 26.06.2012 was issued to him, which was posted on 29.06.2012.
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	☆ By virtue of the said recallcum- demand notice, the loan agreement was terminated and the respondent was called upon to repay the entire outstanding amount, and handover possession of the subject vehicle. ☆ As the respondent failed to oblige, a suit for recovery was instituted against him. It is pertinent to note, that in the interregnum, ICICI Bank Ltd. had assigned the loan to an entity by the name of Asset Reconstruction Company (India) Ltd., which in turn, assigned the loan account, pertaining to the respondent vide assignment deed dated 31.12.2009, to the appellant herein. ☆ On a perusal of the statement of accounts filed by the appellant, which is dated 31.10.2009, as per which the last transaction with the respondent took place on 11.08.2008, The learned ADJ had concluded that since the suit was filed on 20.07.2012, it was “hopelessly” barred by limitation. Hence the present appeal.
Legal Principles held –	☆ Article 55 could have possibly been made applicable, to this case as well, as the loan agreement had a tenure extending from 10.08.2007 till 10.06.2012, but for one aspect of the matter which I have adverted to in the following paragraph. ☆ In so far as Article 55 is concerned, the fact that that the respondent failed to adhere to the schedule of repayment, would not deprive the right of the appellant to treat each breach as a fresh cause of action. The last breach, quite clearly, in the instant case, would have occurred only in May-June, 2012, assuming the last instalment was to be adjusted by virtue of the respondent having paid an initial amount of Rs. 7544/- as an advance. Admittedly, the suit was instituted on 20.07.2012. ☆ Quite clearly, in terms of clause 48, the appellant had discretion to decide when to trigger the recall of loan upon occurrence of an event of default. ☆ The fact that EMIs were to be paid over a period spanning from 10.08.2007 till 10.06.2012, gave the appellant, under clause 48 the right to treat any of the defaulted EMI’s (that is, after the due date for its payment had passed) as an event of default. Once, such an event of default occurred, the appellant under clause 48 could set in motion the process for recall of the loan. Thus, the commencement of the period of limitation would be triggered, once the said notice was issued, which in turn would relate to the defaulted EMI. ☆ In the instant case, as noticed above, the recall-cum-demand notice dated 26.06.2012 was dispatched to the respondent, on 29.06.2012. Quite clearly, the period of limitation, would, relate back to last defaulted EMI as, vide the aforementioned notice the appellant gave a final opportunity to the respondent to repay the amount, which was due and payable on the date of notice. The right to sue would occur, in my opinion, each time when, there is a default in payment of an EMI on its due date. However, the appellant in terms of clause 48 is at liberty to take a decision to treat the non-payment of a particular EMI, as an event of default. ☆ However, the period of limitation would commence from the date of the last defaulted EMI, which is made the subject matter of the notice and not from the date of the notice itself. Therefore, in such a situation, Article 113 of the Limitation Act, 1963 would become applicable as against Article 55. ☆ The trial court while dismissing the suit has not alluded (i.e. suggest) to any specific Article of the 1963 Act. Recourse has been taken by the trial court to Section 3 of the 1963 Act, which only empowers a court to dismiss a suit which is barred by limitation even if limitation is NOT set up as a defence. The section by itself could not have helped the trial court in coming to the conclusion as to what should be the period of limitation in a case such as this.

	★ Furthermore, the reference to Article 37 in the written statement is also of no relevance as the appellant did not sue either on a promissory note or a bond. Having regard to the above, the appeal is allowed and, consequently, the impugned judgement is set aside.
Decision	★ The Delhi HC decide the case in favour of the Appellant. ★ The Delhi HC set aside impugned judgement of the Trial Court.

13. MAHANIVESH OILS & FOODS PVT LTD. v. DIRECTORATE OF ENFORCEMENT [DEL]

Hint: In the present case, after consideration of proceeds of crime as given in section 5 of Prevention of Money Laundering Act, 2005, **Property purchased before the enforcement of the Act was provisionally attachment of property** – Whether the action of enforcement directorate under the provisions of the PMLA, 2005 is tenable in law.

Decision:

- ★ The Delhi HC decide the case in favour of the Appellant.
- ★ The Delhi HC held that a mere mechanical recording that the property is likely to be concealed, transferred or dealt with would not meet the requirements of Section 5(1) of the Act. Consequently, the impugned order is likely to be set aside.

Fact of the Case	★ On 08.05.2009, an FIR was lodged by the CBI on a written complaint made by NAFED wherein it was alleged that Mr Homi Rajvansh - the Additional MD of NAFED, had hatched a conspiracy, in connivance with the directors of M/s M.K. Agri International Ltd. (hereafter 'MKAIL'), for making wrongful gains by executing Memoranda of Understanding (MOUs) with MKAIL on behalf of NAFED for import of raw sugar and selling the same by entering into three High Seas Sale (HSS) Agreements with M/s M.K. International Ltd. (hereafter 'MIL'), a sister concern of MKAIL, without charging/recovering any cost for the commodity. ★ MIL on 10.02.2005, through its director - Mr M.K. Agarwal issued cheques for an amount aggregating to Rs.1.5 crores in favour of its two holding companies namely, M/s Duoroyale Enterprises Ltd. and M/s Sri Radhey Trading Pvt. Ltd. Subsequently, both the said companies issued two cheques each amounting to Rs. 75 lacs in favour of M/s Mahanivesh Oils & Foods Pvt. Ltd., the petitioner company, where Smt. Alka Rajvansh - wife of Mr Homi Rajvansh was a Director. ★ On 16.02.2005 and 17.02.2005, M/s Mahanivesh Oils and Foods Pvt. Ltd., issued two cheques of `1,32,00,00/- and `10,81,000/- respectively in favour of M/s Uppal Agencies Pvt. Ltd. for purchase of the ground floor and basement of the property situated at E-14/3, Vasant Vihar, New Delhi (hereafter 'the said property'). ★ It is alleged that Smt. Alka Rajvansh used the funds received from M/s Duoroyale Enterprises Ltd. and M/s Sri Radhey Trading Pvt Ltd. for purchasing the abovementioned property pursuant to a sale deed dated 18.03.2005 executed by Shri B.K. Uppal in favour of the petitioner company. ★ The property was provisionally attached by the enforcement directorate under the provisions of the PMLA, 2005. ★ Petitioner challenged this provisional attachment of the property before the Delhi HC.
Legal Principles held—	★ It is not disputed that the property sought to be attached under the Act was purchased on 18.03.2005 i.e. prior to 01.07.2005 i.e., prior to the Act coming into force. ★ In the circumstances, the principal controversy to be addressed is "whether any proceedings under the Act could lie in respect of the said asset". ★ In the present case, the impugned order has been made under Section 5(1) of the Act. A conjoint reading of Section 5(1) read with Section 2(u) of the Act clearly indicates that the power to attach is only w.r.t. the property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of such property. ★ The occurrence of a scheduled offence is the substratal condition for giving rise to any proceeds of crime and consequently, the application of Section 5(1) of the Act.

- ☆ A commission of a scheduled offence is the fundamental pre-condition for any proceeding under the Act as without a scheduled offence being committed, the question of proceeds of crime coming into existence does not arise. In view of the above, the contention that the Act is completely independent of the principal crime (scheduled offence) giving rise to proceeds of crime is unmerited. It is necessary to bear in mind that the substratal subject of the Act is to prevent money-laundering and confiscate the proceeds of crime. In that perspective, there is an inextricable link between the Act and the occurrence of a crime.
- ☆ It cannot be disputed that the offence of money-laundering is a separate offence under section 3 of the Act, which is punishable under Section 4 of the Act. However as stated earlier, the offence of money-laundering relates to the proceeds of crime, the genesis of which is a scheduled offence. In the aforesaid circumstances, before initiation of any proceeding under Section 5 of the Act, it would be necessary for the concerned authorities to identify the scheduled crime.
- ☆ The First Proviso to Section 5 also indicates that no order of attachment shall be made unless in relation to a scheduled offence
 - ☛ a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 or
 - ☛ a complaint has been filed by a person authorised to investigate the scheduled offence before a Magistrate or Court for taking cognizance of the scheduled offence.
- ☆ Thus, in cases where the scheduled offence is itself negated, the fundamental premise of continuing any proceedings under the Act also vanishes. Such cases where it is conclusively held that commission of a scheduled offence is not established and such decision has attained finality pose no difficulty; in such cases, the proceedings under the Act would fail.
- ☆ The central issue in the present case is NOT on whether the scheduled offence was committed, but whether the attachment under Section 5 of the Act can be sustained where the principal offence as well as the offence of using its proceeds is alleged to have been committed prior to the Act coming into force. The Act is a penal statute and, therefore, can have no retrospective or retroactive operation.
- ☆ Article 20(1) of the Constitution of India expressly forbids that no person can be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence. Further, no person can be inflicted a penalty greater than what could have been inflicted under the law at the time when the offence was committed. Clearly, no proceedings under the Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force. However, the subject matter of the Act is not a scheduled offence but the offence of money-laundering. Strictly speaking, it cannot be contended that the Act has a retrospective operation because it now enacts that laundering of proceeds of crime committed earlier as an offence.
- ☆ The next contention to be considered is whether in the given facts and circumstances, any offence or money laundering had been made out to warrant an issuance of the impugned order.
- ☆ It is alleged that on 10 the February, 2005, MIL through its Director issued cheques aggregating Rs.1.5 crores in favour of its holding companies, namely, M/s Duoroyale Enterprises Ltd. and M/s Shri Radhey Trading Pvt. Ltd. and these companies in turn issued two cheques of Rs.75 lacs each in favour of the petitioner.
- ☆ It is suggested that these amounts were proceeds of crime received by the petitioner as a result of a criminal activity and bulk of these funds were utilized by the petitioner for paying the consideration for acquiring the property in question. It was argued that all actions of integrating the money by purchase of immovable property would fall within the definition of 'money laundering'.
- ☆ In this respect it is relevant to note that the sale deed in respect of the property was executed on 18.03.2005. Thus, even if the allegations made by the respondent are assumed to be correct, the proceeds of crime had been used by the petitioner for acquisition of the

	property much prior to the Act coming into force. The process of activity of utilising the proceeds of crime, if any, thus, stood concluded prior to the Act coming into force. ☆ Even if it is assumed that the funds received from M/s Duoroyale Enterprises Ltd. and M/s Shri Radhey Trading Pvt. Ltd. were proceeds of crime and were properties involved in money-laundering, such funds had come into possession of the petitioner prior to the Act coming into force. Thus, funds were already projected as untainted funds unconnected with the crime for which Mr Homi Rajvansh and other persons are accused. ☆ Thus, the funds had been laundered at a time when money-laundering was not an offence and proceedings under the Act cannot be initiated. In the present case, the respondent could not point out any material to counter the petitioner's contention that there was no material on record, which could possibly lead to a belief that the petitioner is likely to transfer or conceal the property in any manner. ☆ As indicated earlier, the concerned officer must have a reason to believe on the basis of material in his possession that the property sought to be attached is likely to be concealed, transferred or dealt with in a manner which may result in frustrating any proceedings for confiscation of their property under the Act. ☆ Although, the impugned order records that the concerned officer has reason to believe that the property in question is likely to be concealed, transferred or dealt with in a manner, which may result in frustrating the proceedings relating to confiscation of the said proceeds of crime, there is no reference to any fact or material in the impugned order which could lead to this inference.
Decision	☆ The Delhi HC decide the case in favour of the Appellant. ☆ The Delhi HC held that a mere mechanical recording that the property is likely to be concealed, transferred or dealt with would not meet the requirements of Section 5(1) of the Act. Consequently, the impugned order is likely to be set aside.

14. SANDEEP GUPTA v. PUNJAB NATIONAL BANK & ORS [DEL]

(V. Imp.) Hint: In the given case, Retiring partner's (i.e. petitioner) provided guarantee to the respondent bank. Upon retirement **he sought to withdraw his guarantee but, the reconstitution agreement upon which the petitioner retired and new partners inducted did not provide for the release of the guarantee** - Whether guarantee of the petitioner could be released.

Decision: The Delhi HC decide the case in favour of the Respondents on the various grounds as described in decision section.

Fact of the Case	☆ Respondent No. 2 partnership firm viz. M/s Allied Fibre Industries takes loan from the respondent No. 1 Punjab National Bank on the security of the title deeds of the property of the petitioner and guarantee of the petitioner. ☆ Petitioner takes retirement from the Respondent No. 2 partnership firm i.e. cease to be a partner of Respondent No. 2. ☆ As a result, Petitioner file Mandamus writ before the Delhi HC against Respondent No. 1 (i.e. PNB) to release the title deeds of the property of the petitioner and to discharge the petitioner from the guarantee furnished by the petitioner, (at the time when the petitioner was partner of the Respondent No. 2) for repayment of the dues of the respondent No. 2. ☆ In this regard it is pertinent that before instituting the present petition, the petitioner had filed a suit against the Respondents No. 3 & 4 claiming specific performance of the agreement contained in the deed of reconstitution of partnership to have the security furnished by the petitioner substituted in which the Respondent No. 1 Bank is also a party to the said suit.
Legal Principles held—	☆ The said suit was admittedly instituted prior to the institution of this petition. The petition is not maintainable on this ground alone. ☆ The petitioner cannot maintain a petition under Article 226 of the Constitution of India for the relief for which the petitioner has already availed of the relief under the civil law prior to instituting the writ petition.

	★ Supreme Court in <i>Jai Singh Vs. Union of India</i> (1977) 1 SCC 1 held that the appellant therein having filed a suit in which the same question as the subject matter in the writ petition was agitated could not be permitted to pursue two parallel remedies in respect of the same matter at the same time. ★ Similarly in <i>Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd.</i> (1995) 1 SCC 642 finding that the writ petitioner had availed of the alternative statutory remedy it was held that the writ petition should not have been entertained. ★ Yet again in <i>S.J.S Business Enterprises (P) Ltd Vs. State of Bihar</i> (2004) 7 SCC 166 it was held that if a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. This rule was held to be based on public policy.
Decision	★ The Delhi HC decide the case in favour of the Respondents on the following grounds: (a) The petitioner cannot maintain a petition under Article 226 of the Constitution of India for the relief for which the petitioner has already availed of the relief under the civil law prior to instituting the writ petition (b) The Respondent No.1 Bank which is the trustee of public monies cannot be left high and dry by granting the relief of releasing the security of the outgoing partners without the continuing/new partners substituting the said security. (c) The petitioner prior to signing the deed of reconstitution of firm ought to have ensured that the security furnished by him is released, if that was the agreement with the Respondents No.3 & 4.

15. TODAY HOTELS PVT LTD. v. INTECTURE INDIA DESIGNS LTD [DEL]

Hint: The Appellant had filed an application under section 8 of the Arbitration and Conciliation Act, 1996 seeking an order to refer a dispute to arbitration. **The said application was dismissed. Issue arise in this case, whether appeal lies against the said application, which was dismissed.**

Decision:

- ★ The Delhi HC decide the case in favour of the Respondent (i.e. Intecture) and
- ★ Delhi HC held that since Section 37 does not permit filing of an appeal from an order passed under Section 8, no appeal would lie from such an order under the Act.

Fact of the Case	★ The Appellant (Today Hotels) had filed an application under section 8 of the Arbitration and Conciliation Act, 1996 seeking an order to refer a dispute to arbitration. The said application was dismissed. ★ The Appellants filed appeal before the Delhi HC against the said dismissed application. ★ The Respondent (Intecture) contended that the instant appeal was not maintainable as the Arbitration and Conciliation Act, 1996 did not provide for appeals from any order passed under Section 8 of the Act.
Legal Principles held –	★ The Delhi HC observed that: (a) The order passed under Section 8 of the Arbitration and Conciliation Act, 1996 is an order passed by the judicial authority/forum/court which draws its power from section 8 of the Act. Therefore, the right to file an appeal against such order has also to be found in the Act. (b) If the Act does not provide for an appeal or specifically prohibits an appeal from an order passed under Section 8, then NO appeal would lie under the Act.
Decision	★ The Delhi HC decide the case in favour of the Respondent (i.e. Intecture) and ★ Delhi HC held that since Section 37 does not permit filing of an appeal from an order passed under Section 8, NO appeal would lie from such an order under the Act.

16. LAKHMI CHAND v. RELIANCE GENERAL INSURANCE [SC]

(V. Imp.) Hint: The Respondent Company has rejected the claim on the various grounds viz., Accident caused **due to the rash driving of the offending vehicle, damaged vehicle was carrying excess passenger** etc. The **National Commission also rejected the compensation on the ground of violating the insurance contract terms.** Issue Raised “whether the action raised by the National Commission is valid in law”.

Decision:

- ★ The Court held that the Appellant had the right to receive the amount from the insurance company and rejection of claim by the respondent on arbitrary basis is not valid in law.
- ★ The Court decide the case in favour of the Appellant (i.e. Lakhmi Chand).

Fact of the Case	★ The appellant was the owner of a Tata Motors goods carrying vehicle and the vehicle was insured with the respondent. The risk covered in this policy was to the tune of Rs. 2,21,153/-. ★ The said vehicle met with an accident on account of rash and negligent driving of the offending vehicle. In this regard, an FIR was registered with the jurisdictional Police Station. The appellant incurred expenses amounting to Rs. 1,64,033/- for the repair of his vehicle and the Surveyor appointed by the respondent assessed the damage caused to the said vehicle at Rs. 90,000/-. ★ The appellant had preferred a claim for a sum of Rs. 1,64,033/- with supporting bills, which was rejected by the respondent. ★ Appellant filed complaint before the District Forum against the rejection of the claim by the respondent, and District Forum allowed the claim. ★ Aggrieved of the order of the District Forum, the respondent Company preferred an appeal before the State Commission urging various grounds. The State Commission allowed the appeal. ★ The said judgment passed by the State Commission was challenged by the appellant before the National Commission, which dismissed the petition on the ground that the appellant had violated the terms of the insurance contract. Review petition was also dismissed. ★ The appellant filed an appeal before the SC.
Legal Principles held –	★ The SC held that the concurrent findings recorded by the National Commission in the impugned judgment and order are erroneous in law for the following reasons. (a) It is an admitted fact that the accident of the vehicle of the appellant was caused on account of rash and negligent driving of the offending vehicle. An FIR was registered against the driver of the said vehicle for the offences referred to supra. (b) The vehicle of the appellant was badly damaged in the accident and it is an undisputed fact that the report of Surveyor assessed the loss at Rs.90,000/-, but the actual amount incurred by the appellant on the repair of his vehicle was Rs.1,64,033/-. (c) The said claim was arbitrarily rejected by the respondent on the ground that the damage caused to the vehicle did not fall within the scope and purview of the insurance policy, as there was a contravention of terms and conditions of the policy of the vehicle. (d) Even, the National Commission did not consider the judgment of this Court in the case of B.V. Nagaraju v. Oriental Insurance Co. Ltd Divisional Officer, Hassan, IV 2010 CPJ 315 (SC): ☛ In that case, the insurance company had taken the defence that the vehicle in question was carrying more passengers than the permitted capacity in terms of the policy at the time of the accident. ☛ The said plea of the insurance company was rejected. ☛ This Court held that the mere factum of carrying more passengers than the permitted seating capacity in the goods carrying vehicle by the insured does not amount to a fundamental breach of the terms and conditions of the policy so as to allow the insurer to eschew its liability towards the damage caused to the vehicle. ☛ In the instant case, the respondent-Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods carrying vehicle.

	Further, it was held in the case of B.V. Nagaraju (supra) that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. ★ In the instant case, it is undisputed that the accident was in fact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR no. 66 of 2010 was registered for the offences referred to supra under the provisions of the IPC. ★ These facts have NOT been taken into consideration by either the State Commission or National Commission while exercising their jurisdiction and setting aside the order of the District Forum.
Decision	★ The Court held that the Appellant had the right to receive the amount from the insurance company and rejection of claim by the respondent on arbitrary basis is not valid in law. ★ The Court decide the case in favour of the Appellant (i.e. Lakhmi Chand). ★ The SC held that question with regard to the violation of terms and conditions of the policy and burden of proof is on the insurer to prove the fact of such alleged breach of terms and conditions by the insured.

17. INDIAN MACHINERY COMPANY v. ANSAL HOUSING & CONSTRUCTION LTD [SC]

(V. Imp.) Hint: Whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non- prosecution.

Decision: The SC decide the case in favour of the appellant.

Fact of the Case	In the given case, the question that has arisen is - Whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non- prosecution. - The National Commission has taken the view in the impugned order that the second complaint would not be maintainable.
Legal Principles held—	★ The SC considered that decision taken in the New India Assurance Co Ltd v. R. Srinivasan [(2000)] - wherein this precise question had arisen as mentioned in paragraph 5 of this decision. - It is mentioned in that paragraph that the only question is that in view of the dismissal of the first complaint filed by the respondent therein, - a second complaint on the same facts and cause of action would not lie and it ought to have been dismissed as not maintainable. ★ While dealing with this issue, the SC observed that - The Rule 9(6) of the Tamil Nadu Consumer Protection Rules, 1988 is in identical terms with Rule (8) of Rule 4(8) and Rule 8(8). - Under this sub-rule, the appeal filed before the State Commission against the order of the District Forum, can be dismissed in default or the State Commission may in its discretion dispose of it on merits. - Similar power has been given to the National Commission under Rule 15(6) of the Rules made by the CG under Section 30(1) of the Act. - These Rules do not provide that if a complaint is dismissed in default by the District Forum under Rule 4(8) or by the State Commission under Rule 8(8) of the Rules, a second complaint would NOT lie. - Thus, there is NO provision parallel to the provision contained in Order 9 Rule 9(1) CPC which contains a prohibition that if a suit is dismissed in default of the plaintiff under Order 9 Rule 8, a second suit on the same cause of action would not lie. - The rule of prohibition contained in Order 9 Rule 9(1) CPC cannot be extended to the proceedings before the District Forum or the State Commission.

	☛ The fact that the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, ☛ Therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default."
Decision	The SC decide the case in favour of the appellant. The SC held that ☛ We are of the opinion that the second complaint filed by the appellant was maintainable on the facts of this case. ☛ Under the circumstances, we set aside the order passed by the National Commission and remit the matter back to the National Commission for adjudicating the disputes on merits.

18. EITZEN BULK A/S v. ASHAPURA MINECHEM LTD & ANR [SC]

Hint: In the given case, Eitzen and Ashapura entered into an arbitration agreement which contained an Arbitration Clause under which the **seat of arbitration was London and the governing law was English law**. Disputes having arisen between the parties, **the matter was referred to Arbitration by a sole Arbitrator**. The Arbitration was held in London according to English Law. Foreign Arbitral Tribunal passed the arbitral award. When Eitzen sought to enforce the award in India, Ashapura moved Gujarat HC and Bombay HC for the stay of the execution of award on the ground that Part 1 of Indian Arbitration and Conciliation Act, 1996 is not excluded. **Question arise "Whether Indian courts have jurisdiction to entertain the challenge to the execution of foreign award"**

Decision:

- ★ The SC decide the case in favour of the Appellant (Eitzen Bank).
- ★ The SC held that the **foreign arbitral award could not be challenged in the Indian courts** under section 34 of the Arbitration Act.

Fact of the Case	★ Eitzen Bulk A/S of Denmark (hereinafter referred to as 'Eitzen') entered into the contract with Ashapura Minechem Limited of Mumbai (hereinafter referred to as 'Ashapura') as charterers for shipment of bauxite from India to China. ★ The Charter party contained an Arbitration Clause under which the seat of arbitration was London and the governing law was English law. ★ Disputes having arisen between the parties, the matter was referred to Arbitration by a sole Arbitrator. The Arbitration was held in London according to English Law. Foreign Arbitral Tribunal passed the following award are as follows: (a) Ashapura was held liable and directed to pay a sum of 36,306,104 US\$ together with compound interest at the rate of 3.75 % per annum. (b) In addition they were directed to pay 74,135 US\$ together with compound interest at the rate of 3.75% per annum and another sum of 90,233.66 Pounds together with compound interest at the rate of 2.5% per annum vide Award of the Sole Arbitrator dated 26.5.2009. ★ When Eitzen sought to enforce the award in India, Ashapura moved Gujarat HC and Bombay HC for the stay of the execution of award on the ground that Part 1 of Indian Arbitration and Conciliation Act, 1996 is not excluded. ☛ Gujarat HC stayed the execution, ☛ while Bombay High court refused to stay the proceedings holding that Part 1 of Indian Arbitration and Conciliation Act, 1996 excludes Indian courts to interfere in the execution. ★ Thus, we have the two decision on the same issue such as: (a) The decision of the Gujarat HC holding that a Court in India has jurisdiction under Section 34 to decide objections raised in respect of a Foreign Award because Part I of the Arbitration Act is not excluded from operation in respect of a Foreign Award on the one hand and (b) The decision of the Bombay HC holding that Part I is excluded from operation in case of a Foreign Award and thereupon directing enforcement of the Award on the other hand. ★ The aforesaid two decision of different is challenged in the following manner:
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	(a) The decisions of the Gujarat HC are questioned by Eitzen by way of SLP (C) Nos.2210-2212/2011. (b) The decisions of the Bombay High Court are questioned by Ashapura by way of SLP (C) Nos.7562-7563/2016. ★ Thus, the main question on which contentions were advanced by the learned counsel for the parties is - whether Part I of the Arbitration Act is excluded from its operation in case of a Foreign Award where the Arbitration is not held in India and is governed by foreign law. - Clause 28, which is the Arbitration Clause in the Contract, clearly stipulates that any dispute under the Contract “is to be settled and referred to Arbitration in London”. It further stipulates that English Law to apply. ★ Thus, the parties have clearly intended that the Arbitration will be conducted in accordance with English Law and the seat of the Arbitration will be at London.
Legal Principles held –	★ The question is whether the above stipulations show the intention of the parties to expressly or impliedly exclude the provisions of Part I to the Arbitration, which was to be held outside India, i.e. in London. ★ We think that the clause evinces such an intention by providing that the English Law will apply to the Arbitration. The clause expressly provides that Indian Law or any other law will not apply by positing that English Law will apply. The intention is that English Law will apply to the resolution of any dispute arising under the law. ★ This means that English Law will apply to the conduct of the Arbitration. It must also follow that any objection to the conduct of the Arbitration or the Award will also be governed by English Law. Clearly, this implies that the challenge to the Award must be in accordance with English Law. Thus, there is an express exclusion of the applicability of Part I to the instant Arbitration by Clause 28. ★ In fact, Clause 28 deals with not only the seat of Arbitration but also provides that there shall be two Arbitrators, one appointed by the charterers and one by the owners and they shall appoint an Umpire, in case there is no agreement. ★ In this context, it may be noted that the Indian Arbitration and Conciliation Act, 1996 makes no provision for Umpires and the intention is clearly to refer to an Umpire contemplated by Section 21 of the English Arbitration Act, 1996. Thus, it is clear that the intention is that the Arbitration should be conducted under the English law, i.e. the English Arbitration Act, 1996. ★ It may also be noted that Sections 67, 68 and 69 of the English Arbitration Act provide for challenge to an Award on grounds stated therein. The intention is thus clearly to exclude the applicability of Part I to the instant Arbitration proceedings. ★ This is a case where two factors exclude the operation of Part I of the Arbitration Act. - Firstly, the seat of Arbitration which is in London and - Secondly the clause that English Law will apply. ★ In fact, such a situation has been held to exclude the applicability of Part I in a case where a similar clause governed the Arbitration. In this clause 28 in the present case must be intended to have a similar effect that is to exclude the applicability of Part I of the Indian Arbitration and Conciliation Act since the parties have chosen London as the seat of Arbitration and further provided that the Arbitration shall be governed by English Law. ★ In this case the losing side has relentlessly resorted to apparent remedies for stalling the execution of the Award and in fact even attempted to prevent Arbitration. This case has become typical of cases where even the fruits of Arbitration are interminably delayed. Even though it has been settled law for quite some time that Part I is excluded where parties choose that the seat of Arbitration is outside India and the Arbitration should be governed by the law of a foreign country. ★ Thus, we are of the view that by Clause 28, the parties chose to exclude the application of Part I to the Arbitration proceedings between them by choosing London as the venue

	for Arbitration and by making English law applicable to Arbitration, as observed earlier. ★ It is too well settled by now that where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration will be a law other than Indian law, Part I of the Act would not have any application. ★ Therefore, the award debtor would not be entitled to challenge the award by raising objections under Section 34 before a Court in India.
Decision	★ The SC decide the case in favour of the Appellant (Eitzen Bank). ★ A Court in India could not have jurisdiction to entertain such objections under Section 34 in such a case. ★ The SC held that the foreign award could not be challenged in the Indian courts under section 34 of the Arbitration Act.

19. ROTOMAC ELECTRICALS LTD. v. UNION OF INDIA & ANR [Del]

Hint: The appellant was granted an advance licence under Duty Exemption Scheme under the 'FTDR Act'. As per the conditions of the licence, **the appellant was required to complete the export obligation of Rs.1,07,58,600/- as Free On Board (FOB) value within a period of 18 months from the date of the issue of advance licence.** The appellant failed to fulfil this obligation and the penal proceedings were initiated against it and **penalty was imposed.** "Whether Penalty imposed is tenable in law".

Decision:

- ★ The Delhi HC decide the case in favour of the Respondent (i.e. Union of India).
- ★ The Delhi HC held that the Appellant was liable pay penalty as imposed by the Respondent on account of failure to fulfilment of Export Obligation.

Fact of the Case	★ The appellant/writ petitioner was granted an advance licence dated 22.12.1999 under Duty Exemption Scheme under the Foreign Trade (Development and Regulation) Act, 1992 (for short 'FTDR Act'). ★ As per the conditions of the licence, the appellant was required to complete the export obligation of Rs.1,07,58,600/- as Free On Board (FOB) value within a period of 18 months from the date of the issue of advance licence. ★ The appellant failed to fulfil this obligation and the penal proceedings were initiated against it and penalty was imposed. ★ The appellant challenged the imposition of the penalty by filing writ petition before the HC.
Legal Principles held –	★ The Delhi HC after examination of the documents, finds that (a) The appellant was granted various opportunities of personal hearing as detailed in above paras to produce requisite evidence of fulfilment of export obligation but the appellant has failed to do so. (b) From the documents (only photocopies) submitted by the firm with their letter dated 03.09.2014 and also with their appeal, it is observed that Part-2 of DEEC Book has been not logged by Customs. (c) They have NOT been able to produce shipping bills showing authorization No/File No. (d) Further, it is observed that appellant has NOT produced Duplicate/Bank Certificate copy of BRC. (e) They were repeatedly advised to provide the documents required as per Policy/Procedure but they failed to do so. From the above, it is clear that the appellant did NOT have the requisite documents required to prove that they have fulfilled export obligation in respect of advance licence No.0131276 dated 22.12.1999. ★ The learned Single Judge held that (a) such finding of fact recorded by the statutory authorities regarding the failure of the appellant to furnish the documents to establish the fulfilment of the export obligation warrants no interference by this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

	(b) We have observed that the dispute was NOT with regard to the interpretation of clause 4.12 as to whether the exports that had taken place even before the grant of advance licence can be considered or not, but <u>the issue was whether the appellant could produce authenticated documents to prove the fulfilment of export obligation as required under the terms and conditions of the advance licence.</u> A categorical finding was recorded by the respondent Nos. 1 & 2 that the appellant/writ petitioner failed to produce. ★ Therefore, the respondents cannot be said to have committed any error in imposing the penalty in exercise of the powers conferred by Section 11(2) of FTDR Act, 1992. ★ On a perusal of the show cause notices, we found that the petitioner was put on notice that it failed to submit the documents to prove the fulfilment of export obligation. It is also relevant to note that the show cause notice dated 01.12.2009 was in fact issued under Section 14 of the FTDR Act proposing to take action under Section 11(2) for non-fulfilment of export obligation against the advance licence dated 22.12.1999. Hence, the allegation that the show cause notices were silent about the action proposed has no factual basis. ★ Therefore, the decisions cited on behalf of the appellant, i.e., Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd. (2006) 7 SCC 592; Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd. (2007) 8 SCC 89 and Commissioner of Central Excise v. Gas Authority of India Limited (2007) 15 SCC 91 are NOT relevant for adjudicating the case on hand. ★ The contention that the Directors of the appellant company should NOT have been made liable also deserves NO consideration since none of the Directors approached this Court.
Decision	★ The Delhi HC decide the case in favour of the Respondent (i.e. Union of India). ★ The Delhi HC held that the Appellant was liable pay penalty as imposed by the Respondent on account of failure to fulfilment of Export Obligation.

20. GREAVES COTTON LTD. v. UNITED MACHINERY & APPLIANCES [SC]

Hint: Both Appellant and Respondent **entered into an agreement for supply of diesel engines by the appellant to the respondent for using the same in the diesel gensets and the said agreement containing arbitration clause.** The Respondent filed civil suit seeking money decree towards the loss and damages suffered by it on account of alleged breach of contract on the part of Appellant. After receiving notice from the court, the appellant moved an application seeking extension of time for 8 weeks to file written statement and also invoked the arbitration clause contained in the agreement. Thereafter, the appellant moved application under Section 5 read with Section 8 of the Arbitration and Conciliation Act, 1996, Arbitral Court reject the application on the following two grounds:

- (a) **Appellant moving application for extension of time to file written statement, waived its right to seek arbitration.**
- (b) **filing of an application for extension of time to file written statement before a judicial authority constitutes - 'submitting first statement on the substance of the dispute'.**

Decision: The SC decide the case in favour of the Appellant.

Fact of the Case	★ Appellant is the manufacturers of diesel engines and Respondent is the manufacturers of diesel generator sets. ★ Both Appellant and Respondent entered into an agreement for supply of diesel engines by the appellant to the respondent for using the same in the diesel gensets and the said agreement containing arbitration clause. ★ The Respondent filed civil suit seeking money decree towards the loss and damages suffered by it on account of alleged breach of contract on the part of Appellant. ★ After receiving notice from the court, the appellant moved an application seeking extension of time for 8 weeks to file written statement and also invoked the arbitration clause contained in the agreement. ★ Thereafter, the appellant moved application under Section 5 read with Section 8 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"), in the suit seeking reference of the disputes between the parties forming the subject-matter of the suit, for arbitration, which
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	was rejected by the Court on the ground that the appellant has, by moving application for extension of time to file written statement, waived its right to seek arbitration. Hence, this appeal through special leave.
Legal Principles held –	★ The issue come before the SC for consideration is whether filing of an application for extension of time to file written statement before a judicial authority constitutes – ‘submitting first statement on the substance of the dispute’ or not. (a) SC while considering the view of the law laid down by this Court in various judicial pronouncement viz. Manna Lal Kedia & Ors v. State of Bihar & Ors, Rashtriya Ispat Nigam Ltd & Anr v. Verma Transport Co and in Booz Allen and Hamilton Inc. v. SBI Homes Finance Ltd & Ors (2011), SC held that we find it difficult to agree with the High Court that in the present case merely moving an application seeking further time of 8 weeks to file the written statement would amount to making first statement on the substance of the dispute. (b) SC held that, in our opinion, filing of an application without reply to the allegations of the plaint does NOT constitute first statement on the substance of the dispute. It does not appear from the language of section 8(1) of the 1996 Act that the Legislature intended to include such a step like moving simple application of seeking extension of time to file written statement as first statement on the substance of the dispute. Therefore, in the facts and circumstances of the present case, we are unable to hold that the appellant, by moving an application for extension of time of 8 weeks to file written statement, has waived right to object to the jurisdiction of judicial authority. ★ From the order impugned, it also reflects that before disposing of application under Section 8 of the 1996 Act, the High Court has not looked into questions as to ☛ Whether there is an agreement between the parties; ☛ Whether disputes which are subject-matter of the suit fall within the scope of arbitration; and ☛ Whether the reliefs sought in the suit are those that can be adjudicated and granted in arbitration.
Decision	★ The SC decide the case in favour of the Appellant. ★ In view of the above, we think it just and proper to request the High Court to decide the application afresh in the light of law laid down by this Court in para 19 of the judgment in Booz Allen and Hamilton (supra) except the point, which has already been answered in the present case by us.

21. THOUGHTWORKS INC v. SUPER SOFTWARE PVT LTD & ANR [DEL]

Hint: In the given case, Appellant filed a complaint against the Respondent in relation to infringement of registered trademark. However, the Arbitrator passed award against the appellant without considering the certain valid issues. Appellant filed appeal against the Arbitral award before the Delhi HC. **Question arise “whether the Delhi HC allowed the appeal against the Arbitral Award”.**

Decision:

- ★ The Delhi HC decide the case in favour of Appellant.
- ★ The Delhi HC held that after consideration of the aforementioned reasons, the HC is satisfied that the impugned Award is opposed to the fundamental policy of India as it has numerous glaring errors which appear on the face of the Award.
- ★ Consequently, the Delhi HC sets aside the impugned Award and allows the petition but, in the circumstances, with no order as to costs.

Fact of the Case	★ The Petitioner is engaged in the business of IT consulting, software development services and sale of proprietary software under its coined trademark/tradename “ThoughtWorks” since 1993. The Petitioner has registered its trademark ThoughtWorks in India in 2001 under class 9.
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	☆ In 2015, the Petitioner became aware that the domain name "Thoughtworks.in" was registered by Respondent No. 1 when one of the analysts of the Petitioner accessed the website of Respondent No. 1 mistaking it to be the Petitioner's website. ☆ Immediately, the Petitioner filed a complaint against Respondent No. 1 before National Internet Exchange of India (NIXI) under the "In Domain Dispute Resolution Policy ("INDRP")" and the Procedure Rules of NIXI. ☆ The Respondent contested the above complaint and filed a reply: (a) Respondent contending that "the generic nature in a combined phrase was deemed harmless and not infringing on any one's existing Indian trademark or copyright" at the time of registration of the domain name. (b) It was further contended that while the Petitioner was a technology service company, neither did it transact any business online nor offer any e-commerce related services. (c) It was further contended that the Petitioner had not made any effort to contact Respondent No. 1 or to resolve the matter amicably. ☆ In the impugned Award dated 12th July, 2015, the sole Arbitrator held as under: (a) There were three addresses given for the Petitioner in the complaint as regards the owner of the trademark "Thoughtworks" and there was no explanation available for the discrepancy. Therefore, it became difficult to hold whether, in India, the Petitioner having its office in Chicago in the USA was the owner of the trademark "ThoughtWorks". (b) Along with the complaint, NO copy of the certificate of registration of the trademark of any country, including India, was submitted or provided by the Petitioner. Even the date of registration of the trademark "ThoughtWorks" in India was not provided. Therefore, it could not be held that the domain name www.thoughtworks.in was confusingly similar or identical to the trademark of the Petitioner. (c) The Respondent was making a legitimate and fair use of the domain name although he was carrying on business "very much similar to the business of the Complainant". (d) For over three years, the Petitioner had not claimed the disputed domain name. Between the period of 18th August, 2011 till the registration of the domain name in favour of Petitioner on 31st October, 2014, the domain name remained unregistered and freely available. (e) On the other hand, the Petitioner had no explanation as to why the action was not taken for all these years. Therefore, the Petitioner had failed to establish four elements constituting the INDRP policy which had to be fulfilled for a complaint to be successful. ☆ The arbitrator passed an award against the petitioner. ☆ Later on, the Petitioner filed the present appeal before the Delhi HC against the arbitral award.
Legal Principles held—	☆ The Delhi HC considered the following observation in the Arbitral award before passing the order: 1. Learned Arbitrator not permitting a party to clarify the factual aspect might itself lead to a grave error that is fatal to the Award in terms of what could be seen as a procedural lapse. 2. The learned Arbitrator also appears to have made a mistake about the trademark registration not having been produced. As pointed out by the Petitioner, it was annexed to the complaint itself as Annexure F. 3. Court is satisfied that in the present case, the learned Arbitrator failed to apply his mind to the facts on record. Indeed, a copy of the trademark registration certificate of the Petitioner was enclosed with the complaint and yet the learned Arbitrator failed to have noticed this fact.

	4. In any event, the complaint itself contained details of its various registrations. If there was any doubt, the learned Arbitrator ought to have sought a clarification from the Petitioner on this aspect as well. 5. More importantly, the learned Arbitrator appears to have come to an erroneous conclusion that the trademark "ThoughtWorks" did not belong to the Petitioner. Again, no opportunity was afforded to the Petitioner. The impugned domain name contains only the Petitioner's trademark and yet no finding was returned on whether there was any similarity. ☆ The Delhi HC also consider the decision in Stephen Koenig v. Arbitrator, National Internet Exchange of India & ANR 186 (2012) DLT 43, which was subsequently upheld by the Division Bench of this Court because of the fact that a mere delay in lodging the complaint would not disentitle the aggrieved party from proceeding against the 'squatter'. ☆ The Petitioner was able to show that no sooner than he came to know of the above domain name, it took prompt action by filing a complaint with NIXI. ☆ Importantly, no finding was returned on whether the use of the domain name by Respondent No. 1 would lead to confusion and deception. ☆ With the domain name taking up the entire name of the Petitioner, there could be NO doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of Respondent No. 1 with the Petitioner when there is none.
Decision	☆ The Delhi HC decide the case in favour of Appellant. ☆ The Delhi HC held that after consideration of the aforementioned reasons, the HC is satisfied that the impugned Award is opposed to the fundamental policy of India as it has numerous glaring errors which appear on the face of the Award. ☆ Consequently, the Delhi HC sets aside the impugned Award and allows the petition but, in the circumstances, with no order as to costs.

22. FALCON PROGRESS LTD v. SARA INTERNATIONAL LTD. [DEL]

Hint: Delhi HC held that Execution of foreign award challenge as to validity of the contract is not tenable in law.

Fact of the Case	☆ In the given case, Falcon Progress Limited (hereafter 'FPL'), a company registered under the laws of Hong Kong, filed petition before the Delhi HC for enforcement of the foreign award dated 22.11.2012 as corrected by the award dated 21.12.2012 (hereafter 'the impugned award'). ☆ The impugned award was rendered by the sole arbitrator pursuant to arbitration proceedings conducted under the rules of Singapore International Arbitration Centre (SIAC) in respect of disputes between FPL and Sara International Ltd. (hereafter 'Sara'), the Judgment Debtor. ☆ Sara has filed the present application under Section 48 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that enforcement of the impugned award be declined.
Legal Principles held—	ISSUE NO. 1 ☆ The principal question to be considered is whether there was a concluded contract between the parties. Undisputed Facts ☆ The undisputed facts are that on 24.04.2009 at 03:33 p.m., Ms Daisy Liu of FPL sent an e- mail to Mr Gill of Sara attaching therewith a final version of the agreement for signing. The e-mail clearly stated: "Attached please find the final version of the contract for signing. Please kindly send us the signed contract for counter-signing today with thanks".

- ☆ In response to the said mail, Mr Gill of Sara sent an e-mail on 24.04.2009 at 6:23 p.m. attaching a signed copy of the agreement. Mr Gill clearly stated:
"Please find enclosed herewith signed contract. Kindly let us have the counter signed & stamped copy".
- ☆ Admittedly, **the signed agreement was attached with the said mail.** Thereafter, Ms Daisy Liu sent another mail at 6:47 p.m. attaching a counter signed scanned copy of the agreement which was earlier signed and sent by Sara. The said mail reads as under:-
"Attached please find the co-signed contract. We'll send you the LC format early next week. Please kindly nominate vessel ASAP so that we can determine the LC quantity and amount."
- ☆ It is not disputed that **the agreement attached with the mail of FPL was the same agreement which was subsequently signed on behalf of Sara and, thereafter, counter-signed on behalf of FPL.**
- ☆ In the circumstances, the contention **that the parties had only agreed to agree and there was no concluded contract between the parties is unsustainable.**
- ☆ The Arbitral Tribunal had **also considered the aforesaid contention and rejected the same.** A plain reading of the agreement indicates that **all essential terms had been agreed to between the parties.** The contention that **since FPL had requested Sara to indicate the name of the vessel and the quantity for opening of the LC, the signed agreement attached with the mail could NOT be considered as a concluded contract is unsustainable.** FPL's request for nomination of the vessel and for informing the quantity of goods being shipped is **not inconsistent with the terms of the agreement.** Although, it is correct that **FPL had agreed to open LC in favour of Sara within a period of 7 days from signing of the contract to cover the entire value of shipment, the same is consistent with FPL's request to Sara to intimate the quantities to be shipped as well as the nominated vessel.**
- ☆ In the present case, it is **not disputed that the agreement attached with the emails referred hereinabove contained an arbitration clause and, therefore, the contention that there is no arbitration agreement between the parties is also devoid of any merits.**

ISSUE NO. 2

- ☆ The next issue to be considered is **whether the impugned award falls foul (i.e. unfair) of the fundamental policy of Indian law inasmuch as the Arbitral Tribunal had awarded damages in favour of FPL.**
- ☆ The finding of the Arbitral Tribunal that Sara had breached the agreement cannot be assailed in these proceedings. The said finding is final and binding. **The only issue advanced was that award of damages without sufficient proof of loss would fall foul of the fundamental policy of Indian law.**
- ☆ Both the parties were ad idem that in case of breach of agreement, **the damages to be awarded were to be measured in terms of Section 51(3) of the Sale of Goods Act, 1979 (UK).** The controversies raised by Sara included **the determination of the market value and the relevant date in reference to which the market value was to be determined.** However, it is not disputed that **the parties had agreed on a list of market prices on various dates which were drawn from Umetal Figures.**
- ☆ On the basis of the said list, the **Arbitral Tribunal determined the market value of the ore by making due adjustments including on account of moisture content.** It is relevant to note that **computation of the difference between the market value and the contracted value is NOT in dispute.** No contentions have been advanced in this court assailing (i.e. violent attack) the aforesaid calculation. **The only contention advanced is that since FPL had not procured the goods in question from another source at a higher value, no damages could be awarded to FPL.**

	☆ It was earnestly contended that FPL was a trader and, therefore, would have suffered actual loss only if it had further transacted the goods or had procured the goods at a higher price. The aforesaid contention is also unmerited. ☆ A trader is NOT required to show that it has procured the goods at a higher price in order to claim damages. It is sufficient for a trader to show that the market value of the goods promised to it had increased. It is well settled that the difference in the contracted value and the market value of the goods which the seller has failed to deliver represents the amount that the buyer must obtain to put itself in the position, it would have been if the agreement was duly performed by the seller. ☆ Thus, FPL is entitled to the difference between the market price and the contracted value of the goods as representing the damages actually suffered by FPL. The fact that the goods at the contracted value were not delivered to the trader would itself indicate that it had suffered a loss of drop in value
Decision	. In view of the above, the application is dismissed.

23. COSMO FERRITES LTD. v. PRAGYA ELECTRONICS PVT. LTD & ORS. [DEL]

(V. Imp.) Hint: In the given case, the Arbitral Tribunal refused to grant interest on the arbitral award even the contract between the parties expressly stated the interest is chargeable on account of delay.

Decision: The SC decide the case in favour of the Appellant and held that the Arbitral tribunal is bound to grant interest on arbitral award which was expressly given under the contract. The arbitral tribunal has also ignored the provisions of the Agreement, which expressly entitles CFL to claim interest not exceeding the rate of 14% p.a. for any delay in payment

Fact of the Case	☆ CFL entered into a non-exclusive distributorship agreement dated 01.04.2005 (hereafter 'the Agreement') with PEPL, respondent herein for the supply of soft ferrites. Subsequently, the parties entered into annual agreements for the years 2007, 2008 and 2009. ☆ In terms of the Agreement, PEPL placed purchase orders on CFL for supply of goods, which in turn were sold by PEPL to its customers. ☆ Dispute arose as to the payments and the issue was referred to arbitration. Although, the arbitral tribunal found that CFL was entitled to recover the aforesaid amount, it rejected CFL's claim for interest at the rate of 12.25% p.a. on the said awarded sum. ☆ The Appellant file appeal before Delhi HC against the said arbitral award.
Legal Principles held –	☆ The principal issue to be addressed is <u>whether the decision of the arbitral tribunal to reject CFL's claim for interest is sustainable.</u> ☆ The Delhi HC observed that: (a) It is trite (i.e. overused) law that the arbitral tribunal cannot ignore the terms of the agreement between the parties. (b) Section 28(3) of the Act mandates that the arbitral tribunal must decide in accordance with the contract between the parties. (See: Indian Hume Pipe Company Limited v. State of Rajasthan: (2009)). (c) In the present case, there is no dispute that the Agreement expressly provided for interest on delayed payments. The arbitral tribunal has not found the aforesaid clause to be invalid or inapplicable. (d) The arbitral tribunal has also not indicated any reason as to why the aforesaid clause ought to be ignored. The arbitral tribunal is bound to make award in terms of the Agreement between the parties and there is no indication as to why the arbitral tribunal has rejected CFL's claim for interest. ☆ In the case of State of Haryana & Ors v. S. L. Arora & Co (2010), The SC had expressly held as under ☛ The authority of the Arbitral Tribunals to award interest under Section 31(7)(a) is subject to the contract between the parties and the contract will prevail over the provisions of Section 31(7) (a) of the Act. ☛ Where the contract between the parties contains a provision relating to, or regulating or prohibiting interest, the entitlement of a party to the contract to interest for the period

	between the date on which the cause of action arose and the date on which the award is made, will be governed by the provisions of the contract, and the Arbitral Tribunal will have to grant or refuse interest, strictly in accordance with the contract. ☛ The Arbitral Tribunals cannot ignore the contract between the parties, while dealing with or awarding pre-award interest. ☛ Where the contract does not prohibit award of interest, and where the arbitral award is for payment of money, the arbitral tribunal can award interest in accordance with Section 31(7)(a) of the Act, subject to any term regarding interest in the contract." ☆ The aforesaid decision was overruled by the SC in its later decision in Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, only to the extent that interest under Section 31(7)(b) of the Act would also be payable on any interest included in the sum awarded under Section 31(7)(a) of the Act. However, <u>the view that contractual stipulations as to interest cannot be ignored by the arbitral tribunal is good law and the decision of the Supreme Court in S. L. Arora (supra) continues to be a binding precedent.</u> ☆ After considering the aforesaid judicial pronouncement, it is also necessary to observe that the arbitral tribunal would still have the discretion to award interest in cases where the contract is silent. However, such discretion would have to be exercised objectively keeping in view, the facts of the case. ☆ In cases where the contract expressly provides that interest would be payable on sums withheld, the arbitral tribunal would be bound to award the same unless there are good reasons to not to do so.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that the arbitral tribunal would be bound to award the same unless there are good reasons to not to do so. The arbitral tribunal has also ignored the provisions of the Agreement, which expressly entitles CFL to claim interest not exceeding the rate of 14% p.a. for any delay in payment. ☆ In view of the above, the petition is liable to be allowed and the impugned award is liable to be set aside to the extent of rejection of CFL's claim for interest at the rate of 12.25% p.a. from the date of invoices till the date of the impugned award.

24. DELHI METRO RAIL CORPORATION LTD. v. DELHI AIRPORT METRO EXPRESS PVT.LTD [DEL]

Hint: The Arbitral Tribunal has rendered an Award in favour of the respondent in the sum of Rs. 4670 Crores including interest till the date of the Award and the learned single judge directed the respondent to furnish an unconditional BG to the extent of Rs. 65 Crores which would cover the factor of interest at the rate of 12% per annum should the appellant herein succeed. The Question arise "Whether the action of the learned Single judge is tenable in law".

Decision: The Delhi HC held that the action of the learned Single judge is tenable in law on various grounds as given in Decision section.

Fact of the Case	☆ Disputes arose between the parties in respect of the contract relating to the airport metro line. ☆ The Arbitral Tribunal has rendered an Award in favour of the respondent in the sum of Rs. 4670 Crores including interest till the date of the Award. ☆ The appellant DMRC, moved the HC against the award. ☆ In the order dated 30.05.2017 (hereinafter referred to as "the impugned order") the learned Single Judge has directed ☛ The appellant herein to pay a sum of Rs. 60 Crores directly to Axis Bank who is stated to be the lead lending bank to the petitioner (before learned Single Judge and respondent herein) to protect the rights of the appellant herein,
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	☛ The respondent has been directed to furnish an unconditional BG to the extent of Rs. 65 Crores which would cover the factor of interest at the rate of 12% per annum should the appellant herein succeed. ☆ The appellant challenged this order before the Division Bench.
Legal Principles held –	☆ We find no force in the submission of learned counsel for the appellant that the present petition under Section 9 of the Act is premature. ☆ The submission of the petitioners is premised in the language of Section 36 which stipulates that only after the expiry of time for making an application to set aside the arbitral award under Section 34 has expired, the award is deemed to be a decree of the Court. ☆ According to the learned counsel for the appellant, there is no decree as on date. This submission is not acceptable in view of the express language of Section 9 itself. ☆ From the foregoing, it is clear that the power vested in the Court may be exercised when the proceedings before the Arbitrator are either “contemplated”, “pending” or even “completed”. ☆ The present case is one under the third category and the Court has the power to order interim measures after the passing of the award, but before its enforcement in accordance with Section 36 of the Act. ☆ Hence, the Court was clearly vested with the power to grant interim measures prior to the award becoming a deemed decree under Section 36 of the Act. ☆ We may notice that the order dated 30.05.2017 is only an interim order and all the issues sought to be raised by the parties have been kept open to be considered by the learned Single Judge on the next date of hearing as is evident upon reading of the order dated 30.05.2017.
Decision	☆ The Delhi HC held that the action of the learned Single judge is tenable in law. ☆ We find no grounds to interfere in the impugned order passed by the learned Single Judge, (a) Firstly, for the reason that order dated 30.05.2017 is an interim order by which the appellant herein has been directed to deposit Rs. 60 Crores out of an award in favour of the respondent in the sum of Rs. 4670 Crores; (b) Secondly, for the amount to be deposited, the respondent has been directed to provide the bank guarantee of Rs. 65 Crores which would cover the interest on Rs. 60 Crores to be deposited by the appellant herein; and (c) Thirdly, this amount is to be paid directly to the Axis Bank keeping in view the large sums of interest to be paid by the respondent (Rs. 65 lakh per day/Rs. 20 Crores per month) and also for the reason that all the grounds sought to be urged have been kept open to be decided by the learned Single Judge.

25. ESSAR PROJECTS (INDIA) LTD. v. INDIAN OIL CORPORATION LTD & ANR [DEL]

(V. Imp.) Hint: There was an arbitration agreement between respondent and appellant. Further, Appellant has given the unconditional BGs for securing due performance, the same would be encashable only after the arbitrators decide the factum of breach as well as the damage suffered. There was dispute arises in between both the parties. Question arises in this case, “Whether respondent could be restrained from encashing the unconditional BGs”.

Decision: The SC decide the case in favour of the Respondent (i.e. IOCL) and Respondent is allowed to encashed unconditional BGs because Appellant failed to provide special equities that would encourage the SC to interfere in encashing the BGs.

Fact of the Case	☆ In the given case, the appellant had granted a contract for construction of civil works in a steel plant to the contractor, which despite extensions was unable to complete the project within the stipulated time and the appellant rescinded the contract. As per the terms of the contract, the appellant assessed the loss/damages and invoked the bank guarantees (BGs). ☆ The contractor rushed before the Trial Court praying for an injunction restraining the appellant from invoking the BGs to no avail and then approached the Andhra Pradesh HC alleging that since the BGs were given for securing due performance, the same would
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	be encashable only after the arbitrators decide the factum of breach as well as the damage suffered. ★ The HC reversed the decision of the Trial Court finding that the liability to pay damages would arise only after it is established that there is a breach of contract and same could be ascertained by the arbitrator. ★ By the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner prays for restraining the respondents from encashing BGs. ★ Question arises in this case, "Whether respondent could be restrained from encashing the unconditional BGs".
Legal Principles held –	★ The scope of interference by courts in the invocation of the bank guarantees is no longer res integra. It has been repeatedly held that, especially in cases of unconditional BGs, the court should not interfere unless the petitioner is able to establish fraud of egregious nature or is able to plead special equities. ★ The SC Observed the following: ☛ We are of the opinion that the correct position of law is that commitment of banks must be honoured free from interference by the courts and it is only in exceptional cases, that is to say, in case of fraud or in a case where irretrievable injustice would be done if BG is allowed to be encashed, the court should interfere. ☛ In this case fraud has not been pleaded and the relief for injunction was sought by the contractor/Respondent 1 on the ground that special equities or the special circumstances of the case required it. ☛ The special circumstances and/or special equities which have been pleaded in this case are that there is a serious dispute on the question as to who has committed breach of the contract, that the contractor has a counterclaim against the appellant, that the disputes between the parties have been referred to the arbitrators and that no amount can be said to be due and payable by the contractor to the appellant till the arbitrators declare their award. ☛ In our opinion, these factors are not sufficient to make this case an exceptional case justifying interference by restraining the appellant from enforcing the BGs. Therefore, the HC was not right in restraining the appellant from enforcing the BGs."
Decision	★ The SC held that the Respondent be allowed to encash the BGs as they were unconditional and no special circumstances/special equities had been established by the Petitioner in the given case. ★ The SC decide the case in favour of the Respondent (i.e. IOCL).

26. ANANTHESH BHAKTA v. NAYANA S. BHAKTA & ORS (SC)

(V. Imp.) **Hint:** In the given case, partnership deed as well as retirement deed provided for arbitration and said partnership deed is unregistered. Because of disputes arises among the partners, they filed application under Arbitration and Conciliation Act, 1996. **Question arises in this case, "Whether arbitration proceedings could be refused on the ground that partnership is unregistered".**

Decision: The SC decide the case in favour of the Respondent.

Fact of the Case	The disputes arose between the partners of an unregistered partnership firm and a suit was filed to resolve the dispute , in which the defendants have filed an application seeking to refer the dispute to arbitration as the partnership deed as well as the retirement deed contained arbitration clause.	
Legal Principles held –	Issue 1	Whether non-filing of either original or certified copy of retirement deed and partnership deed along with application I.A. No. IV dated 09.05.2014 entailed dismissal of the application as per section 8(2) of 1996 Act.
	Reply	☛ The original Retirement Deed and Partnership Deed were filed by the defendants on 12th May and it is only after filing of original deeds that Court proceeded to decide the application I.A.No. IV.

		- In the present case it is relevant to note the Retirement Deed and Partnership Deed have also been relied by the plaintiffs. - Hence, the argument of plaintiffs that defendants' application I.A.No. IV was not accompanied by original deeds liable to be rejected, cannot be accepted. - Thus, we are of the view that the appellants submission that the application of defendants under Section 8 was liable to be rejected, cannot be accepted.
	Issue 2	Whether the fact that all the parties to the suit being not parties to the retirement deed/partnership deed, the Court was not entitled to make the reference relying on arbitration agreement.
	Reply	- The plaintiffs admittedly are parties to the arbitration agreement as noted above. It does not lie in their mouth to contend that since one of the defendants whom they have impleaded was not party to the arbitration agreement, no reference can be made to the arbitrator. - In the facts of the present case, it cannot be said that merely because one of the defendants i.e. defendant no. 6 was not party to the arbitration agreement, the dispute between the parties which essentially relates to the benefits arising out of Retirement Deed and Partnership deed cannot be referred. - Learned District Judge has noted that defendant No. 6 has not inherited any share either in Partnership deed or in the schedule property and hence there is no question of bifurcation of either cause of action or parties. We fully endorse the above view taken by Learned District Judge.
	Issue 3	Whether dispute pertaining to unregistered partnership deed cannot be referred to an arbitration despite there being arbitration agreement in the deed of retirement/partnership deed. The submission by the petitioner is that partnership being an unregistered partnership, no reference can be made to the arbitration.
	Reply	- In the present case, there is no dispute between the parties that both Retirement deed and Partnership deed contain an arbitration clause. - In Retirement deed which had been signed by retiring partners, continuing partners and concurring partners, following was stated in clause 8: "...In case of any dispute or difference arising between the parties, regarding the interpretation of the contents of this Deed of Retirement or any other matter or transactions touching the said retirement, it shall be referred to an arbitration under the provisions of the Arbitration & Conciliation Act, 1996." - When the partners and those who claim through partners agreed to get the dispute settled by arbitration, it is not open for the appellants to contend that partnership being unregistered partnership, the dispute cannot be referred.
Decision		- The petitioners have not been able to show any statutory provision either in 1996 Act or in any other statute from which it can be said that dispute concerning unregistered partnership deed cannot be referred to arbitration. - The SC decide the case in favour of the Respondent.

27. NEWGEN SPECIALTY PLASTIC LTD v. INTEC CAPITAL LTD [DEL]

Hint: The appellant **had obtained a loan** of Rs. 3 Crores from the respondent. Appellant **also tendered a collateral security for a sum of Rs. 90,00,000/-**. Since the appellant **failed to pay the monthly instalments on time**. As a result, **respondent/lender invoked arbitration proceedings to recover the outstanding loan**. Appellant **appeared in the arbitration proceedings on some dates but thereafter failed to appear and hence was proceeded ex-parte and the impugned award was passed decreeing the recovery of the amount along with interest but subject to adjustment to be granted to the appellant w.r.t. the collateral amount of Rs.90,00,000/-**. Appellant **challenged the impugned award by filing objections before the Delhi HC under Section 34 of the Act.**

Decision:

★ The Delhi HC decide the case in favour of the Respondent.

☆ Accordingly, this Court cannot adjudicate the issues on merits, which were not addressed in the arbitration proceedings.

Fact of the Case	☆ The appellant had obtained a loan of Rs. 3 Crores from the respondent for purchase of equipment for its business. Appellant also tendered a collateral security for a sum of Rs. 90,00,000/-. ☆ Since the appellant failed to pay the monthly instalments on time. As a result, the total outstanding loan raised to Rs.2,80,25,074/-, and to recover said claim the, respondent/lender invoked arbitration proceedings. ☆ Appellant appeared in the arbitration proceedings on some dates but thereafter failed to appear and hence was proceeded ex-parte and the impugned award was passed decreeing the recovery of the amount along with interest but subject to adjustment to be granted to the appellant w.r.t. the collateral amount of Rs.90,00,000/-. ☆ Appellant challenged the impugned award by filing objections before the Delhi HC under Section 34 of the Act.
Legal Principles held –	☆ The Delhi HC consider the following facts before passing the order: (a) Once, it is established by the respondent that appellant had taken a loan on the basis of the leading evidence, and the appellant has default in the payment of monthly instalments, i.e. the respondent proved its claim in the arbitration proceedings. Then, the court would not interfere with the impugned award under Section 34 of the Arbitration and Conciliation Act, 1996. (b) Learned counsel for the appellant firstly argued that it was the duty of the respondent first to adjust the sale proceeds of hypothecated equipment against the amount due. However, we put a query to learned counsel for the appellant that whether the appellant had returned the machinery to the respondent, it is conceded that the machinery/equipment purchased by the appellant, by utilization of the loan granted, have NOT being returned to the respondent. So, the argument of adjustment of sale proceeds is raised, when the appellant returned the hypothecated equipment to the respondent . (c) Learned counsel for the appellant argued that the respondent is liable to adjust the security amount, and to which there is no dispute, because, arbitrator as per the impugned award while granting relief as per para 8 directed recovery of the amount due only after adjustment of the security amount of Rs. 90,00,000/-. (d) Once the appellant chooses to remain ex-parte in the arbitration proceedings, a plea on merits which is not raised before the arbitration proceedings cannot be raised before the court hearing objections under Section 34 of the Act and much less this appellate court having appeal against the dismissal of objections.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ Accordingly, this Court cannot adjudicate the issues on merits, which were not addressed in the arbitration proceedings.

28. KANCHAN UDYOG LTD. v. UNITED SPIRITS LTD [SC]

Hint: The appellant entered into an agreement with the respondent **for establishment of a non-alcoholic beverages bottling plant**. The concentrate (Essence) was to be supplied by the respondent for preparation of the non-alcoholic beverage. The beverage was to be sold in specified districts of West Bengal as provided in the marketing agreement. The **bottler's agreement was terminated by the respondent**. Commercial production at the plant ceased and the **suit was instituted by the appellant in 1990 claiming damages for loss of anticipated profits**. **Question arise "Whether the Appellant is entitled damages for loss of anticipated profits"**.

Decision: The SC decide the case in favour of the Respondent and held that **Appellant was not entitled damages for loss of anticipated profits on the basis of various grounds as given in decision section**.

Fact of the Case	☆ The appellant entered into an agreement with the respondent for establishment of a non-alcoholic beverages bottling plant. The concentrate (Essence) was to be supplied by the respondent for preparation of the non-alcoholic beverage.
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	☆ The beverage was to be sold in specified districts of West Bengal as provided in the marketing agreement. The bottler's agreement was terminated by the respondent. ☆ As a result, the commercial production at the plant ceased. Therefore, Appellant filed the suit against the respondent in regard to claim the damages for loss of anticipated profits in 1990. ☆ The learned Single Judge decreed the Suit, awarding damages towards loss of anticipated profits, and towards costs for installation of the plant, after deducting Rs.9.05 lakhs payable by the appellant to the respondent as consultancy charges. ☆ The respondent was held liable to pay to the appellant a sum of Rs.4,24,33,000/- with interest @ 10% from the date of suit till payment. ☆ The Division Bench in appeal reversed the decree, and dismissed the Suit. ☆ Hence the present appeal to the Supreme Court.
Legal Principles held—	☆ In the facts of the present case, it cannot be held that the breach of the contract was alone not the cause for loss of anticipated profits, much less was it the primary or dominant reason. ☆ The appellate court has adequately discussed the appellant's letter dated 04.07.1987 thanking the respondent for its advertising support. (a) During the year 1986- 87, the respondent spent Rs. 2,05,13,376.14 for advertising purposes evident from its balance sheet. (b) Similarly, in 1987-88, it spent Rs. 1,65,87,158.73 towards advertisement and sale promotions. (c) On the contrary, for the year ending 31.03.1987, the appellant spent Rs.6,68,856.00 towards advertisement and in the year 1987-88 it spent only Rs.39,288.00. ☆ The fact that Appellant was unable to pay for the concentrates seeking deferred payment, acknowledgement on 09.05.1988 that it would continue to suffer loss for the next six years upto 1992-93 seeking long term credit for five years for supply of concentrates and its acknowledgement in letter dated 27.04.1987 that "Due to many factors already discussed with you we have not been able to run the factory and the sales of our product have not picked up in the market", and not to press for payment of consultancy fees, failure to deploy adequate manpower as per its own projections demonstrates the poor financial condition of the appellant as the prime reason for its inability to run the plant and earn profits. ☆ As against a value of Rs.4,26,685.19 of raw materials in 1989, the appellant had an overdraft of Rs.13,89,000.00. It had a credit entry of Rs. 5,135.00 only in July, 1988 in its account with the State Bank of India. The current account with the Union Bank of India reflected a balance of Rs.1,28,619.25 on 28.03.1989. The Bank balance on 31.03.1989 reflected from its balance sheet was only Rs.43,345.38, and its loss as reflected in the balance sheet on 31.03.1987 was Rs.18,47,018.11. ☆ In the facts of the present case, it cannot be held that the breach by the respondent was the cause, much less the dominant cause for loss of anticipated profits by the appellant. ☆ The appellate court held that with reference to evidence has adequately discussed (a) The appellant failed to take steps to mitigate it losses under the Explanation to Section 73 of the Act. We find no reason to come to any different conclusion from the materials on record. (b) If concentrates were available from M/s. VEC, the appellant had to offer an explanation why it stopped lifting the same after having done so for nearly a year, and could have continued with the business otherwise and earned profits. It could also have taken steps to sell the unit after its closure in May, 1989 rather than to do so belatedly in 1996. (c) No reasonable steps had been displayed as taken by the appellant for utilisation of its bottling plant by negotiations with others in the business.

	(d) Nothing had been demonstrated of the injury that would have been caused to it thereby. (e) That leaves the question with regard to reliance loss and the expectation loss. ★ Whether the two could be maintainable simultaneously or were mutually exclusive? ☞ In Pullock & Mulla, 14th Edition, Volume II, page 1174, ☞ The primary object for protection of expectation interest, has been described as to put the innocent party in the position which he would have occupied had the contract been performed. ☞ The general aim of the law being to protect the innocent party's defeated financial expectation and compensate him for his loss of bargain, subject to the rules of causation and remoteness. ☞ The purpose of protection of reliance interest is to put the plaintiff in the position in which he would have been if the contract had never been made. ☞ The loss may include expenses incurred in preparation by the innocent party's own performance, expenses incurred after the breach or even pre-contract expenditure but subject to remoteness. ★ In view of the conclusion, that the appellant was not entitled to any expectation loss towards anticipated profits in accordance with the discussion of the aforesaid reasons, any grant of reliance loss would tantamount to giving a benefit to it for what was essentially its own lapses. ★ There are no allegations of any deficiency in the plant. Contrary to its claim of Rs.2.52 crores towards cost of the plant, the learned Single Judge awarded Rs.1.60 crores without any discussion for the basis of the same. Though the appellant had preferred a cross appeal, it did not press the same.
Decision	★ The SC decide the case in favour of the Respondent based on the aforesaid discussion leads to the inevitable conclusion that ☞ The appellant had failed to establish its claim that the breach by the respondent was the cause for loss of anticipated profits, that the profitability projection in its loan application was a reasonable basis for award of damages towards loss of anticipated profits. ☞ The appellant had failed to abide by its own obligations under Exhibit 'C' and lacked adequate infrastructure, finances and manpower to run its business. It also failed to take reasonable steps to mitigate its losses.

29. M/S DURO FELGUERA S.A v. GANGAVARAM PORT LIMITED [SC]

Hint: The Respondent awarded the main contract i.e. Original Package No. 4 TD to the respondent which was divided into five different and separate Packages Five different contracts and both entered into MoU. Each contract contained arbitration clause. **Question arise whether single arbitration tribunal could be appointed to resolve all the disputes arose in these six contracts.**

Decision:

- ★ The SC decide the case in favour of the Appellant (Duro Felguera).
- ★ The SC appointed separate Tribunals for each of disputes pertaining to the Package.

Fact of the Case	★ The Respondent GPL intended to expand its facilities in the Port w.r.t. Bulk Material Handling Systems. This included Engineering, Design, Procurement of Materials, Manufacturing, Supply, Erection, Testing and Commissioning of Bulk Material Handling Systems, as well as all other associated works and integration of the same with the existing coal handling systems etc. ★ After post-bid negotiations, the petitioner Duro Felguera and its subsidiary (FGI) were considered by GPL and Duro Felguera and FGI were selected as "the Contractors" for the work. ★ After discussion between the parties, the main contract i.e. Original Package No. 4 TD was divided into five different and separate Packages.
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	☆ Separate Letters of Award for five different Packages were issued to M/s Duro Felguera, S.A. and the Indian Subsidiary-FGI for the above said work respectively. ☆ Each of the Packages has special conditions of contract as well as general conditions of contract. ☆ Each one of the Contract/Agreement for works under split-up Packages contains an arbitration clause namely sub-clause 20.6. ☆ Duro Felguera had also entered into a Corporate Guarantee dated 17.03.2012 guaranteeing due performance of all the works awarded to Duro Felguera and FGI. The said Corporate Guarantee had its own arbitration clause namely clause (8). ☆ In addition, Duro Felguera and FGI have executed a tripartite Memorandum of Understanding with GPL. In the said MoU, Duro Felguera and FGI have agreed to carry out the works as per the priority of documents listed therein. ☆ Dispute arose between the parties. GPL contended that all the five contracts are composite contract and one arbitration tribunal should be appointed. ☆ On the other hand, Appellant contended that all five contracts are separate contracts and different arbitration tribunals should be appointed.
Legal Principles held –	☆ The learned Senior Counsel for GPL relied upon the decision held in <i>Chloro Controls India Private Ltd. v. Severn Trent Water Purification Inc. & Ors</i> (2013) 1 SCC 641: ☛ Senior Counsel contends that where various agreements constitute a composite transaction, court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. ☛ Even though Chloro Controls has considered the doctrine of “composite reference”, “composite performance” etc. ☆ The ratio of Chloro Controls may not be applicable in the present case. Because, in Chloro Controls, the arbitration clause in the principal agreement i.e. clause (30) required that any dispute or difference arising under or in connection with the principal (mother) agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with Rules of ICC. ☆ The words thereon “under and in connection with” in the principal agreement was very wide to make it more comprehensive. In that background, the performance of all other agreements by respective parties including third parties/non-signatories had to fall in line with the principal agreement. In such factual background, it was held that all agreements pertaining to the entire disputes are to be settled by a “composite reference”. The case in hand stands entirely on different footing. ☆ As discussed earlier, all five different Packages as well as the Corporate Guarantee have separate arbitration clauses and they do NOT depend on the terms and conditions of the Original Package No.4 TD nor on the MoU, which is intended to have clarity in execution of the work. Duro Felguera being a foreign company, for each of the disputes arising under New Package No. 4 and Corporate Guarantee, International Commercial Arbitration Tribunal are to be constituted. ☛ M/s. Duro Felguera has nominated Mr. Justice D.R. Deshmukh (Former Judge of Chhattisgarh HC) as their arbitrator. ☛ GPL has nominated Mr. Justice M.N. Rao (Former Chief Justice of Himachal Pradesh HC). Along with the above two arbitrators Mr. Justice R.M. Lodha, Former Chief Justice of India is appointed as the Presiding Arbitrator of the International Commercial Arbitral Tribunal. ☆ Since the issues arising between the parties are inter-related, the same arbitral tribunal, Justice R.M. Lodha, Former CJI, Justice D.R. Deshmukh, Former Judge of Chhattisgarh HC and Justice M. N. Rao, Former Chief Justice of Himachal Pradesh

	HC, shall separately constitute Domestic Arbitral Tribunals for resolving each of the disputes pertaining to Packages No.6, 7, 8 and 9.
Decision	★ The SC decide the case in favour of the Appellant (Duro Felguera). ★ The SC appointed separate Tribunals for each of disputes pertaining to the Package.

30. HIMANGNI ENTERPRISES v. KAMALJEET SINGH AHLUWALIA [SC]

Hint: The Appellant and the Respondent entered into Lease Deed and **this deed contained an arbitration clause for adjudication of disputes.** The Respondent filed a civil suit **against the Appellant in the district court for eviction and recovery of unpaid arrears of rent and grant of permanent injunction.** On being served with the notice of the civil suit, the Appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 **on the ground that the suit was founded on the lease deed,** which contained an arbitration clause **for resolving the dispute arising out of the lease deed between the parties.** Thus, **all disputes related to the lease were governed by the terms of the lease deed.** The trial court rejected the application filed under section 8 of the said Act. On appeal HC also dismissed the appeal. **Question arise whether the action of the Trial court is tenable in relation to rejection the application filed under section 8 of the said Act of the Appellant.**

Decision:

- ★ The SC decide the case in favour of the Respondent (i.e. Kamaljeet).
- ★ The SC held that **the civil suit filed by the Respondent was maintainable despite parties agreeing to refer the disputes arising therefrom an arbitrator.**

Fact of the Case	★ The Appellant and the Respondent entered into Lease Deed and this deed contained an arbitration clause for adjudication of disputes. ★ The Respondent filed a civil suit against the Appellant in the district court for eviction and recovery of unpaid arrears of rent and grant of permanent injunction. ★ On being served with the notice of the civil suit, the Appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 on the ground that the suit was founded on the lease deed, which contained an arbitration clause for resolving the dispute arising out of the lease deed between the parties. Thus, all disputes related to the lease were governed by the terms of the lease deed. ★ The trial court rejected the application filed under section 8 of the said Act. On appeal HC also dismissed the appeal. ★ The Appellant file an appeal before the SC against the order of the HC.
Judicial Decision	1. Natraj Studios (P) Ltd. v. Navrang Studios & Anr, 1981 ☛ The landlord had filed a civil suit against the tenant in the Small Causes Court, Bombay claiming therein the tenant's eviction from the leased premises. ☛ The tenant was inducted pursuant to "leave and license" agreement executed between the landlord and the tenant. ☛ This Court rejected the application filed by the tenant under Section 8 of the Act and held that the civil suit filed by the landlord was maintainable. ☛ It was held that the disputes of such nature cannot be referred to the arbitrator. 2. Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011): ☛ The Court laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable: ☛ That the well-recognised examples of non-arbitrable disputes are: (a) disputes relating to criminal offences. (b) matrimonial disputes. (c) guardianship matters. (d) insolvency and winding-up matters. (e) testamentary matters (grant of probate, letters of administration and succession certificate). (f) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

Legal Principles held—	★ The SC rejected the appellant application filed under 8 of the Arbitration and Conciliation Act, 1996 on the basis of following grounds: (a) In our opinion, the question involved in the appeal remains no longer res integra and stands answered by two decisions viz., Natraj Studios (P) Ltd. v. Navrang Studios & Anr, 1981(1) SCC 523 and Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532 against the appellant and in favour of the respondent. (b) The Delhi Rent Act which deals with the cases relating to rent and eviction of the premises is a special Act. the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. (c) In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. (d) In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises.
Decision	★ The SC decide the case in favour of the Respondent (i.e. Kamaljeet). ★ The SC held that the civil suit filed by the Respondent was maintainable despite parties agreeing to refer the disputes arising therefrom an arbitrator.

31. INNOX WIND LTD. v. THERMOCABLES LTD [SC]

Hint: In the given case, two purchase orders were issued by the Appellant to the Respondent for supply of cables for their WTGs and, Standard terms and conditions containing arbitration clause attached to the purchase orders. The As dispute arose between the parties as to the quality of the cables, Appellant invoked the arbitration clause to resolve the disputes and issued a notice dated proposing the name of a sole arbitrator in terms of the Standard Terms and Conditions. In the absence of any response, the Appellant moved the Allahabad HC by filing an application under Section 11(6) of the Act. The HC dismissed the said application by holding that an arbitrator cannot be appointed as the Appellant did NOT prove the existence of an arbitration agreement. Question arise whether the arbitrator can be appointed in pursuance of Standard terms and conditions containing arbitration clause attached to the purchase order.

Decision:

- ★ The SC held purchase order is a single contract and general reference to the standard form even if it is not by a trade association or a professional body is sufficient for incorporation of the arbitration clause.
- ★ The SC decide the case in favour of the Appellant (Innox).

Fact of the Case	★ Two purchase orders were issued by the Appellant to the Respondent for supply of cables for their WTGs. ★ According to the Purchase Order, the supply was to be according to the terms mentioned in the order and the Standard Terms and Conditions that were attached thereto. Apart from the other conditions, the Standard Terms and Conditions contain a clause pertaining to dispute resolution. The said clause provides for a dispute to be resolved by a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. ★ The material on record indicates that the Respondent accepted all the terms and conditions mentioned in the Purchase Order except the delivery period. ★ As dispute arose between the parties as to the quality of the cables, Appellant invoked the arbitration clause to resolve the disputes and issued a notice dated proposing the name of a sole arbitrator in terms of the Standard Terms and Conditions. ★ In the absence of any response, the Appellant moved the Allahabad HC by filing an application under Section 11(6) of the Act.
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	☆ The HC dismissed the said application by holding that an arbitrator cannot be appointed as the Appellant did NOT prove the existence of an arbitration agreement. ☆ The appellant file appeal before the SC against the order of HC.
Legal Principles held –	☆ SC held that a general reference to a standard form would be enough for incorporation of the arbitration clause after making the following observation: (a) We are of the opinion that though general reference to an earlier contract is NOT sufficient for incorporation of an arbitration clause in the later contract. But, a general reference to a standard form would be enough for incorporation of the arbitration clause. (b) In M.R. Engineers case, the Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in M.R. Engineers' case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. We are in agreement with the judgment in M.R. Engineer's case with a modification that a general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause. (c) A perusal of the passage from Russell on Arbitration 24th Edition (2015) would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in M.R. Engineers' case. ☆ In the present case, SC consider the following facts: (a) The purchase order was issued by the Appellant in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. (b) The Respondent via letter dated 15.12.2012 confirmed its acceptance of the terms and conditions mentioned in the purchase order except delivery period. (c) The dispute arose after the delivery of the goods. (d) No doubt, there is nothing forthcoming from the pleadings or the submissions made by the parties that the standard form attached to the purchase order is of a trade association or a professional body. (e) However, the Respondent was aware of the standard terms and conditions which were attached to the purchase order. (f) The purchase order is a single contract and general reference to the standard form even if it is not by a trade association or a professional body is sufficient for incorporation of the arbitration clause.
Decision	☆ The SC held purchase order is a single contract and general reference to the standard form even if it is not by a trade association or a professional body is sufficient for incorporation of the arbitration clause. ☆ The SC decide the case in favour of the Appellant (Innox).

32. INDIAN FARMERS FERTILIZER COOPERATIVE LTD. v. M/s. BHADRA PRODUCTS [SC]

Hint: In the given case, the following interesting question arises:

- Whether an award delivered by an Arbitrator, which decides the issue of limitation, can be said to be an interim award, and
- Whether such interim award can then be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

Decision:

The SC held that in the light of the statutory provisions and the case law cited above, it is clear that as the learned Arbitrator has disposed of one matter between the parties i.e. the issue of limitation, **the said award dated 23rd July, 2015 is an "interim award" within the meaning of Section 2(1) (c) of the Act and being subsumed within the expression "arbitral award".** Therefore, it **could have been challenged under Section 34 of the Act.**

Fact of the Case	☆ The appellant issued a tender enquiry to 19 parties including the respondent for supply of Defoamers. The respondent submitted its bid. Pursuant to respondent bid, a Letter of Intent dated 2nd November, 2006 was issued to the respondent for supply of 800 Metric Tonnes of Defoamers to be used for production of 3,08,880 Metric Tonnes of P2O5. ☆ By 11th April, 2007, the respondent had supplied 800 Metric Tonnes of Defoamers. However, they could not achieve the targeted production by the end of 1st November, 2007, which was the validity of the supply period. After considerable delay, on 6th June, 2011, the respondent issued a legal notice demanding payment of Rs.6,35,74,245/- on 27th September, 2012. ☆ The appellant made it clear that there was nothing due and payable to the respondent. ☆ Since disputes arose between the parties, on 1st October, 2014 the respondent invoked arbitration, and on 25th January, 2015, a retired Judge of the SC, was appointed as the sole arbitrator. On 3rd March, 2015, issues were framed. ☆ On 23rd July, 2015, the learned Arbitrator thought it fit to take up the issue of limitation first. For the said purpose, the counsel appearing for both the parties submitted that this issue could be decided on the basis of documentary evidence alone. This issue was then decided in favour of the claimant (i.e. respondent) stating that their claims had not become time barred. ☆ Appellant filed a petition under Section 34 of the Act before the district court challenged the aforesaid award, styling it as the 'First Partial Award'. On 8th October, 2015, the District Court dismissed the Section 34 Petition stating that the aforesaid award could not be said to be an interim award. Therefore, the Court lacked jurisdiction to proceed further under Section 34 of the Act. Accordingly, the appellant filed appeal to the High Court against the order of district court and the HC dismissed the appeal, reiterating the reasoning of the learned District Judge. ☆ The appellant argued that the award made on 23rd July, 2015 is an interim award under the Act and therefore, it would be amenable to challenge under Section 34 of the Act as such. For the said purpose, the appellant referred various provisions of the Act and buttressed his stand with reference to a number of judgments, including, in particular, the judgment of National Thermal Power Corpn. Ltd. v. Siemens Atkeingesellschaft, (2007). The appellant also referred various judgments on what constitutes an interim award and argued that, according to him, the point of limitation being one of the issues raised by the parties, was finally decided by the aforesaid award and Therefore, it would be amenable to challenge. ☆ The respondent placed reliance on various sections of the Act, in particular Sections 16 and 37 thereof. According to the learned senior advocate for the respondent, a ruling on the point of limitation is a ruling on "jurisdiction" and any finding thereon goes to the root of the case. This being the case, the drill of Section 16 has to be followed, and as the plea of limitation has been rejected by the learned Arbitrator, the arbitral proceedings have to continue further and the challenge has to be postponed only after all other issues have been decided. According to the learned senior advocate, the scheme of Section 37, in particular Section 37(2)(a), also makes it clear that appeals lie only from an order under Section 16 accepting the plea but not rejecting it. ☆ Also, according to the learned senior advocate, the present award cannot be said to be an interim award, but is merely an order passed under Section 16 of the Act. He also relied upon several judgments to buttress his point of view and relied heavily upon judgments which held that a decision on a point of limitation goes to jurisdiction in which case Section 16 of the Act would get attracted.
Legal Principles held –	☆ In arbitration law, Section 16 of the Act lays down what is stated to be the Kompetenz-kompetenz principle, viz. that an arbitral tribunal may rule on its own jurisdiction. At one time, the law was that the arbitrator, being a creature of the contract, could not rule on the existence or validity of the arbitration clause contained in the contract. ☆ However, this gave way to the Kompetenz principle which was adopted by the UNCITRAL Model Law. In our view, it is clear that the award dated 23rd July, 2015 is an interim

	award, which being an arbitral award, can be challenged separately and independently under Section 34 of the Act. ★ We are of the view that such an award, which does not relate to the arbitral tribunal's own jurisdiction under Section 16, does not have to follow the drill of Section 16(5) and 16(6) of the Act. ★ Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all interim awards together with the final arbitral award, so that one challenge under Section 34 can be made after delivery of the final arbitral award. ★ Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.
Decision	The SC held that in the light of the statutory provisions and the case law cited above, it is clear that as the learned Arbitrator has disposed of one matter between the parties i.e. the issue of limitation, the said award dated 23rd July, 2015 is an "interim award" within the meaning of Section 2(1) (c) of the Act and being subsumed within the expression "arbitral award". Therefore, it could have been challenged under Section 34 of the Act.

33. TOYOTA JIDOSHA KABUSHIKI KAISHA v. PRIUS AUTO INDUSTRIES LTD & ORS. [SC]

Hint: The appellant is the owner of the trademarks 'TOYOTA', 'TOYOTA INNOVA', 'TOYOTA DEVICE' and the mark 'PRIUS' of which the plaintiff claimed to be a prior user. The dispute between the appellant and respondent w.r.t. the use of the above trademarks ultimately decided by the Delhi HC **which refrained the respondent to use the trademarks 'TOYOTA INNOVA', 'TOYOTA DEVICE' but allowed to use the trademark 'Prius'.** Aggrieved by the decision, the appellant had challenged the decision before the SC.

Decision: The SC decide the case in favour of the Appellant and held that Respondent is allowed to use the trademark "PRIUS".

Fact of the Case	★ The appellant is the owner of the trademarks 'TOYOTA', 'TOYOTA INNOVA', 'TOYOTA DEVICE' and the mark 'Prius' of which the plaintiff claimed to be a prior user. ★ The dispute between the appellant and respondent w.r.t. the use of the above trademarks ultimately decided by the Delhi HC which refrained the respondent to use the trademarks 'TOYOTA INNOVA', 'TOYOTA DEVICE' but allowed to use the trademark 'Prius'. ★ Aggrieved by the decision, the appellant had challenged the decision before the SC.
Legal Principles held—	★ At the very outset (i.e. beginning), it is clarified that in view of the virtual acceptance of the conditional order of injunction with regard to the use of trademark viz. 'TOYOTA', 'TOYOTA INNOVA' and 'TOYOTA DEVICE MARKS' by the defendants, it the truncated (i.e. shortened) scope of the present appeal would be confined to the correctness of the views of the HC with regard to the use of the name 'Prius' and specifically whether by use of the said name/mark to market the automobile spare parts manufactured by them, the defendants are guilty of passing off their products as those of the plaintiff thereby injuring the reputation of the plaintiff in the market. ★ Indeed, the trade mark 'Prius' had undoubtedly acquired a great deal of goodwill in several other jurisdictions in the world and that too much earlier to the use and registration of the same by the defendants in India. ★ But if the territoriality principle is to govern the matter, then there must be adequate evidence to show that the plaintiff had acquired a substantial goodwill for its car under the brand name 'Prius' in the Indian market also. The car itself was introduced in the Indian market in the year 2009-2010. ★ The SC affirmed the decision of HC w.r.t. permit the defendant to use of the trademark "pirus" on the basis of following grounds: (a) The advertisements in automobile magazines, international business magazines; availability of data in information disseminating portals like Wikipedia and online Britannica dictionary and the information on the internet, even if accepted, will not be a safe basis to hold the existence of the necessary goodwill and reputation

	of the product in the Indian market at the relevant point of time, particularly having regard to the limited online exposure at that point of time, i.e., in the year 2001. (b) The news items relating to the launching of the product in Japan isolatedly and singularly in the Economic Times (Issues dated 27.03.1997 and 15.12.1997) also do not firmly establish the acquisition and existence of goodwill and reputation of the brand name in the Indian market. (c) After considering the above facts, the evidence of the plaintiff's witnesses themselves would be suggestive of a very limited sale of the product in the Indian market and virtually the absence of any advertisement of the product in India prior to April, 2001. (d) In turn, this would show either lack of goodwill in the domestic market or lack of knowledge and information of the product amongst a significant section of the Indian population. (e) While it may be correct that the population to whom such knowledge or information of the product should be available would be the section of the public dealing with the product as distinguished from the general population, even proof of such knowledge and information within the limited segment of the population is not prominent. ☆ After considering the aforesaid facts, the SC agree with the conclusion of the High Court that the brand name of the car Prius had not acquired the degree of goodwill, reputation and the market or popularity in the Indian market so as to vest in the plaintiff the necessary attributes of the right of a prior user so as to successfully maintain an action of passing off even against the registered owner. ☆ If goodwill or reputation in the particular jurisdiction (in India) is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff's right in the action of passing off that it had brought against the defendants in the Delhi HC. ☆ Consequently, even if we are to disagree with the view of the Division Bench of the HC in accepting the defendant's version of the origin of the mark 'Prius', nonetheless the eventual conclusion of the Division Bench will have to be sustained. ☆ We cannot help but also to observe that in the present case the plaintiff's delayed approach to the Courts has remained unexplained. Such delay cannot be allowed to work to the prejudice of the defendants who had kept on using its registered mark to market its goods during the inordinately long period of silence maintained by the plaintiff.
Decision	The SC decide the case in favour of the Appellant and held that Respondent is allowed to use the trademark "PIRUS".

34. ROYAL ORCHID HOTELS LTD. v. KAMAT HOTELS (INDIA) LTD & ORS [SC]

Hint: In the given case, earlier registration of trademark of the petitioner under class 16 upheld by judicial authorities. But, subsequently, petitioner filed application of the said trademark for registration under class 42 is refused on the ground that petitioner was failed to prove that it was the prior user of the logo/trademark. Accordingly, HC held the said decision after consideration of material records. **Question arise "whether SC make interference in the decision of the HC"**

Decision:

- ☆ The SC decide the case in favour of the Respondent and held that appellant had not demonstrated that it was the first user of the logo/mark.
- ☆ The SC held that we are inclined to hold that the view recorded by the High Court is a perfectly possible and justified view of the matter and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record.

Fact of the Case	☆ The petitioner - 'Royal Orchid Hotels Limited' got registration of its trademark 'Royal Orchid' and 'Royal Orchid Hotels' in class 16 sometime in the year 2005.
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	☆ The aforesaid registration was challenged by the Respondent No.1 before the Intellectual Property Appellate Board (for short, 'IPAB') which dismissed the challenge on 04.10.2011. The respondent No.1 filed a writ petition before the Madras HC, which was dismissed by the HC on 07.02.2014. ☆ The special leave petition (SLP) filed against the order of the HC, which was also dismissed by this Court on 01.09.2014. ☆ Therefore, the dispute with regard to registration of the trademarks 'Royal Orchid' and Royal Orchid Hotels in class 16 has attained finality in law in favour of the Petitioner. ☆ It appears that the petitioner sometime in the year 2004 applied for registration of its aforesaid trademarks in class 42. This was refused by the Deputy Registrar of the Trademarks. In appeal, the IPAB by order dated 18.06.2013 set aside the order of the Deputy Registrar and allowed the registration of the petitioner's trademark in class 42. ☆ The respondent No.1 filed writ petition before the HC. The HC allowed the same and reversed the order of IPA. Aggrieved, this SLP has been filed before the SC against the aforesaid order of the HC. ☆ It may be necessary to notice at this stage that the respondent No.1 had got its trademark 'Orchid' registered in class 42 sometime in the year 2007. ☆ A reading of the order of the Deputy Registrar dated 29.06.2009 would go to show that the refusal of registration of trade mark "Royal Orchid" to the petitioner in class 42 was on a consideration of the evidence and materials laid before the said authority. On such consideration the Deputy Registrar concluded that the petitioner was not the first user of the logo/mark 'Royal Orchid' as claimed and, in fact, the mark/logo 'Orchid' was being used by the respondent No.1 from an anterior date. The similarity of the two logos/marks was also taken into account by the Deputy Registrar in refusing registration to the petitioner.
Legal Principles held –	☆ SC held that a reading of the discussions by the HC goes to show that the conclusion recorded in the impugned order is based on a detailed consideration of the materials brought on record by both the parties. The conclusion that the petitioner had not demonstrated that it was the first user of the logo/mark and that it is the respondent who is the first user was arrived at on such consideration. ☆ The High Court was also of the view that notwithstanding the class of customers serviced by the parties before it, it cannot be said that the two logos/marks would not give rise to confusion amongst the customers using the Hotels. ☆ In this regard, the High Court observed that the view expressed by the IPAB that having regard to the class of customers serviced by the hotels (High Income) there could be no possibility of being misled cannot be accepted as a general proposition and will always depend on individual customers. ☆ If the High Court on an elaborate consideration of the materials and evidence adduced (i.e. submit) by the parties before it had thought it proper to reach a conclusion consistent with the findings of the primary authority i.e. the Deputy Registrar and the reasons for reversal of the view of the primary authority by the IPAB being summary, as noticed, the present petition really turns on the question of appreciation of the evidence on record. ☆ Having considered the matter we are of the view that the conclusions reached by the High Court cannot be said to be, in anyway, unreasonable and/or unacceptable. Rather,
Decision	☆ The SC decide the case in favour of the Respondent and held that appellant had not demonstrated that it was the first user of the logo/mark. ☆ The SC held that we are inclined to hold that the view recorded by the High Court is a perfectly possible and justified view of the matter and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record.

35. SUNDARAM FINANCE LTD. v. ABDUL SAMAD & ORS [SC]

Hint: The divergence of legal opinion of different High Courts on the question as to

- (a) Whether an award under the Arbitration & Conciliation Act, 1996 is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or
- (b) Whether the award can be straightway filed and executed in the Court where the assets are located is required to be settled in the present appeal.

Decision:

- ★ The SC held that the execution petition could be directly filed in the Morena Courts.
- ★ The SC decide the case in favour of the Appellant (i.e. Sundaram Finance).

Fact of the Case	★ Appellant (i.e. Sundaram Finance) claimed that Respondent (i.e. Abdul Samad) approached it for grant of a loan so as to purchase a Tata-HCV, which was given to the Respondent on terms & agreement given in the loan agreement. The loan was supposed to be paid in instalments. ★ However, Respondent defaulted on payment from 20th instalment. The possession of the car could not take place as it was argued to be stolen. Hence, arbitration proceeding was initiated. The notice was served to the respondent who did not appear to defend the case. This resulted in an ex parte arbitration award for a certain sum of money with interest. ★ The trial court accepted this contention of the Respondent. ★ Aggrieved, the Appellant has filed the instant appeal. ★ The case of the appellant is that the award being enforceable as a decree under Section 36 of the said Act, execution proceedings were filed in the jurisdiction of the courts at Morena, Madhya Pradesh under Section 47 read with Section 151 and Order 21 Rule 27 of the Code of Civil Procedure, 1908.
Issue in dispute	The divergence of legal opinion of different High Courts on the question as to (c) Whether an award under the Arbitration & Conciliation Act, 1996 is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or (d) Whether the award can be straightway filed and executed in the Court where the assets are located is required to be settled in the present appeal.
Legal Principles held –	★ It is not necessary to go into further details of the proceedings but suffice to say that the trial court vide order dated 20.3.2014 return the execution application on account of lack of jurisdiction to be presented to the court of competent jurisdiction. ★ The effect of the judgment was that the appellant was required to file the execution proceedings first before the court of competent jurisdiction in Tamil Nadu, obtain a transfer of the decree and then only could the proceedings be filed in the trial court at Morena. ★ This view adopted by the trial court was in turn based on the judgment of the Madhya Pradesh HC and the opinion of the Karnataka High Court while it is pleaded that the view of the Rajasthan High Court and the Delhi High Court were to the contrary. ★ The petitioner did not approach the HC against the said order of the trial court but straightway approached the SC by filing the SLP on the ground that no useful purpose would be served by approaching the Madhya Pradesh HC in light of the view already expressed by that Court in conflict with the opinions of some other HCs. ★ In order to appreciate the controversy, we would first like to deal with the provisions of the said Code and the said Act. (a) The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. Thus, it is the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. (b) It is the arbitral tribunal, which renders an award and the tribunal does NOT have the power of execution of a decree. For the purposes of execution of a decree, the award is to be enforced in the same manner as if it was a decree under the said Code. The line of reasoning supporting the award to be filed in a so-called court of competent

	jurisdiction and then to obtain a transfer of the decree is primarily based on the jurisdiction clause found in Section 42 of the Act. (c) However, the aforesaid provision applies w.r.t. an application being filed in Court under Part I. The jurisdiction is over the arbitral proceedings. The subsequent application arising from that agreement and the arbitral proceedings are to be made in that court alone. However, what has been lost sight of is Section 32 of the said Act, which provides for arbitral proceedings to be terminated by the final arbitral award. (d) Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It does appear that the provisions of the said Code and the said Act have been mixed up. (e) Thus, we are unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.
Decision	★ The SC held that the execution petition could be directly filed in the Morena Courts. ★ The SC decide the case in favour of the Appellant (i.e. Sundaram Finance).

36. ORIENTAL INSURANCE COMPANY LTD. v. NARBHERAM POWER & STEEL PVT LTD [SC]

Hint: In the given case, the respondent had entered into a Fire Industrial all Risk Policy in respect of the factory situated in Orissa. Due to cyclone the respondent suffered damages **which it estimated at about 4 Crores.** **The respondent sent a communication intimating the appellant that it had invoked the arbitration agreement and requested it to concur with the name of the arbitrator whom it had nominated.** The respondent moved an application before the HC **for the appointment of an arbitrator,** the HC appoint the arbitrator. Subsequently, appellant challenged the said arbitrator appointment. Noted that Clause 13 of Fire Industrial all Risk Policy categorically lays the postulate (i.e. demand) **that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration.** **Question arises "Whether the said appointment of arbitrator is Valid in law".**

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ **The SC held that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration.**
- ★ Therefore, the **only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances.** If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit.

Fact of the Case	★ The respondent had entered into a Fire Industrial all Risk Policy in respect of the factory situated in Orissa. ★ In October 2013, due to cyclone the respondent suffered damages which it estimated at about 4 Crores. An intimation was given to the appellant-insurer and it appointed a surveyor which visited the factory premises. A series of correspondences were exchanged between the respondent and the insurer. ★ As ultimately the claim was not settled, the respondent sent a communication intimating the appellant that it had invoked the arbitration agreement and requested it to concur with the name of the arbitrator whom it had nominated. ★ The appellant replied to the said letter repudiating the claim made by the respondent and declined to refer the disputes to arbitration between the parties. ★ The respondent moved an application before the HC for the appointment of an arbitrator, which was contested by the appellant insurer and the HC appointed a retired Judge of the High Court as arbitrator. ★ The Appellant file SLP before the SC against the order of the HC.
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Legal Principles held –	★ When we carefully read the Clause 13, it is quite limpid (i.e. transparent) that once the insurer disputes the liability under or in respect of the policy, there can be no reference to the arbitrator. It is contained in the second part of the Clause. ★ The third part of the Clause stipulates that before any right of action or suit upon the policy is taken recourse to, prior award of the arbitrator/arbitrators with regard to the amount of loss or damage is a condition precedent. ★ In pursuance of the impugned order of the HC, ☛ It was seen that the HC emphasis on the second part and, on that basis, opined that the second part and third part do not have harmony and, in fact, sound a discordant (i.e. unfavourable) note, for the scheme cannot be split into two parts, one to be decided by the arbitration and the other in the suit. ☛ It does not need special emphasis that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally (i.e. accurately) express the intent of arbitration. ☛ It can also lay the postulate (i.e. demand/seek) in which situations the arbitration clause cannot be given effect to. ☛ If a clause stipulates that under certain circumstances, there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest. ★ In the instant case, SC set aside the order of the HC on the following grounds: (a) The HC has fallen into grave error by expressing the opinion that there is incongruity between Part II and Part III. The said analysis runs counter to the principles laid down in the three-Judge Bench decision in The Vulcan Insurance Co. Ltd (supra). (b) Clause 13 categorically lays the postulate (i.e. demand) that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration. The thrust (i.e. push/attack) of the matter is whether the insurer has disputed or not accepted the liability under or in respect of the policy. (c) The parties are bound by the terms and conditions agreed under the policy and the arbitration clause contained in it. It is not a case where mere allegation of fraud is leaned upon to avoid the arbitration. It is not a situation where a stand is taken that certain claims pertain to excepted matters and are, hence, not arbitrable. (d) The language used in the second part is absolutely categorical and unequivocal inasmuch as it stipulates that it is clearly agreed and understood that no difference or disputes shall be referable to arbitration if the company has disputed or not accepted the liability. (e) On a reading of the communication, we think, the disputation (arguments) squarely comes within Part II of Clause 13. The said Part of the Clause clearly spells out (i.e. explain) that the parties have agreed and understood that no differences and disputes shall be preferable to arbitration if the company has disputed or not accepted the liability. (f) Therefore, the only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances. If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit. ★ In the present case, we are not concerned with regard to whether the policy was void or not as the same was not raised by the insurer. The insurance-company has repudiated the claim by denying to accept the liability on the basis of the aforesaid reasons. It is a denial to indemnify the loss as claimed by the respondent.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration.

- ★ Therefore, the **only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances. If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit.**

37. SHYAM SUNDER AGARWAL v. P. NAROTHAM RAO [SC]

(V. Imp.) Hint: In the given case, Dispute resolution clause 12 in MoU used words “Mediators/Arbitrators”, “any breaches” and “decision to be final” – Whether such clause is as arbitration clause/agreement or not.

Decision:

- ★ The SC decide the case in favour of the Respondent (i.e. P Narotham Rao).
- ★ The SC held that **subsequent conduct of the parties to the Agreement also showed that they understood that Clause 12 was not an arbitration clause in the Agreement.**

Fact of the Case	★ A Memorandum of Understanding (MoU)/Agreement was executed between the parties for sale and purchase of shares of a Company called M/s Mancheril Cement Company Private Limited of which all the parties are Directors. ★ The bone of contention in the present proceedings is as to whether Clause 12 of the said Agreement can be stated to be an arbitration clause, as in the said clause the word “decision” is used; the word “Mediators/Arbitrators” is used; the expression “any breaches” is used; and the “decision” is to be final and binding on all parties to the said Agreement.
Legal Principles held—	★ What emerges on a conspectus (i.e. brief particulars) of reading of these clauses is that ☞ Mr. Sudhakar Rao and Mr. Gone Prakash Rao are without doubt escrow agents who have been appointed to keep certain vital documents in escrow, and to ensure a successful completion of the transaction contained in the MOU, though they styled as Mediators/Arbitrators in the MOU. ☞ Indeed, “Mediators and Arbitrators” would show that the language used is loose – the idea really is that the two named persons do all things necessary during the implementation of the transaction between the parties to see that the transaction gets successfully completed. ☞ This becomes even clearer when Clauses 8 and 11 are seen minutely. ☞ Clause 8 expressly declares and confirms “that for successful completion of this transaction in order to avoid any further unforeseen litigations”, the two escrow agents have been appointed. ☞ Clause 11 further makes it clear that these two gentlemen are escrow agents but shall not handover certain documents till the total transaction is satisfactorily completed. ★ We agree that Clause 12 has to be read in the light of these Clauses of the MOU and therefore, the expression “decision” used in Clause 12 is only a pro tem decision – namely, that the two escrow agents are to make decisions only during the period of the transaction and not thereafter. He has correctly contended that, to use a well-known latin expression, they are “functus officio” after the transaction gets completed. ★ Further, the “breaches” that are referred to in Clause 12 refer to an undertaking given by the party of the first part which is contained in Clause 10, which, if breached, the escrow agents have necessarily to decide on before going ahead with the transaction. ★ Therefore, when viewed as a whole, it is clear that the two escrow agents are not persons who have to decide disputes that may arise between the parties, whether before or after the transaction is completed, after hearing the parties and observing the principles of natural justice, in order to arrive at their decision. ★ A reading of the MOU as a whole leaves no manner of doubt that the said MOU only invests the two gentlemen named therein with powers as escrow agents to smoothly implement the transaction mentioned in the MOU and not even remotely to decide the disputes between the parties as Arbitrators.

	☆ In the present case, it is clear that the wording of the Agreement, as has been held by us above, is clearly inconsistent with the view that the Agreement intended that disputes be decided by arbitration. ☆ Indeed, three of the four purchasers did not read Clause 12 as an arbitration clause, but approached the Civil Court instead. Therefore, strengthening our conclusion that the subsequent conduct of the parties to the Agreement also showed that they understood that Clause 12 was not an arbitration clause in the Agreement.
Decision	☆ The SC decide the case in favour of the Respondent (i.e. P Naroatham Rao). ☆ The SC held that subsequent conduct of the parties to the Agreement also showed that they understood that Clause 12 was not an arbitration clause in the Agreement.

38. M/S. NANDHINI DELUXE v. M/S. KARNATAKA COOPERATIVE MILK PRODUCERS FEDERATION LTD [SC]

Hint: The respondent, which is a Cooperative Federation of the Milk Producers of Karnataka, **adopted the aforesaid mark 'NANDINI' in the year 1985 and under this brand name it has been producing and selling milk and milk products.** It has **got registration of this mark as well under Class 29 and Class 30.** On the other hand, the appellant herein is in the business of running restaurants and it adopted the mark 'NANDHINI' for its restaurants in the year 1989 and applied for registration of the said mark in respect of various foodstuff items sold by it in its restaurants. The mark used by the appellant is objected to by the respondent on the ground that it is **deceptively similar to the mark of the respondent and is likely to deceive the public or cause confusion.** **The question arise before the SC "Whether the refusal of registration of trademark of Appellant is tenable in law".**

Decision:

- ☆ SC decide the case in favour of the Appellant.
- ☆ SC held that registration of trademark of Appellant i.e. "NANDHINI" is allowed for registration under the same class.

Fact of the Case	☆ The dispute pertains to the use of mark 'NANDHINI'. ☆ The respondent, which is a Cooperative Federation of the Milk Producers of Karnataka, adopted the aforesaid mark 'NANDINI' in the year 1985 and under this brand name it has been producing and selling milk and milk products. It has got registration of this mark as well under Class 29 and Class 30. ☆ On the other hand, the appellant herein is in the business of running restaurants and it adopted the mark 'NANDHINI' for its restaurants in the year 1989 and applied for registration of the said mark in respect of various foodstuff items sold by it in its restaurants. ☆ The mark used by the appellant is objected to by the respondent on the ground that it is deceptively similar to the mark of the respondent and is likely to deceive the public or cause confusion. ☆ According to the respondent, the appellant could not use the said mark which now belongs to the respondent inasmuch as because of its long and sustained use by the respondent, the mark 'NANDINI' is held to have acquired a distinctive character and is well-known to the public which associates 'NANDINI' with the respondent organization. ☆ Therefore, according to the respondent, it has exclusive right to use the said mark and any imitation thereof by the appellant would lead the public to believe that the foodstuffs sold by the appellant are in fact that of the respondent. ☆ Rejecting these objections the Deputy Registrar granted registration, except for milk and milk products, to the appellant. ☆ The appeal filed by the respondent was allowed by the IPAB and on further appeal by the appellant the HC confirmed the order of the IPAB. ☆ The appellant challenged the judgement of the HC before the SC.
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Legal Principles held—	☆ According to us, the moot (debatable) question is as to whether the appellant is entitled to seek registration of the mark 'NANDHINI' in respect of the goods in which it is dealt with, as noted above. Therefore, the fulcrum (i.e. base) of the dispute is as to whether such a registration in favour of the appellant would infringe rights of the respondent. ☆ The entire case of the respondent revolves around the submissions that the adaptation of this trademark by the appellant, which is phonetically similar to that of the respondent, is NOT a bonafide adaptation and this clever device is adopted to catch upon the goodwill which has been generated by the respondent in respect of trade mark 'NANDINI'. ☆ The respondent alleges that the proposed trade mark 'NANDHINI' for which the appellant applied for registration is similar trade mark in respect of similar goods and, therefore, it is going to cause deception and confusion in the minds of the users that the goods in which the appellant is trading, in fact, are the goods which belong to the respondent. ☆ SC consider the following facts: - Respondent started using trademark in respect of its products, namely, milk and milk products in the year 1985. As against that, the appellant adopted trade mark 'NANDHINI' in respect of its goods in the year 1989. - Though, the respondent is a prior user, the appellant also had been using this trade mark 'NANDHINI' for 12-13 years before it applied for registration of these trade marks in respect of its products. - The goods of the appellant as well as respondent fall under the same Classes 29 and 30. Notwithstanding the same, the goods of the appellant are different from that of the respondent. Whereas the respondent is producing and selling only milk and milk products the goods of the appellant are fish, meat, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, edible oils and fats, salad dressings, preserves etc. and it has given up its claim qua milk and milk products. - Insofar as application for registration of the milk and milk products is concerned, it was not granted by the trade mark registry. In fact, the same was specifically rejected. The appellant was directed to file the affidavit and Form 16 in this behalf to delete the goods 'milk and milk products' which affidavit was filed by the appellant. Further concession is already recorded above. - NANDINI/NANDHINI is a generic, it represents the name of Goddess and a cow in Hindu Mythology. It is not an invented or coined word of the respondent. - The nature and style of the business of the appellant and the respondent are altogether different. Whereas respondent is a Cooperative Federation of Milk Producers of Karnataka and is producing and selling milk and milk products under the mark 'NANDINI', the business of the appellant is that of running restaurants and the registration of mark 'NANDHINI' as sought by the appellant is in respect of various foodstuffs sold by it in its restaurants. - Though there is a phonetic similarity insofar as the words NANDHINI/NANDINI are concerned, the trademark with logo adopted by the two parties are altogether different. The manner in which the appellant has written NANDHINI as its mark is totally different from the style adopted by the respondent for its mark 'NANDINI'. Further, the appellant has used and added the word 'Deluxe' and, thus, its mark is 'NANDHINI DELUXE'. It is followed by the words 'the real spice of life'. There is device of lamp with the word 'NANDHINI'. In contrast, the respondent has used only one word, namely, NANDHINI which is NOT prefixed or suffixed by any word.
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	In its mark 'Cow' as a logo is used beneath which the word NANDHINI is written, it is encircled by egg shape circle. A bare perusal of the two marks would show that there is hardly any similarity of the appellant's mark with that of the respondent when these marks are seen in totality.
Decision	★ SC decide the case in favour of the Appellant. ★ SC held that registration of trademark of Appellant i.e. "NANDHINI" is allowed for registration under the same class, while keeping in mind the aforesaid salient features: (a) Further, the nature and style of the business of the respondent and appellant altogether different. (b) We do not find that the two marks are deceptively similar. Applying the aforesaid principles to the instant case, when we find that not only visual appearance of the two marks is different, they even relate to different products. (c) The trademark with logo adopted by the two parties are altogether different. The manner in which the appellant has written NANDHINI as its mark is totally different from the style adopted by the respondent for its mark 'NANDINI'.

39. DEEPAYAN MOHANTY v. CARGILL INDIA PVT LTD & ORS. [Del]

Hint: The Plaintiff is the employee of Defendant Company and **he was awarded a bonus for the years 2006-07, 20067-08 & 20098-09.** The award of the said bonus was split 50-50. 50% comprised a cash award, which was paid to the Plaintiff and **50% was retained as a deferred incentive award.** Cash portion was paid to the Plaintiff at the relevant time and **the remaining was deferred over a period of 3 years and was to be given to him with interest.** This bonus award contained a forfeiture clause, by which if an employee joins a competitor's business, the withheld bonus would be forfeited. **Question arise in the Case "Whether the action of company to forfeit the deferred incentive award on account of joining competitor business is tenable in law and it amount to restraint of trade?"**

Decision:

- ★ The SC decide the case in favour of the Plaintiff (i.e. Deepayan).
- ★ The SC held that If the cash part of the incentive has not been withdrawn and the amount has vested in the Plaintiff, **there can be no reason to withhold disbursement of the same.** The forfeiture clause is clearly not enforceable, as it is in restraint of trade by virtue of Section 27 of the Indian Contract Act, 1872.

Fact of the Case	★ The Plaintiff is the employee of Defendant Company and he was awarded a bonus for the years 2006-07, 20067-08 & 20098-09. ★ The award of the said bonus was split 50-50. ☛ 50% comprised a cash award, which was paid to the Plaintiff and ☛ 50% was retained as a deferred incentive award. ★ Cash portion was paid to the Plaintiff at the relevant time and the remaining was deferred over a period of 3 years and was to be given to him with interest. This bonus award contained a forfeiture clause, by which if an employee joins a competitor's business, the withheld bonus would be forfeited. ★ The Plaintiff resigned from Defendant which was accepted on the same day and he was relieved from duty. The plaintiff joined in a competitor's business. ★ When the Plaintiff approached the Defendants for payment of the balance incentive award, he was informed that he did not comply with the terms and conditions of the incentive award and hence the payment was not liable to be made.
Legal Principles held—	★ The first and foremost question is whether the forfeiture clause is valid and enforceable in law. The forfeiture clause is clear: If a person engages in a competing business/service within the 2 years period after leaving Cargill, the outstanding amount can be forfeited. ★ It is the settled position, in India at least, that no employer has a right to restrain an employee from taking up competing employment after the term of employment. Such a clause is invalid and unenforceable as per Section 27 of the Indian Contract Act, 1872.

	☆ But what Cargill is doing in the present case is not restraining him from pursuing his competing business but refusing to disburse the balance incentive award amount to him since he allegedly engaged in a competing business. ☆ Can such a clause be held to be valid and enforceable? ☛ The answer to this question depends upon the nature of the sum being withheld. ☛ The deferred incentive is an amount which was awarded to an employee as a reward for good performance “during the course of employment”. ☛ The said amount is awarded in full in favour of the employee. Only the payment is postponed partially and for the postponement of the payment, interest is also paid by Cargill to the employee. ☛ Thus, the amount belonging to the employee is being withheld by Cargill. Ideally, the entire amount ought to be disbursed at the time when it was awarded but as a part of Cargill’s company policy it is being deferred. ☆ If the deferment is to enforce a clause which is otherwise unenforceable, the forfeiture based on the said clause, is itself illegal. The amount does not belong to Cargill. It belongs to the employee and Cargill is merely making the employee agree to take the amount with interest after the period of two years. That does not mean that under the garb of paying interest, Cargill can forfeit something on the basis of an invalid and unenforceable clause in the agreement. The terms used in the clause, namely, “forfeiture”, and “awarded but not yet distributed” clearly show that the amount vests in the employee and only the disbursement is deferred. The fact that interest is being paid on the unpaid incentive amount also shows that the intention of Cargill seems to be merely enforce conditions on employees which cannot otherwise be enforced in law, at least in India. ☆ The condition in an employment contract that an employee cannot engage in competing business after employment for any period is, in restraint of trade, as is clear from a reading of Percept D’Mark India Pvt. Ltd. v Zaheer Khan, (2006) 4 SCC 227 and Niranjana Shankar Golikari v Century Spinning and Manufacturing (1967) 2 SCR 378. There is yet another dimension to the forfeiture clause: ☛ By the said clause, the company seeks to abrogate money which vests in the employee. This would also be in restraint of trade. ☛ The factum of the award has not been disputed and the conditions of the deferred incentive are also not disputed. ☛ The resignation and the acceptance thereof are also not disputed. ☛ Under these circumstances, the court is thus not embarking on an adventure which is completely alien to the dispute in hand i.e. the payment of the outstanding deferred incentive amount. ☆ The arguments on behalf of Cargill i.e. that the conduct of the Plaintiff raises a triable issue may not be correct inasmuch as the court in this case is not adjudicating the violation of the employment contract or the alleged breach of fiduciary relationship between the Plaintiff and the Defendants.
Decision	☆ The SC decide the case in favour of the Plaintiff (i.e. Deepayan). ☆ The SC held that if the cash part of the incentive has not been withdrawn and the amount has vested in the Plaintiff, there can be no reason to withhold disbursement of the same. The forfeiture clause is clearly not enforceable, as it is in restraint of trade by virtue of Section 27 of the Indian Contract Act, 1872.

Hint: In the given case, The Respondent filed petition before the Madras HC for the enforcement of the foreign award in India. The Madras HC allowed the execution of this foreign award, overruling the **objection of the appellant that no stamp duty has been paid on in in India and hence it could not be enforced under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996.** Question arise in the Case **“Whether the action of Madras HC is tenable in law?”**

Decision:

- ★ The SC decide the case in favour of the Respondent (i.e. Rioglass).
- ★ The SC held that we are of the view that the expression “award” has never included a foreign award from the very inception till date.
- ★ Consequently, **a foreign award not being includible in Schedule I of the Indian Stamp Act, 1899, is NOT liable for stamp duty.**

Fact of the Case	★ The Respondent filed petition before the Madras HC for the enforcement of the foreign award in India. The Madras HC allowed the execution of this foreign award, overruling the objection of the appellant that no stamp duty has been paid on in in India and hence it could not be enforced under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996. ★ The Appellant filed petition before the SC against the Madras HC Order.
Legal Principles held—	★ On a reading of the aforesaid provisions of the Civil Procedure Code, 1882 and the Indian Arbitration Act, 1899, it becomes clear that the only “award” that is referred to in the Indian Stamp Act, 1899 is an award that is made in the territory of British India provided that such award is NOT made pursuant to a reference made by an order of the Court in the course of a suit. ★ At this point in time, it is important to note that there were several princely states in India governed by sovereign rulers which had their own laws. ★ Arbitration laws, if any, in the aforesaid princely states, if they were to culminate in awards, would NOT be “awards” under either the Civil Procedure Code, 1882 or the Indian Arbitration Act, 1899. They would therefore be foreign awards insofar as British India is concerned. ★ An award made in a princely state, or in a foreign country, if enforced by means of a suit in British India, would NOT be covered by the expression “award” contained in Item 12 of Schedule I of the Indian Stamp Act, 1899. ★ Only awards which are decisions in writing by an arbitrator or umpire, made in British India, on a reference made otherwise than by an order of the Court in the course of a suit would be included. ★ This position continued even when the Code of Civil Procedure, 1908 contained a Second Schedule, which substituted the arbitration provisions contained in the Code of Civil Procedure, 1882. Here again, under the Second Schedule, parties to a suit may apply for an order of reference to arbitration and an award would follow. ★ Thus, it will be seen that “award” under Item 12 of Schedule I of the Indian Stamp Act, 1899 has remained unchanged till date. As has been held by us hereinabove, in 1899, this “award” would refer only to a decision in writing by an arbitrator or umpire in a reference NOT made by an order of the Court in the course of a suit. ★ This would apply only to such award made at the time in British India, and today, after the amendment of Section 1(2) of the Indian Stamp Act, 1899, to awards made in the whole of India except the State of Jammu and Kashmir.
Decision	★ The SC decide the case in favour of the Respondent (i.e. Rioglass). ★ The SC held that we are of the view that the expression “award” has never included a foreign award from the very inception till date. ★ Consequently, a foreign award not being includible in Schedule I of the Indian Stamp Act, 1899, is NOT liable for stamp duty.

41. SONELL CLOCKS AND GIFTS LTD. v. THE NEW INDIA ASSURANCE CO. LTD [SC]

Hint: The Appellant **had taken an Insurance Policy** from the Respondent **in respect of its building, plant and machinery**. Due to torrential rains and floods in the entire area, **the water gushed into the factory premises causing damage to the machinery as well as raw material lying therein**. This event occurred on 4th August, 2004. The Appellant gave **the Intimation of the loss to the Respondent after a gap of 3 months 25 days i.e. on 30th November, 2004**. Thereafter, **the Respondent appointed a surveyor to assess the loss caused due to the flooding of the factory premises**. The surveyor after causing inspection submitted its report to the Respondent **stating that the claim was not payable on account of the failure of the Appellant to comply with the general conditions of the policy which required immediate intimation of the event causing the imposition of liability on the insurer**. Acting upon the said report, the Respondent repudiated (i.e. reject) the claim. The Appellant **contended that the Respondent had waived their right to repudiate the claim on the ground of delay in intimation by appointing the surveyor**. . Question arise in the Case “Whether Respondent had waived their right to repudiate the claim on the ground of delay in intimation by appointing the surveyor is tenable in law?”

Decision:

- ★ The SC decide the case in favour of the Respondent (i.e. The New India).
- ★ Based on the aforesaid observation, **the SC held that the Respondent had not waived its right to repudiate the claim by appointing the surveyor.**

Fact of the Case	★ The Appellant (i.e. Sonell Clocks) had taken an Insurance Policy from the Respondent (The New India) in respect of its building, plant and machinery. ★ Due to torrential rains and floods in the entire area, the water gushed into the factory premises causing damage to the machinery as well as raw material lying therein. This event occurred on 4th August, 2004. ★ The Appellant gave the Intimation of the loss to the Respondent after a gap of 3 months 25 days i.e. on 30th November, 2004. Thereafter, the Respondent appointed a surveyor to assess the loss caused due to the flooding of the factory premises. ★ The surveyor after causing inspection submitted its report to the Respondent stating that the claim was not payable on account of the failure of the Appellant to comply with the general conditions of the policy which required immediate intimation of the event causing the imposition of liability on the insurer. Acting upon the said report, the Respondent repudiated (i.e. reject) the claim. ★ The Appellant contended that the Respondent had waived their right to repudiate the claim on the ground of delay in intimation by appointing the surveyor.
Legal Principles held –	★ The Primary question involved in these appeals is “Whether the respondent (insurer) had waived the condition relating to delay in intimation, by appointing a surveyor”. ★ It is well established position that waiver is an intentional relinquishment of a right. It must involve conscious abandonment (i.e. surrender) of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. It is an agreement not to assert a right. ★ To invoke the principle of waiver, the person who is said to have waived must be fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. There must be a specific plea of waiver, much less of abandonment of a right by the opposite party. ★ In the present case, it is common ground that the letter of repudiation (i.. rejection) elucidates that the claim of the appellant was rejected on account of the following grounds: ☛ Neither the intimation of the loss had been given to it immediately after the loss nor were the requisite particulars of the loss conveyed within stipulated period and

	☞ there was breach of terms and conditions of Clause 6 of the general conditions of the policy. ☞ Additionally, the surveyor report predicates ☞ that it was very difficult to estimate the damages for the reasons mentioned therein and ☞ that the claim of the appellant was not payable on account of breach of Clause 6 of the general conditions of the policy. That recommendation commended to the respondent. It has been so incorporated in the letter of repudiation. ★ The expression “duration” is of some significance which is reflective of the existence or otherwise of the policy itself. In the present case, there is no dispute about the subsistence of the policy but is one of violation of condition No. 6 of the policy. ★ Furthermore, in the present case the controversy will have to be answered on the basis of Standard Fire and Special Perils Policy relatable to condition No. 6 obligating the insured to give forthwith intimation of the loss to the insurer. The two clauses are materially different and relate to two different and distinct insurance policies. In other words, Clause 5 of the Marine Insurance Policy and Clause 6 of the present policy are incomparable being qualitatively different. ★ To put it differently, Galada’s case (supra) was not a case which considered repudiation based on a premise or a reason similar to condition No. 6 of the present policy and a specific plea taken by the insurer in that behalf in the repudiation letter itself. ★ Notably, Clause 5 of the Marine Insurance Policy which was the subject matter in Galada’s case (supra) did not have a negative covenant as in this case in the proviso to condition No.6 of the subject policy. The fulfilment of the stipulation in Clause 6 of the general conditions of the policy is the sine qua non to maintain a valid claim under the policy. ★ In the present case, the event occurred on 4th August, 2004 but intimation was given to the insurer only on 30th November, 2004 after a gap of around 3 months 25 days. No explanation was offered for such a long gap much less plausible and satisfactory explanation. The stipulation in condition No.6 of the policy to forthwith give notice to the insurer is to facilitate the insurer to make a meaningful investigation into the cause of damage and nature of loss, if any.
Decision	★ The SC decide the case in favour of the Respondent (i.e. The New India). ★ Based on the aforesaid observation, the SC held that the Respondent had not waived its right to repudiate the claim by appointing the surveyor.

42. DREDGING CORPORATION OF INDIA v. MERCATOR LTD [DEL]

Hint: The Arbitration Agreement between the parties is contained in Clause 24 of the Time Charter Party Agreement(s) under which the seat of arbitration was fixed at London. The respondent has challenged the jurisdiction of this Court to entertain these petitions under Section 34 of the Arbitration and Conciliation Act, 1996. The ground of challenge was that the seat of arbitration in the present petitions was London and therefore, Part-I and Section 34 of the Act, 1996 will not be applicable to such arbitration proceedings. However, the parties by agreement agreed to have the venue of arbitration at New Delhi. The question arise “whether courts in Delhi have jurisdiction to entertain this petition”.

Decision:

- ★ The SC decide the case in favour of the Respondent.
- ★ The SC held that the courts in Delhi have no jurisdiction.

Fact of the Case	★ The Arbitration Agreement between the parties is contained in Clause 24 of the Time Charter Party Agreement(s) under which the seat of arbitration was fixed at London. ★ The respondent has challenged the jurisdiction of this Court to entertain these petitions under Section 34 of the Arbitration and Conciliation Act, 1996. ★ The ground of challenge was that the seat of arbitration in the present petitions was London and therefore, Part-I and Section 34 of the Act, 1996 will not be applicable to such arbitration proceedings. ★ However, the parties by agreement agreed to have the venue of arbitration at New Delhi.
Legal Principles held—	★ Once the Arbitration Agreement was invoked by the respondent, though the petitioner wanted such change, the respondent refused. ★ Thereafter, the parties only agreed to a change of 'venue' of arbitration from London to New Delhi. This was the consistent understanding of the petitioner itself, not only before the Arbitral Tribunal as recorded in its procedural order referred hereinabove, but also by its conduct of filing a petition under Section 68 of the (English) Arbitration Act, 1996 before the High Court of Justice at London. ★ A reading of the correspondence exchanged between the parties would clearly show that the parties did not arrive at a consensus for change of 'Seat' of arbitration from London to New Delhi though this was the initial request of the respondent. ★ We are NOT agree with the submissions made by the counsel for the petitioner that in the above correspondence the use of word 'venue' by the parties has to be construed as 'seat'. ★ In my opinion, the parties were very well aware of the distinction between the 'seat' and 'venue'. Therefore, while the respondent insisted that the 'Seat' of arbitration shall remain at London, it is only the 'venue' which can be shifted to New Delhi. The petitioner also agreed to the same as in its opinion the change of 'venue' would not require any amendment to the Charter Party Agreement, while a change in seat would have required such amendment. ★ Applying the judgment of Union of India v. Hardy Exploration and Production (India) INC 2018 to the facts of the present case, not only clause 24 of the Charter Party Agreement(s) but also the conduct of the parties, gathered from the exchange of correspondence, their conduct before the Arbitral Tribunal as also the conduct subsequent to the passing of the Impugned Award, would lead to a conclusion that the parties agreed on the 'Seat' of arbitration to be at London.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that the courts in Delhi have no jurisdiction.

43. GOVT OF N.C.T OF DELHI v. YASIKAN ENTERPRISES PVT. LTD [DEL]

Hint: The appellant called a tender for providing sanitation and scavenger services inside and outside the building including reception services from designated places for the Delhi Sachivalaya/Secretariat, I.P. Estate, New Delhi. One M/s Yasikan Enterprises - a sole proprietary concern of Shri Jagdish Kumar submitted his offer and the work was awarded to him. When dispute arose between the Parties, M/s. Yasikan Enterprises Pvt. Ltd the same was referred to a sole arbitrator and an award was passed against the appellant. The appellant challenged the award mainly on the ground that the arbitration agreement was with the proprietor of Yasikan Enterprises and not with Yasikan Enterprises Pvt Ltd.

Decision:

- ★ The SC decide the case in favour of Respondent.
- ★ The SC held that in the absence of an arbitration agreement, the arbitration proceedings **are void ab initio and the award is liable to be set aside.**
- ★ Moreover, the arbitration clause is **an independent clause which is NOT assignable.**

Fact of the Case	★ The appellant called a tender for providing sanitation and scavenger services inside and outside the building including reception services from designated places for the Delhi Sachivalaya/Secretariat, I.P. Estate, New Delhi.
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	★ One M/s Yasikan Enterprises - a sole proprietary concern of Shri Jagdish Kumar submitted his offer and the work was awarded to him. ★ When dispute arose between the Parties, M/s. Yasikan Enterprises Pvt. Ltd the same was referred to a sole arbitrator and an award was passed against the appellant. ★ The appellant challenged the award mainly on the ground that the arbitration agreement was with the proprietor of Yasikan Enterprises and not with Yasikan Enterprises Pvt Ltd.
Legal Principles held –	★ On this issue, the Respondent submits that the reference having been made by the Lieutenant Governor on the request of M/s Yasikan Enterprises Pvt. Ltd., the same does not deserve to be set aside. ★ In the present case, Petitioner raised the following grounds before the SC: (a) As per Section 7 of the Act, every arbitration agreement has to be in writing between the parties. It also has to be signed by the parties. There is no arbitration agreement signed between the Petitioner and M/s Yasikan Enterprises Pvt. Ltd. (b) The company was NOT awarded the contract. (c) The offer was submitted by M/s Yasikan Enterprises as a sole proprietary firm. It was signed by Mr. Jagdish Kumar as the sole proprietor. (d) The company being a distinct legal entity from the sole proprietorship, the arbitration clause does not apply devolve upon the company. (e) The first submission of the Petitioner is that there was NO arbitration clause with the company M/s Yasikan Enterprises Pvt. Ltd. The contract was awarded to the firm M/s Yasikan Enterprises, which was a sole proprietary concern. (f) Accordingly, in the absence of an arbitration agreement, the arbitration proceedings are void ab initio and the award is liable to be set aside. (g) Moreover, the arbitration clause is an independent clause which is NOT assignable. ★ This is clear from a reading of Delhi Iron and Steel Company Limited v. U.P. Electricity Board & Another (2002) 61 DRJ 280. “17. So far as the arbitration clause is concerned it was held that this contract is personal in its character and incapable of assignment on that ground. However, it is a settled law that an arbitration clause does not take away the right of a party of a contract to assign it if it is otherwise assignable. 18. While distinguishing between two clauses of assignment the SC observed that a right of obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. In other words, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties. 19. As observed above the petitioner had the liability to perform all contracts of Victor Cables and all benefits arising therefrom and liabilities thereunder in all or in any form. It does not mean that he had also the obligation to get the dispute settled by way of arbitration as agreed by Victor Cables. These are two different and distinguished liabilities. The former is assignable where the latter is not. Thus the undertaking by the petitioner that “all contracts of Victor Cables Corporation and all benefits arising therefrom and liabilities thereunder in all or in any form shall be of the petitioner” was in the form of discharging all the liabilities of the Victor Cables and there was nothing personal about such contracts whereas clause of arbitration was personal in its character and was even otherwise incapable of assignment.

	20. In view of the foregoing reasons the unilateral reference of the alleged disputes to the respondent No.2 and unilateral appointment of respondent No.2 as arbitrator are hereby held illegal and inoperative and set aside. Petition is allowed."
Decision	★ The SC decide the case in favour of Respondent. ★ The SC held that in the absence of an arbitration agreement, the arbitration proceedings are void ab initio and the award is liable to be set aside. ★ Moreover, the arbitration clause is an independent clause which is NOT assignable.

44. TRUSTEE, JACOBITE SYRIAN CATH & ANR v. JIPPU VARKEY [NCDRC]

Hint: The Petitioner **had collected certain amount from the Respondent for granting permission** to construct a family tomb in the cemetery of the Cathedral. The **family tomb was allegedly constructed by the Respondent and the mortals of his father were placed in the said tomb.** It is **alleged by the respondent that the said tomb was destroyed by the Petitioner.** Being aggrieved from the destruction of the tomb and **claiming to be a consumer of the petitioners,** the **Respondent file a complaint on account of deficiency of services as a consumer under consumer Protection Act, 1986 seeking reconstruction of the tomb and compensation.** Question arises in the given case "Whether deficiency of services liable for compensation"?

Decision:

- ☞ The NCDRC held that the complaint filed by the Respondent was not maintainable on the basis of the aforesaid grounds.
- ☞ The NCDRC decide the case in favour of the Petitioner (i.e. Trustee, Jacobite).

Fact of the Case	☞ The Petitioner (who are Trustees, of Jacobite Syrian Cath) had collected certain amount from the Respondent (Jippu) for granting permission to construct a family tomb in the cemetery of the Cathedral. The family tomb was allegedly constructed by the Respondent and the mortals of his father were placed in the said tomb. ☞ It is alleged by the respondent that the said tomb was destroyed by the Petitioner. ☞ Being aggrieved from the destruction of the tomb and claiming to be a consumer of the petitioners, the Respondent file a complaint as a consumer before the District Forum seeking reconstruction of the tomb and compensation. ☞ The District Forum passed the order and directed the complainant would have every right to reconstruct the family tomb at its own cost and the petitioners were liable to extend necessary help and support to him for the said reconstruction in the cemetery of the Church. ☞ The Appellant file appeal before the State Commission against the District Forum and directed the petitioners to reconstruct the tomb in the cemetery of the Cathedral at their own expenses and also pay a sum of Rs.25,000/- as compensation to the complainant. ☞ The Petitioners filed the instant Petition before National Consumer Disputes Redressal Commission (NCDRC).
Legal Principles held—	☞ That the term „consumer“, defined in Section 2(1) (d) of the Consumer Protection Act, 1986 means a person who either purchases goods or avails services for a consideration. ☞ The question which arises for consideration is as to whether the complainant can be said to have hired or availed the services of the Cathedral or its Trustees for obtaining permission for construction of a family tomb in the cemetery of the Cathedral by allegedly paying Rs. 1001/- to them. ☞ NCDRC held that in my opinion, the grant of permission for construction of a family tomb in the cemetery of a Cathedral does not amount to rendering services within the meaning of Section 2(1) (o) of the Act. It is just a permission granted by a religious organization to one of its devotees. ☞ Even if some amount is charged by the religious organization from the devotees for granting the requisite permission that would NOT amount to rendering services as is understood in the context of the Consumer Protection Act

	☞ A devotee availing such a facility from the religious organization to which he belongs cannot be said to be a consumer in terms of the Consumer Protection Act. Therefore, a consumer complaint for redressal of the grievance of the complainant was clearly NOT maintainable.
Decision	☞ The NCDRC held that the complaint filed by the Respondent was not maintainable on the basis of the aforesaid grounds. ☞ The NCDRC decide the case in favour of the Petitioner (i.e. Trustee, Jacobite).

45. POONA EMPLOYEES UNION v. FORCE MOTORS LIMITED & ANR [SC]

Hint: In the given case, Appellant union claiming to command 85% of the workforce of the company sought recognition as company union in place of Existing union BKS. However, the existing union BKS and the company opposed. Mistakenly, Industrial court granted recognition without appreciating the facts properly. **Whether recognition to be accorded to the appellant union under Section 19 of Trade Union Act, 1926?**

Decision:

- ☆ The SC decide the case in favour of the Respondent.
- ☆ The SC held that having regard to the paramount objectives of the Act and in the interest of industrial orderliness, stability, peace and overall wellbeing as well, **we disregard the contention of appellant union as recognized union of the Company in place of BKS.**

Fact of the Case	☆ The Force Motors Limited has its office at Akurdi, Pune. ☆ The Respondent No. 2- union i.e. Bhartiya Kamgar Sena ("the BKS") is the recognized union of the company. ☆ The appellant union in its bid to be adjudged as the recognized union in place of BKS, filed an application on 6.9.2003 before the Industrial Court as required under the provision of the Act. ☆ It insisted that almost all the employees' members of BKS had meanwhile tendered their resignation, and had expressed their desire to discontinue their membership therewith. It claimed that majority of the employees had become its members, so much so that in the month of January, 2003, it had in its fold 1973 employees members. ☆ Claiming that it was a union registered under the Trade Unions Act, 1926 on 20.7.1986 with a valid certificate to that effect, it asserted that with the exodus (i.e. departure of people) of the employees members from BKS to its ranks, it had the holding of 85% of the total employees of the company. ☆ The company resisted the application by pleading that the appellant union was not duly registered under the 1926 Act. At the point of time, it denied as well that it did have 30% membership of the employees of the company and that it did comply with the imperatives of Section 19 of the Act. Dismissing the appellant union's claim of majority membership to be a bogey, it refuted its claim of having larger membership of the employees of the company compared to BKS.
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	☆ Apart from reiterating that the appellant union was not duly registered under the 1926 Act and thus it had no locus standi to claim the status of a recognized union, it categorically controverted (i.e. stake) its claim of holding 30% membership of the company as compared to it (BKS). ☆ The Industrial Court allowed the application of the appellant union. ☆ However, on appeal the HC reversed the decision of the Industrial court. ☆ The Appellant/Petitioner file writ petition before the SC against the HC Order.
Legal Principles held—	The SC consider the following observation before passing the order: (a) On a conjoint reading of the provisions of the Trade Unions Act, it is abundantly and predominantly clear that the exercise of examining an application of a union in an undertaking seeking the status of recognized union whether by replacing an existing recognized union or not, is neither a routine ritual nor an idle formality. (b) The applicant- union has to be eligible to apply as per the prescriptions with regard to the extent of membership it has to command for the relevant period, its application has to be bonafide in the interest of the employees and it must not have indulged in any activity of instigating, aiding or assisting, the commencement or continuation of a strike during the said period. (c) The detailed procedure in both the eventualities, as contemplated in Sections 12 and 14 of the Act, enjoins a participating enquiry to verily ascertain the membership pattern of the rival unions, and also the existence or otherwise of the disqualifying factors as stipulated by the Act. (d) Section 9(2) of the Act makes it incumbent on the Investigating Officer to assist the Industrial Court in matters of verification of membership of unions and also to assist the Industrial and Labour Courts investigating into the complaints relating to the unfair labour practice. (e) Indubitably, the burden would be on the applicant union to decisively establish its eligibility and suitability for being conferred the status of a recognized union to be adjudged by the legislatively enjoined parameters. (f) Though the enquiry envisages participation of the rival union(s), employers and employees, having regard to the ultimate objective of installing a representative union to secure genuine, effective and collective negotiations, catering to industrial cohesion, harmony and growth, no compromise or relaxation in the rigours of the requirements of the enquiry can either be contemplated or countenanced. (g) To recall the common averment (i.e. allegation) made in the 1556 affidavits filed by the appellant union is that the employees concerned had resigned from BKS on 12.12.2002 as it did not defend the interest of the workers and had functioned as per the directions of the company. It was further affirmed that the deponent did not pay union subscription to BKS since last year and that he/she had instead accepted the membership of the appellant union i.e. Puna Employees Union on 12.12.2002 and that concludes to be its member on the date of the execution of the affidavit. It was stated further that in view of the resignation of the deponent and others, BKS did not have majority of the membership since 1.1.2003 and that thus its recognition be revoked. (h) The report of the Investigating Officer clearly reveals that the contribution collected from the members of the appellant union had not been deposited in its bank account. This finding is based on a scrutiny of the original records of the appellant union. Though the then President of the appellant union in his testimony claimed that the membership fee had been duly deposited in the bank, he conceded (i.e. admit) that no complaint had been made against the Investigating Officer for incorporating a finding contrary thereto. (i) No overwhelming evidence was also produced to counter this finding. This witness admitted as well that the accounts of the appellant union were not being

	audited by a Chartered Accountant, appointed by the Government which per se is also in repudiation of the mandate of Section 19(iv) of the Act. (j) This witness in course of the cross-examination was also confronted with the annual return submitted by the union for the period January to December, 2003 in which he admitted that the columns No. 10, 13, 15 and 17 of the prescribed form had been left blank. (k) The report of the Investigating Officer based on a scrutiny of all relevant records of the appellant union including the list of employees, membership receipt book, register of membership, cash book, bank pass books etc. does NOT as such admit of any doubt about its credibility. (l) In the cross-examinations, some of the affiants on their affidavits filed in support of the claim of membership of the appellant union had stated that they had affirmed the same because they were promised by the appellant union that their deducted wages for the go-slow tactics would be reimbursed. It had throughout been in the understanding of all concerned that the contents of the affidavits would be used only for relevant and ancillary purpose but divorced from the issue of membership. (m) However, the Industrial Court conclude that the appellant union have more than 30% of the membership of the total employees, took cognizance of these affidavits and relied on the same. The contents of the affidavits, referred to hereinabove, which are identical and in a format are to the effect that the deponents had not paid subscription to the BKS for the last two years and that they had accepted the membership of appellant union on 20.12.2002 and that BKS does not have majority of the membership since 1.1.2003.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that having regard to the paramount objectives of the Act and in the interest of industrial orderliness, stability, peace and overall wellbeing as well, we disregard the contention of appellant union as recognized union of the Company in place of BKS.

46. MANAGEMENT OF THE BARARA COOPERATIVE MARKETING-CUMPROCESSING SOCIETY LTD. v. WORKMAN PRATAP SINGH [SC]

Hint: In the given case, Respondent is an employee of the Appellant and Respondent is terminated from the services. Due to the termination from the service, Appellant offered compensation to Respondent in lieu of right of reinstatement in service. Accordingly, the Respondent accepted the award of compensation in lieu of the right of reinstatement in service. However, latter on the Respondent seeking re-employment in the appellant's services in accordance with Section 25 (H) of the Industrial Disputes Act, 1947

Question arises: Workman who accepted the compensation in lieu of his right of reinstatement in service and Later workman seeking reemployment in appellant service by virtue of Section 25H of the Industrial Dispute Act. Whether action of the workman is tenable in law?

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC held that the respondent also accepted the compensation. Therefore, this was not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act.

Fact of the Case	☆ In the given case, Respondent is an employee of the Appellant and Respondent is terminated from the services. Due to the termination from the service, Appellant offered compensation to Respondent in lieu of right of reinstatement in service. ☆ Accordingly, the Respondent accepted the award of compensation in lieu of the right of reinstatement in service. ☆ However, latter on the Respondent seeking re-employment in the appellant's services in accordance with Section 25 (H) of the Industrial Disputes Act, 1947.
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Legal Principles held—	☆ The SC consider the following observation before passing the order: (a) In the FIRST PLACE, the respondent having accepted the compensation awarded to him in lieu of his right of reinstatement in service, the said issue had finally come to an end; and SECONDLY, Section 25 (H) of the ID Act had no application to the case at hand. (b) In order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that ☛ Firstly, he was the “retrenched employee” and ☛ Secondly, his ex-employer has decided to fill up the vacancies in their set up and, ☛ Therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking re-employment in the services. (c) It is not in dispute that the respondent also accepted the compensation. Therefore, this was not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act. (d) In the present case, the respondent termination was held illegal and, in consequence thereof, he was awarded lump sum compensation of Rs.12,500/ in full and final satisfaction. (e) That apart and more importantly, the respondent was not entitled to invoke the provisions of Section 25 (H) of the ID Act and seek re-employment by citing the case of another employee (Peon) who was already in employment and whose services were only regularized by the appellant on the basis of his service record in terms of the Rules. In our view, the regularization of an employee already in service does not give any right to retrenched employee so as to enable him to invoke Section 25 (H) of the ID Act for claiming re-employment in the services. The reason is that by such act the employer do not offer any fresh employment to any person to fill any vacancy in their set up but they simply regularize the services of an employee already in service. Such act does not amount to filling any vacancy. (f) In our view, there lies a distinction between the expression ‘employment’ and ‘regularization of the service’. The expression ‘employment’ signifies a fresh employment to fill the vacancies whereas the expression ‘regularization of the service’ signifies that the employee, who is already in service, his services are regularized as per service regulations.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that the respondent also accepted the compensation. Therefore, this was not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act.

47. EMPLOYEES STATE INSURANCE CORPORATION v. VENUS ALLOY PVT. LTD. [SC]

Hint: The question arise in the present case that “whether the director of the appellant company, who are receiving remuneration, come within the purview of “employee” under Section 2(9) of the Employees’ State Insurance Act, 1948 (‘the ESI Act’)?

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC has held that Directors of a company, who are receiving remuneration, would fall within the definition of an “employee” as provided under Section 2(9) of the ESI Act, 1948 and that the company is bound to deposit contributions in relation to the remuneration paid to such Directors.

Fact of the Case	☆ The question arise in the present case that “whether the director of the appellant company, who are receiving remuneration, come within the purview of “employee” under Section 2(9) of the Employees’ State Insurance Act, 1948 (‘the ESI Act’)?
Judicial Judgment	☆ Employees’ State Insurance Corporation v. Apex Engineering Pvt. Ltd. 1997: (a) The BOD(s) of respondent-Company resolved to elect one of its Directors as MD of the Company and to grant him annual remuneration of Rs. 12,000/- for rendering services as MD. (b) In this case, the question arises whether the said Managing Director was an “employee” within the meaning of Section 2(9) of the ESI Act? (c) The SC held that the provisions of the Act were applicable to the remuneration received by a ‘Managing Director’ even MD act in dual capacity as employer and employee.
Legal Principles held—	☆ The SC consider the following observation before passing the order: (a) Appellant-Corporation contends that the Directors of the Company were paid remuneration at the rate of Rs. 3,000/- p.m. and they were falling within the definition of “employee” under the ESI Act. Hence, contribution was payable in regard to the amount paid to them. (b) The respondent-Company only on the contention that the Directors do not fall within the category of “employee” but no attempt was made to show as to how and why the remuneration paid to its Directors would not fall within the purview of “wages” as per the meaning assigned by Section 2(22) of the ESI Act? (c) The SC relying on the judgment held in the case of Employees’ State Insurance Corporation v. Apex Engineering Pvt. Ltd. 1997. We are clearly of the view that what has been observed and held in Apex Engineering (supra), in relation to the Managing Director of a Company, applies with greater force in relation to a Director of the Company, if he is paid the remuneration for discharge of the duties entrusted to him.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC has held that Directors of a company, who are receiving remuneration, would fall within the definition of an “employee” as provided under Section 2(9) of the ESI Act, 1948 and that the company is bound to deposit contributions in relation to the remuneration paid to such Directors.

48. DELHI TRANSPORT CORPORATION v. SATNARAIN [DEL]

Hint: In the given case, the respondent working as conductor in the Appellant (i.e. DTC). However, the respondent was dismissed from service the basis of domestic inquiry. Labour court directed the appellant to reinstate him with service continuity and consequential benefits. However, Employer reinstated the workman in the service but did not pay the benefits. Whether the action of the employer is tenable.

Decision:

- ☆ The Delhi HC decide the case in favour of the Respondent.
- ☆ **The Delhi HC once an employee is prevented from joining duties not because of his fault/inaction but because of the employer not permitting him to join duties, he would be certainly entitled to get the benefit for the said period.**
- ☆ Once the petitioner’s writ petition was dismissed, it is evident that this Court directing the petitioner’s to reinstate the service of the respondent. In these circumstances, it would be most unjust with the respondent to deprive him from their benefits.

Fact of the Case	☆ The respondent who was working as a Conductor in the DTC, was issued a charge-sheet alleging that he had failed to deposit the wage bill for the cash received by him. ☆ Thereafter, the respondent was removed from service based on the findings of a domestic inquiry held against him. ☆ Due to the termination from service, the respondent raising an industrial dispute before the learned Labour Court regarding the validity of the respondent's termination. After considering the material produced on record, the learned Labour Court passed an Award directing reinstatement of the respondent with continuity of service and all other consequential benefits, excluding back wages. ☆ Accordingly, the respondent was reinstated in service on 13.12.2014, without being granted any benefits for the period from 06.09.2010, i.e., the date of publication of the Award, till his reinstatement. ☆ For the purpose of release wages from the period from 6th September, 2010 to 12th December, 2014 along with interest, respondent file application before the Labour Court seeking release of wages. ☆ The Labour Court allowed the said application and passed the order in favour of the Respondent. ☆ The Appellant/Petitioner file writ petition before the SC against the impugned order.
Legal Principles held—	☆ The Delhi HC consider the following observation before passing the order: (a) The question arise whether the petitioner having filed a writ petition for preventing the respondent from joining service, can the petitioner still deprive the respondent of the wages for the said period during which he was very much willing and ready to join back his duties. (b) In my view, once an employee is prevented from joining duties not because of his fault/inaction but because of the employer not permitting him to join duties, he would be certainly entitled to get the benefit for the said period. (c) Once the petitioner's writ petition was dismissed, it is evident that this Court directing the petitioner's to reinstate the service of the respondent. In these circumstances, it would be most unjust with the respondent to deprive him from their benefits. (d) There is no merit in the petitioner's contention that merely because this Court, while dismissing the writ petition, did not pass any specific order directing payment of wages to the respondent for the said period that the petition remained pending, the respondent would not be entitled to wages for the period during which he has admittedly not worked.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ The Delhi HC once an employee is prevented from joining duties not because of his fault/inaction but because of the employer not permitting him to join duties, he would be certainly entitled to get the benefit for the said period. ☆ Once the petitioner's writ petition was dismissed, it is evident that this Court directing the petitioner's to reinstate the service of the respondent. In these circumstances, it would be most unjust with the respondent to deprive him from their benefits.

49. CENTRAL BOARD OF TRUSTEES v. STANDING CONFERENCE OF PUBLIC ENTERPRISES [DEL]

Hint: In the given case, the petitioner initiated proceedings through the concerned PF commissioner under Section 7-A of the Act **against the respondent for determination of the provident fund dues payable by the respondent towards the employees engaged through by its contractors. Without examining the contractors, the PF commissioner determined the contribution dues and directed the respondent to deposit the contribution for workers of the contractors also.** Even, the petitioner had initiated proceedings under the Act **after an inordinate delay of 12 years, which in itself would have made it very difficult for the respondent to obtain the requisite information from its contractors.**

Question: Whether the amount of PF payable determined by PF Commissioner without summoning the Contractor during inquiry and Inquiry is conducted by the PF Commissioner after an inordinate delay of 12 years, which in itself would have made it very difficult for the respondent to obtain the requisite information from its contractors is tenable in law?

Decision:

- ☆ Delhi HC decide the case in favour of the Appellant/Respondent.
- ☆ Delhi HC held that the petitioner had not taken adequate steps to summon all the contractors by enforcing their attendance and that too in a case where the petitioner had initiated proceedings after an inordinate delay of 12 years, which in itself would have made it very difficult for the respondent to obtain information from its erstwhile contractors as also the fact that the assessment order itself is made on the basis of ad hoc calculations.

Fact of the Case	☆ The petitioner initiated proceedings through the concerned PF commissioner under Section 7-A of the Act against the respondent for determination of the provident fund dues payable by the respondent towards the employees engaged through by its contractors. ☆ Without examining the contractors, the PF commissioner determined the contribution dues and directed the respondent to deposit the contribution for workers of the contractors also. ☆ The Respondent file appeal against the order of PF Commissioner before the Appellate Tribunal. ☆ Appellate Tribunal set aside PF Commissioner order and remanded back to the PF commissioner to decide the issue after making proper enquiry and examining the witness of the contractors. ☆ The petitioner challenged judgement of the appellate tribunal before the Delhi HC.
Question in Issue	The issue in the present case is as to whether merely because it is the duty of the principal employer to comply with the provisions of the Act, even qua the employees employed through its contractors, can the competent authority while conducting an inquiry under the provisions of Section 7-A of the Act, simply claim the amount from the principal employer without even making at least a bonafide attempt to determine the contributions made by the contractors and thereafter determine the shortfall, if any, required to be deposited by the principal employer.
Legal Principles held—	☆ The Delhi HC consider the following observation before passing the order: (a) The facts of the present case reveal that the petitioner had initiated proceedings under the Act after an inordinate delay of 12 years, which in itself would have made it very difficult for the respondent to obtain the requisite information from its contractors. (b) There was no reason as to why the petitioner ought not to resort to its statutory powers under Section 7-A of the Act to enforce the presence of the contractors in order to make a proper assessment of the dues which were payable by the respondent towards the employees engaged through the contractors. (c) Though the petitioner may be under no obligation to approach the contractors engaged by the respondent, but once a specific request for summoning the contractors was made by the respondent. The petitioner shall approach the contractors on a solitary occasion by issuing summons. (d) By recording the statement of the sole contractor i.e. M/s A. P. Bansal & Company, who had appeared before the Enforcement Officer, had merely offered lip service to its statutory duty under Section 7-A of the Act by not making any bona fide efforts to enforce the presence of the other contractors. (e) Merely because it is the respondent's duty to ensure compliance with the provisions of the Act in respect of the employees engaged through the Contractors also, cannot absolve the petitioner/organization of its statutory duty to carry out an enquiry as envisaged under the Act. There is a reason as to why section 7A of the Act gives such wide powers to the PF Commissioner while making

	an inquiry under the Act and the reason obviously is to ensure that a proper and just assessment is made by collecting all available evidence. (f) Delhi HC relying on the SC held in Food Corporation of India v. The Provident Fund Commissioner & Ors. 1990 (60) F.L.R. 15, that there can be no doubt about the fact that it was incumbent upon the petitioner while making an inquiry in accordance with Section 7A of the Act to take all possible steps as set out in the Act to make a correct and proper assessment of the dues. It needs no reiteration that while making such an inquiry, the Commissioner has ample powers not only to summon any witness but also has powers to enforce the attendance of any person or summon him on oath.
Decision	★ Delhi HC decide the case in favour of the Appellant/Respondent. ★ Delhi HC held that the petitioner had not taken adequate steps to summon all the contractors by enforcing their attendance and that too in a case where the petitioner had initiated proceedings after an inordinate delay of 12 years, which in itself would have made it very difficult for the respondent to obtain information from its erstwhile contractors as also the fact that the assessment order itself is made on the basis of ad hoc calculations.

50. THE REGIONAL PROVIDENT FUND COMMISSIONER v. VIVEKANANDA VIDYAMANDIR & ORS [SC]

Hint: The question raised in appeal before SC that **if the special allowances paid by an establishment to its employees would fall within the expression “basic wages” under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund.**

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ Accordingly, in the present case, special allowance become part of the basic wage for the purpose of computation of PF Contribution under EPF & MP Act.

Fact of the Case	★ The appellants are establishments covered under the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952. ★ The question raised in appeal before SC that if the special allowances paid by an establishment to its employees would fall within the expression “basic wages” under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund.
Legal Principles held –	★ The SC consider the following observation before passing the order: 1. According to Section 2(b) of the EPF and MP Act, 1952, Basic wage referred to as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. 2. The SC relying on the decision held in Bridge and Roof Co. (India) Ltd. v. Union of India, (1963). In this case, it was observed as follows: (a) Section 2(b)(ii) of the said Act excludes dearness allowance (DA), house rent allowance (HRA), overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. (b) This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of “basic wages”.

- (c) It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment.
- (d) It is clear from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of employment.
- (e) Having excluded "dearness allowance" from the definition of "basic wages", Section 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in Section 6 which lays down that contribution shall be 6.25 per centum of the basic wages, dearness allowance and retaining allowance (if any).
- (f) Therefore, we must try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in Section 6.
- (g) It seems that the basis of inclusion in Section 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution under Section 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution.

Examples of what component of salary is included or excluded for section 2(b)(ii) and Section 6:

- (h) DA (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate DA and basic wages.
- (i) Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and therefore, it is included in Section 6;
- (j) But HRA is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus DA or consolidated wages. Therefore, HRA which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of «basic wages», even though the basis of payment of HRA where it is paid is the contract of employment.
- (k) Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from «basic wages».
- (l) Similarly, commission or any other similar allowance is excluded from the definition of «basic wages» for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment.

CRUX:

- (m) Therefore, it seems that the basis for the exclusion in clause (ii) of the exceptions in section 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages.

3. The SC also consider the judgement held in Muir Mills Co. Ltd., Kanpur Vs. Its Workmen, wherein any variable earning which may vary from individual to individual

	according to their efficiency and diligence will stand excluded from the term "basic wages". In this case, the court observed the following: Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. ☛ The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; ☛ It will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; ☛ It will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of "basic wages" ..." 4. The term basic wage has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014), it was observed as follows: ☛ In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. ☛ Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. Examples: ☛ For example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. ☛ In view of what we have observed above, we are of the opinion that the amount received as leave encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance."
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that after applying the aforesaid tests to the facts of the present appeals: (a) No material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. (b) In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. (c) There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. (d) Therefore, it is not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. (e) Accordingly, in the present case, special allowance become part of the basic wage for the purpose of computation of PF Contribution under EPF & MP Act.

51. MODERN TRANSPORTATION CONSULTATION SERVICES PVT. LTD. & ANR. v. C.P.F. COMMISSIONER [SC]

(V. Imp.) Hint: The basic questions arising in the present case is

- (a) whether the retired employees of Railways, who had withdrawn all the superannuation benefits, including full amount of accumulations in their provident fund accounts are to be treated as “excluded employees” in terms of Paragraph 2(f) of the Scheme of 1952?
- (b) If to be treated as “excluded employees”, the said retired employees of Railways, on being re-employed by the appellants, may not be required to join the Fund created under the said Scheme of 1952 and consequently, the appellants may not be obliged to make any contribution in that regard?

Decision:

- ★ The SC decide the case in favour of the Respondent.
- ★ The SC held that retired employee cannot be treated as excluded employee in terms of Paragraph 2(h) under Scheme of 1952.

Fact of the Case	The basic questions arising in the present case is (c) whether the retired employees of Railways, who had withdrawn all the superannuation benefits, including full amount of accumulations in their provident fund accounts are to be treated as “excluded employees” in terms of Paragraph 2(f) of the Scheme of 1952? (d) If to be treated as “excluded employees”, the said retired employees of Railways, on being re-employed by the appellants, may not be required to join the Fund created under the said Scheme of 1952 and consequently, the appellants may not be obliged to make any contribution in that regard?
Legal Principles held—	The SC consider the following facts and relevant laws before passing the order: (a) Appellants contends that the persons engaged by them had been the members of General Provident Fund while working as the employees of Railways and had withdrawn the full amount of accumulations in GPF. Therefore, these employees should be treated as “excluded employees”. (b) Whether the definition of “excluded employees” in Paragraph 2(f) as also the stipulation in Paragraphs 26 and 69 of the Scheme of 1952 refer to any provident fund or only to the Fund under the Scheme of 1952? ✎ In the setup and structure of the Act of 1952, specific distinction is maintained between the Fund, which is created by the CG under Section 5(1) of the Act and any other provident fund, which is created by an employer. ✎ Significantly, Paragraph 2(f) of the Scheme of 1952 refers to “the Fund” and not to “any Fund”; and Paragraphs 26 and 69 also refer to “the Fund” and not to “any Fund”. ✎ The determiner “the”, as occurring in Paragraph 2(f) as also Paragraph 69 before the expression “Fund” makes it clear that the reference therein is only to the Fund which is created under the Scheme of 1952 and it is not a general reference to any Fund. ✎ It is clear that the Fund referred to in Paragraphs 2(f), 26 and 69 of the Scheme of 1952 is that Fund, which is created under the Scheme of 1952 and the reference is not to any other Fund. ✎ Thus, to be covered under the expression “excluded employee” by virtue of clause (i) of paragraph 2(f) read with clause (a) of paragraph 69(1), the employee must be such who was a member of the Fund established under the Scheme of 1952 and who had withdrawn full amount of his accumulations in the said Fund on retirement from service after attaining the age of 55 years.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that on the plain interpretation aforesaid, we have not an iota of doubt that the retired Railway employees, who had withdrawn their accumulations in General Provident Fund or any other Fund of which they were members, could not have been treated as “excluded employees” for the purpose of the Scheme of 1952 for the reason that such a withdrawal had not been from the Fund established under the Scheme of 1952.

	☆ In fact, there was no occasion for them to make any withdrawal from the Fund established under the Scheme of 1952 because they were never the members of the said Fund.
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52. DELHI TRANSPORT CORPORATION v. JASBIR SINGH [SC]

Hint: In the present case, **the respondent was appointed as a driver and while he was on probation, he was involved in an accident.** Accordingly, the petitioner issued a show cause notice to the respondent calling upon him to show cause as to why his services be not terminated. Respondent file application before the Central Administrative Tribunal against the action of the appellant in regard to the termination of the respondent services. The Central Administrative Tribunal allowed the Application preferred by the respondent and set aside the show cause notice, termination order, and the appellate orders and **Tribunal has directed reinstatement of the respondent with 50 % back wages.** Two issues come before the SC:

- (a) Whether the Tribunal action for reinstatement of Driver is correct?
 (b) Whether Tribunal action to pay 50% back wages is tenable in law?

Decision:

- ☆ The SC decide the case in favour of the Appellant.
 ☆ The SC direct the petitioner to reinstate the respondent positively within two weeks but petitioner is **not required pay 50% back wages.**

Fact of the Case	☆ In the present case, the respondent was appointed as a driver and while he was on probation, he was involved in an accident. ☆ Accordingly, the petitioner issued a show cause notice to the respondent calling upon him to show cause as to why his services be not terminated. ☆ Respondent file application before the Central Administrative Tribunal against the action of the appellant in regard to the termination of the respondent services. ☆ The Central Administrative Tribunal allowed the Application preferred by the respondent and set aside the show cause notice, termination order, and the appellate orders and Tribunal has directed reinstatement of the respondent with 50 % back wages. ☆ Appellant file appeal against the order of the Tribunal before the SC
Legal Principles held—	The SC consider the following facts before passing the order: (a) The respondent was also responsible for the state in which he found himself. While on probation, he was involved in an accident and he went ahead and confessed before the Court with regard to his guilt. He also compounded the offence under by depositing a fine of Rs. 50,000/-. (b) We are of the view that the direction issued by the Tribunal for payment of Rs. 50% back wages were not justified in the facts and circumstances of the case.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC direct the petitioner to reinstate the respondent positively within two weeks but petitioner is not required pay 50% back wages. In case, this direction is not complied with, the respondent shall be entitled to wages from the last date fixed for his reinstatement.

53. GLOBE GROUND INDIA EMPLOYEES UNION v. LUFTHANSA GERMAN AIRLINES & ANR [SC]

Hint: Globe Ground India Private Ltd [Respondent No. 2] is subsidiary of Lufthansa German Airlines [Respondent 1]. Appellant is the employees union representing the employees of Respondent No. 2. The appellant raised the industrial dispute, which was referred by the CG to Industrial Tribunal cum-Labour Court. In the proceedings, the appellant sought to implead (i.e. sue) the respondent No. 1 also as it was the holding company of respondent No. 2. **The question arise "Whether appellant can implead the Respondent No. 1 since it was the holding company of Respondent No. 2.**

Question arise: "Whether the first respondent Lufthansa German Airlines is to be impleaded as a party respondent or not, in adjudication proceedings to answer the reference referred by the CG to the Industrial Tribunal-cum-Labour Court.

Decision:

- ☆ SC decide the case in favour of the Respondent.
- ☆ Further, SC held that having regard to limited scope of adjudication, to answer the reference, which is circumscribed by Section 10(4) of the Industrial Dispute Act, 1947, **we are of the view that the first respondent is neither necessary nor proper party, to answer the reference by the Industrial Court.**

Fact of the Case	☆ Globe Ground India Private Ltd [Respondent No. 2] is subsidiary of Lufthansa German Airlines [Respondent 1]. ☆ Appellant is the employees union representing the employees of Respondent No. 2. ☆ The appellant raised the industrial dispute, which was referred by the CG to Industrial Tribunal cum-Labour Court. ☆ In the proceedings, the appellant sought to implead (i.e. sue) the respondent No. 1 also as it was the holding company of respondent No. 2. ☆ The question arise “Whether appellant can implead the Respondent No. 1 since it was the holding company of Respondent No. 2. ☆ Appellant file appeal before the SC seeking the impleadment of the respondent No. 1 holding company in the industrial reference made against the subsidiary Respondent No. 2 Company.
Legal Principles held –	The SC consider the following facts before passing the order: 1. From a reading of the reference, which is referred by the CG to Industrial Tribunal, it is clear that the reference which is required to be answered by the Industrial Tribunal is that, ☛ Whether the action of the Management of M/s Globe Ground India (Pvt.) Limited, in closing down their establishment on 15.12.2009 and retrenching the services of 106 workmen is justified and legal. ☛ At this stage, it is appropriate to refer to Section 10 of the Industrial Disputes Act. It is clear from the said section, whenever, the appropriate Government refers the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal shall confine its adjudication to those points only and matters incidental thereto. 2. Whenever, an application is filed in the adjudication proceedings, either before the Industrial Tribunal in a reference made under the Industrial Disputes Act, 1947 or any other legal proceedings, for impleadment of a party who is not a party to the proceedings, what is required to be considered is whether such party which is sought to be impleaded is either necessary or proper party to decide the lis. Explanation of the expressions “necessary” or “proper” parties: The expressions “necessary” or “proper” parties have been considered time and again and explained in several decisions. The two expressions have separate and different connotations. (a) Necessary party, is one without whom no order can be made effectively. (b) Proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings. 3. It is clear that the Respondent No. 1 had a subsidiary, namely, Globe Ground Deutschland GmbH, which was holding 51% shares along with 49% shares held by the Bird Group in the Respondent No. 2 Company. Further, it is clear that the Bird Group had floated another company, Bird Worldwide Flight Services Ltd. to provide ground handling and ancillary services which started from the month of January, 2009. 4. It is the allegation of the appellant’s union that even after the formation of a new company, such new company is utilizing same equipment and vehicles belonging to the second respondent. It is also the allegation of the appellant that after the formation of the new company, it has retained most of the employees, except the trade union

	activists. The appellant workers' union does not seek employment of the alleged retrenched workers in the first respondent.
Decision	☆ SC decide the case in favour of the Respondent. ☆ Further, SC held that having regard to limited scope of adjudication, to answer the reference, which is circumscribed by Section 10(4) of the Industrial Dispute Act, 1947, we are of the view that the first respondent is neither necessary nor proper party, to answer the reference by the Industrial Court.

54. THE STATE BANK OF INDIA & ORS. v. P. SOUPRAMANIANE [SC]

Hint: The Respondent who was working as a Messenger in the State Bank of India at Puducherry was discharged from service by an order dated 15.05.1986 **on the ground of his conviction by a criminal court for an offence involving moral turpitude.** The respondent was convicted for the offence committed under section 324 of the IPC [i.e. assault] and sentence of 3 months imprisonment was given. The appellate court **released him under section 360 of the Cr. PC on probation** on the ground that the Respondent was employed as a Messenger in a Bank and **any sentence of imprisonment would affect his career.**

Question: whether the action of Bank to discharged the employee from the service on the **ground of his conviction by a criminal court for an offence involving moral turpitude is tenable in law.** What is moral turpitude?

Decision:

☆ The SC held that

- (a) On an overall consideration of the facts of this case, **we are of the opinion that the crime committed by the Respondent does not involve moral turpitude.**
- (b) As the **Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service.**

☆ The SC decide the case in favour of the Respondent.

Fact of the Case	☆ The Respondent who was working as a Messenger in the State Bank of India at Puducherry was discharged from service by an order dated 15.05.1986 on the ground of his conviction by a criminal court for an offence involving moral turpitude. ☆ The respondent was convicted for the offence committed under section 324 of the IPC [i.e. assault] and sentence of 3 months imprisonment was given. ☆ The appellate court released him under section 360 of the Cr. PC on probation on the ground that the Respondent was employed as a Messenger in a Bank and any sentence of imprisonment would affect his career. ☆ The Respondent filed a writ Appeal which was allowed by the Division Bench of the Madras HC. ☆ Madras HC set aside the order of discharge of the Respondent from service and directed the Appellants to reinstate the Respondent. The Appellants were directed to pay 1/4th of the salary from the date of discharge till the date of reinstatement as back wages. ☆ Appellant bank filed appeal before the SC against the Divisional Bench of HC.
Legal Principles held—	The SC consider the following facts before passing the order: 1. A show-cause notice was issued to the Respondent in which it was categorically mentioned that the Respondent cannot continue in service after his conviction in a criminal case involving moral turpitude in view of Section 10(1)(b)(i) of the Banking Regulation Act, 1949. 2. The criminal court released the Respondent on probation only to permit him to continue in service. The release under probation does not entitle an employee to claim a right to continue in service. 3. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a

	criminal court are not binding on the employer who has the liberty of dealing with his employees suitably. 4. It is necessary to examine whether Section 10 (1) (b) (i) of Banking Regulation Act is applicable to the facts of the case. Conviction for an offence involving moral turpitude disqualifies a person from continuing in service in a bank. 5. The conundrum (i.e. puzzle) that arises in this case is whether the conviction of the Respondent under Section 324 IPC can be said to be for an offence involving moral turpitude. (a) There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption Act, NDPS Act, etc. (b) The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorized as a crime involving moral turpitude. (c) In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. (d) A simple assault is different from an aggravated assault. (e) All cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude. 6. In the instant case, there was no motive for the Respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature.
Decision	☆ The SC held that (a) On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the Respondent does not involve moral turpitude. (b) As the Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service. ☆ The SC decide the case in favour of the Respondent.

55. REGIONAL MANAGER, U.P.S.R.T.C. & ANR v. MASLAHUDDIN (DEAD) [SC]

Hint: Respondents were appointed as drivers by the appellant Corporation and placed them under category D, for which the retirement age is 60 years. During the course of their service, their pay scale have been revised and due to this, they have been placed under category C, for which the retirement age is 58 years. The appellant retired the respondent at the age of 58 years. Due to early retirement age i.e. 58 years, the respondents raised a dispute before the labour court as well as the HC.

Question: Whether Employees claimed their service up to 60 years?

Decision:

- ☆ The SC held that in the present case, respondent take the advantage of the revised pay scale retrospectively along with the respondent accepted the arrears of pay with retrospective effect in accordance with company rules. Accordingly, they fall in Group "C" category as per company rules and their superannuation age would be 58 years instead of 60 years.
- ☆ Accordingly, SC set aside the order of the Labour Court and HC.
- ☆ The SC decide the case in favour of the Appellant.

Fact of the Case	☆ Respondents were appointed as drivers by the appellant Corporation and placed them under category D, for which the retirement age is 60 years. During the course of their service, their pay scale have been revised and due to this, they have been placed under category C, for which the retirement age is 58 years. ☆ The appellant retired the respondent at the age of 58 years. ☆ Due to early retirement age i.e. 58 years, the respondents raised a dispute before the labour court as well as the HC.
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	☆ HC held that the respondents' retirement age should be 60. ☆ The appellant Corporation file appeal against the order of the HC before the SC.
Legal Principles held –	The SC consider the following facts before passing the order: - Company Rules prevailing at the relevant time: Classification in Group: The employees getting salary more than Rs. 200/ would fall in Group "A", "B" or "C" as per the classification and those who would not fall in either Group "A", "B" or "C" category, they would fall in Group "D" category. Decide retirement age as per Group: The age of superannuation of Group "D" employees was 60 years and for the others, i.e. Group "A", "B" and "C", the age of retirement was 58 years. The short question which is posed for consideration by this Court is whether the respective respondents Drivers would fall in Group "D" or Group "C"? - As per the company rules, it is required to be noted that all those employees who were getting the salary less then Rs.200/ would fall in Group "D" category. - It appears from the affidavit of the appellant, that at the time when the respective respondents Drivers were appointed, they were in the pay scale of Rs.185/- and under the normal circumstances they would fall in Group "D" category. Therefore, their age of superannuation would be 60 years. - However, in the year 1982 the pay scale of all the employees of the Corporation was revised, including the Drivers, and the pay scale of the Drivers of the Corporation was revised to Rs.335/- from Rs.200/-. That the pay scale of the respondents was also revised to Rs.335/ w.e.f. the date of their initial appointment and they were also paid the arrears from the date of their initial appointment till August, 1981. - That, in the year 1984, it was resolved to fix the age of superannuation of the Drivers and Conductors as 58 years and place them in Group "C". - In the year 1985, the BOD(s) resolved that the classification of posts of all the employees would be revised in view of the recommendations of the Second Pay Commission and that the pay scale of the Drivers and Conductors was again revised to Rs. 335/- and above and that they would be placed in Group "C". That the above resolution was notified on 10.06.1985 and it was also clarified that the revision in classification will be applicable while determining the age of retirement of the employees.
Decision	☆ The SC held that in the present case, respondent take the advantage of the revised pay scale retrospectively along with the respondent accepted the arrears of pay with retrospective effect in accordance with company rules. Accordingly, they fall in Group "C" category as per company rules and their superannuation age would be 58 years instead of 60 years. ☆ Accordingly, SC set aside the order of the Labour Court and HC. ☆ The SC decide the case in favour of the Appellant.

56. EMPLOYEE STATE INSURANCE CORPORATION v. BATRA HOSPITAL & MEDICAL RESEARCH CENTRE & ORS [DEL]

Hint: In the given case, respondent establishment came under the provisions of the said Act only with effect from 01.04.2011 and before that the said establishment **was not covered under the said Act. It is not in dispute the petitioner issued the notice on 26.12.2007 to the hospital and not to any particular department.** The officials of the petitioner visited the establishment of the respondent for inspection of the records. **Respondent establishment refused to produce records for inspection on the ground that respondent establishment was not covered under the Act. Whether respondent is liable for prosecution under the said Act on account of refusal to produced records?**

Decision:

☆ Delhi HC decide the case in favour of the Respondent.

- ☆ After consideration of the aforesaid judicial pronouncement and facts, **Delhi HC held that respondent was not covered under the said Act in the year 2007. Therefore, the respondent is not liable to be prosecuted under the provisions of the said Act.**

Fact of the Case	☆ In the given case, respondent establishment came under the provisions of the said Act only with effect from 01.04.2011 and before that the said establishment was not covered under the said Act. It is not in dispute the petitioner issued the notice on 26.12.2007 to the hospital and not to any particular department. ☆ The officials of the petitioner visited the establishment of the respondent for inspection of the records. ☆ However, respondent establishment has not provided the records. Since, the respondent did not provide the record. ☆ Therefore, petitioner filed complaint against the respondent before the Trial Court.
Legal Principles held –	☆ The Delhi HC relying on the decision held in <i>Srinivasa Rice Mills v ESI Corporation (SC)</i>. In this case, which is identical with present issue, the SC observed as under:- (a) The rice mills are situated within the Narsimhapuram area. The appointed day therefor was 1-8-2000. (b) The factories of Appellants were inspected prior to that date. Therefore, prior to that date, Appellants were not bound to comply with the provisions of the Act. They could appoint employees at their own sweet will. (c) But the period wherefor the provisions of the Act would be applicable is 12 months preceding the said date, viz., from 1-8-1999 to 31-7- 2000. (d) However, the compliance requirements of the statutes on the part of the employer would begin from the appointed day, viz., 1-8-2000. (e) The scheme of the Act does not suggest that all the employees would come within the purview of the said Act. Those employees who draw wages as is defined in Section 2(22) of the Act would be the employees who would be covered thereunder. CRUX: (f) As noticed that the inspection of the factories was carried out prior to the date of coming into force of the Act. Thus, such inspections could have been carried out only in terms of the provisions contained in Section 45 of the Act, which could mean that the Inspector would be appointed for the purpose of the Act. (g) He is authorized under the Act to enquire into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions has been complied with. (h) Therefore, it is evident that any action taken prior to or in furtherance of a report made on an inspection, prior to coming into force of the Act, would be ultra virus Section 45(2) of the Act. (i) Once the inspection is held to be illegal, Respondent could not have taken any statutory action for imposition of penalty. ☆ In the present case, Delhi HC observed the following: (a) It is admitted fact that respondent establishment came under the provisions of the said Act only with effect from 01.04.2011 and before that the said establishment was not covered under the said Act. (b) It is not in dispute the petitioner issued the notice on 26.12.2007 to the hospital and not to any particular department. (c) Therefore, <u>the respondent is not liable to be prosecuted under the provisions of the said Act.</u>

	(d) The petitioner itself is not clear whether the respondent hospital is maintaining equipment maintenance department or not and that the records sought to be produced by the official of the respondent pertained to such department only or with respect to entire hospital.
Decision	☆ Delhi HC decide the case in favour of the Respondent. ☆ After consideration of the aforesaid judicial pronouncement and facts, Delhi HC held that respondent was not covered under the said Act in the year 2007. Therefore, the respondent is not liable to be prosecuted under the provisions of the said Act.

57. NANDRAM v. GARWARE POLYSTER LTD [SC]

Hint The appellant was employed by the respondent initially as Boiler Attendant in the year 1983 in the Company in Aurangabad. In the 1987, he was promoted as Junior Supervisor and worked in the Aurangabad plant only. In the year 1995, he was again promoted as Senior Supervisor and continued in Aurangabad. However, by proceedings dated 21.10.2000, the appellant was transferred to Silvasa in Gujarat. By another order dated 20.12.2001 he was transferred from Silvasa to Pondicherry. While so, by proceeding dated 12.04.2005, appellant was terminated from service w.e.f. 15.04.2005 on account of closure of the establishment at Pondicherry. It is not in dispute that the registered office of the Company is in Aurangabad and the decision to close the establishment at Pondicherry was taken by the Company at Aurangabad. Aggrieved by the termination, appellant file complaint before the Labour Court at Aurangabad. Despite the objection taken by the respondent that the Labour Court lacked jurisdiction, the Court held in favour of the complainant. Respondent file appeal before Industrial Court, Industrial Court set aside the order Labour Court on the ground that Labour Court at Aurangabad have no jurisdiction.

Question: Workman raised dispute and filed complaint at Aurangabad, but Rejected on the ground of lack of jurisdiction is tenable in law.

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC held that the **decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad.** Therefore, the **Labour Court in Aurangabad within whose jurisdiction the Management is situated and where the Management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also have the jurisdiction.**
- ☆ **In the facts of this case, both the Labour Courts have the jurisdiction to deal with the matter.**

Fact of the Case	☆ The appellant was employed by the respondent initially as Boiler Attendant in the year 1983 in the Company in Aurangabad. ☆ In the 1987, he was promoted as Junior Supervisor and worked in the Aurangabad plant only. ☆ In the year 1995, he was again promoted as Senior Supervisor and continued in Aurangabad. ☆ However, by proceedings dated 21.10.2000, the appellant was transferred to Silvasa in Gujarat. By another order dated 20.12.2001 he was transferred from Silvasa to Pondicherry. ☆ While so, by proceeding dated 12.04.2005, appellant was terminated from service w.e.f. 15.04.2005 on account of closure of the establishment at Pondicherry. It is not in dispute that the registered office of the Company is in Aurangabad and the decision to close the establishment at Pondicherry was taken by the Company at Aurangabad. ☆ Aggrieved by the termination, appellant file complaint before the Labour Court at Aurangabad. ☆ Despite the objection taken by the respondent that the Labour Court lacked jurisdiction, the Court held in favour of the complainant. ☆ Aggrieved, the respondent-Company took up the matter before the Industrial Court at Aurangabad in revision. The Industrial Court at Aurangabad vide order dated
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	04.07.2009 set aside the order passed by the Labour Court and dismissed the complaint of the appellant holding that the Labour Court at Aurangabad did not have territorial jurisdiction to entertain the complaint of the appellant, since the termination took place at Pondicherry. ☆ The appellant file writ petition before the Bombay HC at Aurangabad against the order of Industrial Court. The HC by judgment dated 07.06.2011 affirmed the view taken by the Industrial Court and held that the situs of employment of the appellant being Pondicherry, the Labour Court at Aurangabad did not have territorial jurisdiction to go into the complaint filed by the appellant. ☆ Now, the appellant file appeal before the SC against the impugned order of the HC
Legal Principles held –	The SC consider the following facts before passing the order: (a) The appellant was employed by the Respondent Company in Aurangabad. (b) He was only transferred to Pondicherry, the decision to close down the unit at Pondicherry was taken by the Company at Aurangabad. (c) Consequent upon that decision only the appellant was terminated. (d) Therefore, it cannot be said that there is no cause of action at all in Aurangabad. The decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad. (e) We have no quarrel that Labour Court, Pondicherry is within its jurisdiction to consider the case of the appellant, since he has been terminated while he was working at Pondicherry. (f) However, it does not mean that Labour Court in Aurangabad within whose jurisdiction the Management is situated and where the Management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also does not have the jurisdiction. (g) In the facts of this case, both the Labour Courts have the jurisdiction to deal with the matter. Hence, the Labour Court at Aurangabad is well within its jurisdiction to consider the complaint filed by the appellant.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that the decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad. Therefore, the Labour Court in Aurangabad within whose jurisdiction the Management is situated and where the Management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also have the jurisdiction. ☆ In the facts of this case, both the Labour Courts have the jurisdiction to deal with the matter.

58. JAYA BISWAL & ORS v. BRANCH MANAGER, IFFCO TOKIO GENERAL INSURANCE COMPANY LTD & ANR [SC]

Hint: The elder son of appellant Nos. 1 and 2 worked as a truck driver with one Bikram Keshari Patnaik (Respondent No. 2). On 19.07.2011, **he met with an accident while on his way to deliver wheat bags in the truck from Berhampur, Orissa to Paralakhemundi, Andhra Pradesh. He sustained severe injuries on the back of his head and died on the spot. The appellants filed Employee's Compensation petition before the Commissioner, who allowed a compensation of Rs. 10,75,253/-.** The Insurance Company filed an appeal under Section 30 of the Employee Compensation Act before the Orissa HC **against the order of the Commissioner.** The learned single Judge allowed the appeal and set aside the award passed by the learned Commissioner and **reduced the compensation to Rs. 6,00,000/- and also waived the award of 50% penalty with interest. Whether the order of the HC is tenable in law in regard to reduction of compensation?**

Decision:

☆ The SC decide the case in favour of the Appellant.

- ★ The SC held that poor appellant who have lost their elder son have right to claim rightful and full compensation without any reduction that would serve the ends of justice.
- ★ The SC held that in the light of the **well-reasoned and elaborate order of award of compensation, the HC could NOT have reduced the compensation amount by more than half by merely mentioning that it is in the 'interest of justice'.**

Fact of the Case	★ The elder son of appellant Nos. 1 and 2 worked as a truck driver with one Bikram Keshari Patnaik (Respondent No. 2). On 19.07.2011, he met with an accident while on his way to deliver wheat bags in the truck from Berhampur, Orissa to Paralakhemundi, Andhra Pradesh. He sustained severe injuries on the back of his head and died on the spot. ★ The appellants filed Employee's Compensation petition before the Commissioner, who allowed a compensation of Rs. 10,75,253/-. ★ The Insurance Company filed an appeal under Section 30 of the Employee Compensation Act before the Orissa HC against the order of the Commissioner. ★ The learned single Judge allowed the appeal and set aside the award passed by the learned Commissioner and reduced the compensation to Rs. 6,00,000/- and also waived the award of 50% penalty with interest. ★ The appellants filed appeal before the SC against the impugned order passed by the HC.
Legal Principles held—	The SC emphasized the advantages of the Employee Compensation Act: 1. The Employee Compensation Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act as stated below: "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident." This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under: "..... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents. 2. An additional advantage of legislation of this type is that by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. 3. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. 4. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. 5. At the same time, a corresponding increase in the efficiency of the average workman may be expected." 6. Thus, the E.C. Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such. 7. In order to succeed, the employee must proved the following:

	(a) There was an accident, (b) The accident had a causal connection with the employment and (c) The accident must have been suffered in course of employment. The SC consider the following facts before passing the order: (a) SC relying the decision held in the case of Mackinnon Mackenzie (supra). (b) In the facts of the instant case, the deceased was on his way to deliver goods during the course of employment when he met with the accident. The act to get back onto the moving truck was just an attempt to regain control of the truck, which given the situation, any reasonable person would have tried to do so. (c) Thus, the accident fairly and squarely arose out of and in the course of his employment. (d) Section 3 of the E.C. Act does not create any kind of exception, which permits the employer to avoid his liability if there was negligence on part of the workman. The E.C. Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence. Therefore, we are disagreed with the contention of the respondent that the appellants are not entitled to any compensation because the deceased died as a result of his own negligence. (e) It is clear that deceased died in an accident, which arose in and during the course of employment.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that poor appellant who have lost their elder son have right to claim rightful and full compensation without any reduction that would serve the ends of justice. ★ The SC held that in the light of the well-reasoned and elaborate order of award of compensation, the HC could NOT have reduced the compensation amount by more than half by merely mentioning that it is in the 'interest of justice'. ★ The SC held that the respondent-Insurance Company is directed to deposit the amount within 6 weeks from today with the Employees Compensation Commissioner.

59. ESIC v. A.K. ABDUL SAMAD & ANR [SC]

Hint: In the present case, appellant initiate criminal proceedings under Section 85 of the Act for conviction and punishment of the respondents for failure to pay contributions required by the Act. Both the respondents faced trial before the Special Court for Economic Offences, Bangalore and **were found guilty and were inflicted with imprisonment till rising of the Court and fine of Rs.1000/-**. According to appellant, **the fine amount could not have been reduced and ought to have been Rs. 5000/- as per mandate of law.**

Question: Whether the quantum of the fine could be reduced under section 85 of the ESI Act. No

Decision:

- ★ SC decide the case in favour of the Appellant.
- ★ SC held that the amount of fine has to be Rs. 5,000 and the courts have no discretion to reduce the same once the offence has been established.
- ★ The respondents shall now be required to pay a fine of Rs. 5,000. If they have already paid the earlier imposed fine of Rs.1000/-, they shall pay the balance or otherwise the entire fine of Rs.5000/- within 6 weeks

Fact of the Case	★ In the present case, appellant initiate criminal proceedings under Section 85 of the Act for conviction and punishment of the respondents for failure to pay contributions required by the Act. ★ Both the respondents faced trial before the Special Court for Economic Offences, Bangalore and were found guilty and were inflicted with imprisonment till rising of the Court and fine of Rs.1000/-. ★ According to appellant, the fine amount could not have been reduced and ought to have been Rs. 5000/- as per mandate of law. ★ In the present case, the following questions arise before the SC:
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	(a) Whether the court has been given judicial discretion only to reduce the sentence of imprisonment for any term lesser than 6 months or (b) Whether it also has discretion to levy no fine or a fine of less than Rs. 5,000.
Legal Principles held –	☆ The SC observed the following before passing the order: (a) Section 85(i)(b) of ESI Act prescribes punishment for a particular offence as imprisonment which shall not be less than six months and the convict shall also be liable to fine of Rs. 5,000. (b) However, the proviso empowers the court that it may, “for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.” (c) The object of creating offence and penalty under the ESI Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. (d) Non-payment of contributions is an economic offence and therefore the Legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of Rs. 5,000 under Section 85(a) (i) (b) of the Act. (e) There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception where under the court is vested with discretion limited to imposition of imprisonment for a lesser term. (f) Conspicuously, no words are found in the proviso for imposing a lesser fine than that of Rs. 5,000. In such a situation, the intention of the Legislature is clear and brooks no interpretation.
Decision	☆ SC decide the case in favour of the Appellant. ☆ SC held that the amount of fine has to be Rs. 5,000 and the courts have no discretion to reduce the same once the offence has been established. ☆ The respondents shall now be required to pay a fine of Rs. 5,000. If they have already paid the earlier imposed fine of Rs.1000/-, they shall pay the balance or otherwise the entire fine of Rs.5000/- within 6 weeks.

60. ROYAL WESTERN INDIA TURF CLUB LTD v. E.S.I.C & ORS [SC]

Hint: The questions involved in the present case “whether casual workers engaged by race club” are covered under definition of employee as defined in Section 2(9) of the ESI Act, 1948.

Decision:

☆ The SC decide **the case in favour of the Respondent.**

☆ The SC held that **casual workers engaged by race club are covered under definition of employee as defined in Section 2(9) of the ESI Act, 1948.**

Fact of the Case	The questions involved in the present case “whether casual workers engaged by race club” are covered under definition of employee as defined in Section 2(9) of the ESI Act, 1948.
Legal Principles held –	The SC consider the following matter before passing the order: ☆ The definition of “employee” is very wide. A person who is employed for wages in the factory or establishment on any work of, or incidental or preliminary to or connected with the work is covered. The definition brings various types of employees within its ken. ☆ The Act is a welfare legislation and is required to be interpreted so as to ensure extension of benefits to the employees and not to deprive them of the same which are available under the Act. ☆ A bare reading of the provisions of Sections 2(22) and 2(23) dealing with wages and wage period makes it clear that it would cover the “casual employees” employed for a few days on a work of perennial nature and wages as defined in section 2(22) and wage period as defined in section 2(23) does not exclude the wages payable to casual workers. They cannot be deprived of the beneficial provisions of the Act.

	☆ This Court in <i>Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd</i>, AIR 1986 SC 1686 has held that Section 39(4) and Section 42(3) clearly envisage the case of casual employees.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that casual workers engaged by race club are covered under definition of employee as defined in Section 2(9) of the ESI Act, 1948.

61. TAMILNADU TERMINATED FULL TIME TEMPORARY LIC EMPLOYEES ASSOCIATION v. S.K. ROY, THE CHAIRMAN, LIC [SC]

Hint: LIC directed to pay back wages and compensation to all badly workmen whose services were terminated in 1988.

Decision:

☆ SC decide the case in favour of the Appellant .

☆ **SC held that keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits.**

Fact of the Case	☆ In the given case, SC held that that the Award passed by Central Government Industrial Tribunal (CGIT) is legal and valid and the same be restored and implemented by the LIC of India by absorbing the concerned workmen in the permanent posts. It was further held that the Corporation would be liable to pay all consequential benefits including monetary benefits taking into consideration the revised pay scale in the cases of those workmen who had attained the age of superannuation. ☆ Review petition filed against the said SC judgement.
Legal Principles held –	☆ The SC consider the following facts before which was submitted by the learned Attorney General: (a) As on 31.03.2015, LIC had 55,427 Class III employees and 5,190 Class IV employees. (b) If LIC is directed to consider the absorption of the workmen to the advertisement, then the number of Class III employees will increase by 11.14% and Class IV employees by 56.65%. (c) Accordingly, the same will affect the employee's ratio in addition to the increase in its financial burden and that the same will be contrary to the interests of the policyholders. (d) The estimation of the financial liability for implementing the order of this Court at approximately Rs. 7087 Crores, with the annual liability at around Rs. 728 Crores per year and that this will be a huge financial burden for LIC to bear. ☆ SC directed the learned counsel appearing on behalf of the review petitioner-LIC to submit a document containing the pay scales indicating the basic pay and other emoluments payable to the concerned workmen. The same were furnished with the periodic revisions in the years 1992, 1997, 2002, 2007 and 2012, without furnishing the other component figures which would be the gross salary of the different classes of workmen in the present dispute. ☆ These periodic revisions of pay of basic salary, along with other component figures comprising the gross salary including Dearness Allowance, House Rent Allowance etc. etc., as applicable, must be accounted for while computing the amount due to the workmen towards the back wages. ☆ The temporary and badli workers of LIC, who are entitled for regularisation as permanent workmen in terms of the impugned judgment and order passed by this Court, by applying the terms and conditions of the modified award passed by Justice Jamdar, are held to be entitled to full back wages as well. ☆ However, keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits.

	☆ The back wages must be calculated on the basis of the gross salary of the workmen, applicable as on the date as per the periodical revisions of pay scale as stated supra. ☆ The computation must be made from the date of entitlement of the workmen involved in these cases, i.e., their absorption, till the age of superannuation, if any concerned workman has attained the age of superannuation as per the regulations of the review petitioner-LIC, as applicable to the concerned workman.
Decision	☆ SC decide the case in favour of the Appellant . ☆ SC held that keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits. ☆ SC direct the review petitioner-LIC to comply with the said modification order within 8 weeks of the receipt of the copy of this order

62. PEPSU ROADWAYS TRANSPORT CORPORATION v. S.K.SHARMA & ORS [SC]

Hint: In the present case, employees are transferred from PEPSU roadways to PEPSU Corporation on account of the merger. The said employees/workmen retired after taking all retiral benefits in 1991. After the retirement of the respondents, **the Corporation framed PRTC Employees Pension/Gratuity and General Provident Fund Regulations, 1992.** Under these Regulations, **for the first time pension was introduced in the Corporation.** This is First Pension scheme revised in 1992.

Question: Retired workmen claimed benefits under the pension scheme as well claim to be government employee. Whether tenable in law?

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC held, on the basis of laws and facts discussed above, that
 - (a) The Respondents **had accepted to continue as employees of Corporation pursuant to order of merger/ transfer of PEPSU Roadways** with effect from 16.10.1956 and **on completing their service under the Corporation and reaching the age of retirement they were entitled to receive only the benefits of CPF and gratuity as admissible to them under then prevailing regulations of the Corporation.**
 - (b) So, as a result of the transfer of the undertaking, **the government employees became employees of the Corporation and ceased to be employees of the Government."**
 - (c) They are not entitled to get benefit of **the Corporation framed PRTC Employees Pension/Gratuity and General Provident Fund Regulations, 1992, which is implemented after the retirement.**

Fact of the Case	☆ The respondents who were the employees of PEPSU Roadways but they were transferred to PEPSU Road Transport Corporation (hereinafter referred to as the 'Corporation'), due to the take-over of PEPSU Roadways by the corporation on the prevailing terms and conditions applicable to them as employee of PEPSU Roadway till the approval of new terms and conditions by the Corporation. ☆ The respondents got promotions etc. and continued to serve the Corporation till they all retired between 1989 and 1991. ☆ After the retirement of the respondents, the Corporation framed PRTC Employees Pension/Gratuity and General Provident Fund Regulations, 1992. Under these Regulations, for the first time pension was introduced in the Corporation. ☆ Soon after the enforcement of Regulations of 1992, the respondents who had already received their retiral benefits, filed a writ petition claiming that they continued to be employees of the State in the department of PEPSU Roadways till PEPSU State was reorganized and from 01.11.1956, the date of reorganization they became employees of State of Punjab with right to pension as available to Government servants. ☆ The Single Judge allowed the writ petition on the premise that the respondents had simply been transferred from the parent department to serve in the Corporation and
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	therefore they continued to be Government servants because there was no order passed for their absorption in the Corporation. ☆ The Appellant file appeal before the SC against the order of the HC.
Judicial Judgment	D.R. Gurushantappa v. Abdul Khuddus Anwar & Ors (1996) 3 SCC 325: In this case, an issue arose in the context of election of the Mysore Legislative Assembly as to whether the respondent was holding office of profit under the Government. ☛ The respondent no. 1 of that case was initially a Government servant but subsequently the Government concern where he was working was taken over by a company registered under the Indian Companies Act, 1956. ☛ The shares of the company were fully owned by the Government but after the Government undertaking was taken over by the company. (a) The employees were no longer governed by the Mysore Civil Services Regulations, and (b) Their conditions of service came to be determined by the standing orders of the company. ☛ The first contention against respondent No. 1 was that since he was initially a Government servant, even after the concern was taken over by the company he would continue to be in the service of the Government. ☛ The Court rejected the contention of the Respondent No. 1 in the following words: (a) When the concern (i.e. business) was taken over by the Company from the Government there were no specific agreements terminating the Government service of Respondent 1, or bringing into existence a relationship of master and servant between the Company and Respondent 1. That circumstance, by itself, cannot lead to the conclusion that Respondent 1 continued to be in government service. (b) When the undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over. As per law, the Company has to be treated as an entity distinct and separate from the Government. (c) So, as a result of the transfer of the undertaking, the government employees became employees of the Company and ceased to be employees of the Government."
Question in issue	The main controversy in this case is whether the claim of the respondents, a group of 21 employees of PEPSU Roadways that in spite of transfer of that department to the Corporation they continue to be actually Government servants and therefore entitled to retiral benefits instead of CPF is acceptable or not.
Legal Principles held –	☆ The SC consider the following facts before passing the order: (a) The respondents contends that they cannot lose the status of a Government servant till they are absorbed in the Corporation after offering an option in favour of such absorption is entirely misconceived and inapplicable in the facts of the present case. (b) Hence, the provisions of the States Reorganization Act ceased to have any significance in the matter because the respondents ceased to be employees of SG of PEPSU prior to 01.11.1956. They accepted such merger and alteration of their service conditions without any protest. (c) Since 1957, under the Regulations of the Corporation they participated and contributed to the scheme of CPF and obtained the benefits of retirement from the Corporation between 1985 and 1991 without any protest. (d) The HC erred in relying upon law which is applicable when there is no merger of Government concern with the private concern but only individual employees are transferred on deputation or on Foreign Service to other organizations/services. The ordinary rules providing for asking of option or issuance of letters of absorption depend upon nature of stipulations which may get attracted to a case of deputation. There may be similar stipulations in case of merger by transfer.

	(e) But if there are no such stipulations like in the present case then the transferee concern like the Corporation has no obligation to ask for options and to issue letters of options to individual employees who become employees of the transferee organization simply by virtue of order and action of transfer of the whole concern leading to merger. (f) No doubt in case of any hardship, the affected employees have the option to protest and challenge either the merger itself or any adverse stipulation. However, if the employees choose to accept the transition of their service from one concern to another and acquiesce then after decades and especially after their retirement they cannot be permitted to turn back and challenge the entire developments after a gap of decades.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held, on the basis of laws and facts discussed above, that (d) The Respondents had accepted to continue as employees of Corporation pursuant to order of merger/ transfer of PEPSU Roadways with effect from 16.10.1956 and on completing their service under the Corporation and reaching the age of retirement they were entitled to receive only the benefits of CPF and gratuity as admissible to them under then prevailing regulations of the Corporation. (e) So, as a result of the transfer of the undertaking, the government employees became employees of the Corporation and ceased to be employees of the Government."

63. INDUSTRIAL PROMOTION & INVESTMENT CORPORATION OF ORISSA LTD v. NEW INDIA ASSURANCE CO. LTD & ANR [SC]

Hint: In the given, the Appellant exercising its power under Section 29 of the State Finance Corporation Act, 1951 took over the assets of M/s. Josna Casting Centre Orissa Private Limited, which had been insured with Respondent No. 1 for a sum of Rs. 46,00,000/- under the Miscellaneous Accident Policy, Rs. 60,40,000/- under the Fire Policy and Rs. 46,00,000/- under the Burglary and House Breaking Policy. **The seized assets were put to auction by the Appellant, and at this point of time, it was detected that some parts of the plant and machinery were missing from the factory premises.** A claim was lodged with Respondent No. 1 for an amount of Rs. 34,40,650/- under the Burglary and House Breaking Policy. **The claim of the Appellant was repudiated by Respondent No. 1 on the ground that the alleged loss did not come within the purview of the insurance policy.** The Appellant filed compensation application under Section 12-B read with Section 36-A of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, which was rejected by the MRTP Commission.

Question: Appellant file application for claim against theft and burglary and No forcible house breaking, whether compensation is payable?

Decision:

★ The SC decide the case in favour of the Respondent.

★ The SC upheld the decision MRTP Commission no claim is granted to the Appellant against the theft and burglary.

Fact of the Case	★ The Appellant exercising its power under Section 29 of the State Finance Corporation Act, 1951 took over the assets of M/s. Josna Casting Centre Orissa Private Limited, which had been insured with Respondent No. 1 for a sum of Rs. 46,00,000/- under the Miscellaneous Accident Policy, Rs. 60,40,000/- under the Fire Policy and Rs. 46,00,000/- under the Burglary and House Breaking Policy. ★ The seized assets were put to auction by the Appellant, and at this point of time, it was detected that some parts of the plant and machinery were missing from the factory premises. ★ A claim was lodged with Respondent No. 1 for an amount of Rs. 34,40,650/- under the Burglary and House Breaking Policy.
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	☆ The claim of the Appellant was repudiated by Respondent No. 1 on the ground that the alleged loss did not come within the purview of the insurance policy. ☆ The Appellant filed compensation application under Section 12-B read with Section 36-A of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, which was rejected by the MRTP Commission. ☆ The Appellant filed appeal against the impugned order of MRTP Commission.
Judicial Judgement	General Assurance Society Ltd. v. Chandmull Jain and Anr., reported in [1966] (a) In this case, SC held that there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberima fides, i.e., good faith on the part of the insured and the contract is likely to be construed contra proferentes, i.e., against the company in case of ambiguity or doubt. (b) It was further held in the said judgment that the duty of the Court is to interpret the words in which the contract is expressed by the parties and it is not for the Court to make a new contract, however reasonable.
Legal Principles held—	The SC consider the following facts before passing the order: (a) From the facts of the present case, it is clear that the Appellant has made out a case of theft without a forcible entry. (b) The Appellant contends that forcible entry is not required for a claim to be made under the policy. (c) Following the well- accepted principle that a contract of insurance which is like any other commercial contract should be interpreted strictly, we are of the opinion that the policy covers loss or damage by burglary or house breaking which have been explained as theft following an actual, forcible and violent entry from the premises. (d) A plain reading of the policy would show that a forcible entry should precede the theft, and unless they are proved, the claim cannot be accepted. (e) It is well settled law that there is no difference between a contract of insurance and any other contract, and that it should be construed strictly without adding or deleting anything from the terms thereof. (f) On applying the said principle, we have no doubt that a forcible entry is required for a claim to be allowed under the policy for burglary/house breaking.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC upheld the decision MRTP Commission no claim is granted to the Appellant against the theft and burglary.

64. ELECTROTHEM (INDIA) LTD v. PATEL VIPULKUMAR RAMJIBHAI & ORS [SC]

Hint: The question raised before the SC in this appeal that **whether the Environmental Clearance dated 27.1.2010 can be termed as illegal in the absence of public consultation or public hearing as mandatorily provided by Notifications dated 2006.**

Decision:

- ☆ The SC decide the case in favour of the Respondents.
- ☆ The SC held that after considering aforesaid facts and principles as laid down in Lafarge (supra), **public consultation/public hearing was considered and found to be mandatory requirement for Environmental Clearance process.**

Fact of the Case	☆ On a PIL, the HC set aside the Environmental Clearance dated 27.01.2010 and restrained the petitioner from operating the entire plant and also ordered to close it down. The operations could be continued only after fresh environmental clearance was accorded in its favour by the Ministry of Environment and Forests and Union of India. In the given case, environment clearance was accorded to the petitioner without conducting public hearing. ☆ Petitioner filed appeal before the SC against the order of the HC.
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	☆ The question raised before the SC in this appeal that whether the Environmental Clearance dated 27.1.2010 can be termed as illegal in the absence of public consultation or public hearing as mandatorily provided by Notifications dated 2006.
Legal Principles held—	The SC consider the following facts before passing the following order: 1. In the affidavit filed on behalf of CPCB it was stated that pursuant to the order dated 22.04.2014 passed by this Court, a joint inspection was carried out as directed and that the industry of the Appellant had complied with most of the recommendations, though there were still certain shortcomings. 2. The facts on record are clear that while granting Environmental Clearance on 20.02.2008, public consultation/public hearing was undertaken on 12.06.2007. As on that date, the status of the project was that the capacity of Pig Iron Plant was to be 350 TPD, Power Plant to be 24 MW, the total cost of the project was Rs. 90.00 Crores and the total Water requirement was 650 MT/Day. 3. The HC was absolutely right that after expansion the capacity of the plant was to increase three-fold. 4. The Environmental Clearance dated 27.01.2010 shows the following facts: (a) The tabular chart given in Environmental Clearance dated 27.01.2010 itself shows the tremendous increase in the capacity. (b) Consequently, the pollution load would naturally be of greater order than the one which was contemplated when the earlier public consultation/ public hearing was undertaken on 12.08.2007. (c) Further, the water requirement had also risen from 650 MT/Day to 2165 MT/Day. 5. The increase in pollution load and water requirement were certainly matters where public in general and those living in the vicinity in particular had and continue to have a stake. Public consultation/public hearing is one of the important stages while considering the matter for grant of Environmental Clearance. 6. The minutes of the meetings held on 9-11 February 2009 show that the Appellant request for exemption from the requirement of public hearing was accepted by the Committee. The observations of the Committee suggest that there would be no additional land requirement, ground water drawl and certain other features. However, the water requirement, which is a community resource, was definitely going to be of greater order in addition to the fact that the expansion of the project would have entailed additional pollution load. 7. The SC relying on the decision held in the case of Lafarge Umiam Mining Private Limited - T.N. Godavarman Thirumulpad Vs. Union of India and Others 2011, wherein it was held that public consultation/public hearing was considered and found to be mandatory requirement for Environmental Clearance process. 8. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the HC. (a) If the public consultation/ public hearing results in a negative mandate against the expansion of the project, the Authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by Environmental Clearance dated 20.02.2008.

	(b) If public consultation/public hearing reflects in favour of the expansion of the project, Environmental Clearance dated 27.01.2010 would hold good and be fully operative.
Decision	☆ The SC decide the case in favour of the Respondents. ☆ The SC held that after considering aforesaid facts and principles as laid down in Lafarge (supra), public consultation/public hearing was considered and found to be mandatory requirement for Environmental Clearance process. ☆ In order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre- decisional to post-decisional. The public consultation/public hearing shall be organized by the concerned authorities in 3 months from today.

65. GEN SECRETARY, COAL WASHERIES WORKERS UNION, DHANBAD v. EMPLOYERS IN RELATION TO MANAGEMENT OF DUGDA WASHERY OF M/s. BCCL [SC]

Hint: The appellant raised an industrial dispute which was referred to the Central Government Industrial Tribunal (CGIT) for adjudication. The Industrial Tribunal vide award dated 17th June 1997, answered the reference in favour of the appellant and directed the Management to reinstate and regularize the concerned 35 workmen w.e.f. 1st July 1990, with payment of 30% full back wages. The Respondent filed appeal before HC against the order of CGIT, HC modified the award by refusing the reinstatement and allowing Rs. 50,000/- compensation in addition to whatever has been paid to the workmen.

Question: Industrial tribunal awards both reinstatement and back wages. But, HC allows lump sum compensation and rejects reinstatement. Whether the action of the HC is tenable in law.

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC held that interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified at Rs.1,50,000 to each workman.

Fact of the Case	☆ The appellant raised an industrial dispute which was referred to the Central Government Industrial Tribunal (CGIT) for adjudication. ☆ The Industrial Tribunal vide award dated 17th June 1997, answered the reference in favour of the appellant and directed the Management to reinstate and regularize the concerned 35 workmen w.e.f. 1st July 1990, with payment of 30% full back wages. ☆ The Respondent filed appeal before HC against the order of CGIT, HC modified the award by refusing the reinstatement and allowing Rs. 50,000/- compensation in addition to whatever has been paid to the workmen. ☆ Appellant file appeal before the SC against the order HC.
Legal Principles held –	The SC consider the following facts before passing the following order: 1. It is not in dispute that the Management has paid wages to the workmen in terms of the order passed on an application under Section 17(B) of the Industrial Disputes Act, 1947 during the pendency of proceedings before the HC. 2. The question arise before the HC “whether an amount of Rs. 50,000/- determined by the Division Bench of the HC to be paid to the workmen in addition to whatever amount has been paid to them under Section 17(B) of the Industrial Disputes Act, 1947” is adequate. 3. Considering the arguments of both sides, in our opinion, the Division Bench was right in observing that an order of reinstatement must be eschewed (i.e. deny), being inequitable. However, the workmen must be compensated in lieu of reinstatement. 4. The SC relying on the decision held in the cases viz., Ruby General Insurance Co. Ltd. v. P.P. Chopra (1969), Delhi International Airport (P) Ltd. v. Union of India (2011), and held that in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified at Rs.1,50,000 to each workman.

	5. For the workmen have already received wages from October 2004 to January 2012 in terms of the order under Section 17(B) of the Industrial Disputes Act, 1947 without any work assigned to them. The respondent paid minimum wages to the concerned workmen during the relevant period as the workmen were not able to produce any document in support of their last drawn wages. 6. This lump sum compensation amount of Rs.1,50,000/- to each workmen would be in full and final settlement.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified at Rs.1,50,000 to each workman. ★ The SC held that the respondent shall deposit the amount payable in terms of this order to the workmen before the CGIT within 3 months from today. If default in compliance of the said direction, the respondent shall be liable to pay interest thereon at the rate of 10% p.a. from today till the amount is deposited or paid to the concerned workmen, whichever is earlier. The CGIT shall cause to disburse the amount to the concerned workmen subject to verification.

66. DELHI TRANSPORT CORPORATION v. RAJENDER KUMAR [DEL]

Hint: Whether dismissal of workman on the ground of unauthorised absenteeism is tenable in law? Yes.

Decision:

- ★ The Delhi HC decide the case in favour of the Appellant.
- ★ The Delhi HC held that the aforesaid facts sufficiently **reveals that the conduct of the employee is nothing but irresponsible and can hardly be justified and in view of the Standing Orders, unauthorized leave can be treated as misconduct.**
- ★ Therefore, Delhi HC held that **the workman was dismissed from services on the ground of absents without authorised leave is justified and tenable in law.**

Fact of the Case	★ The respondent-Workman was appointed as a sweeper/cleaner with the appellant-Corporation. A charge sheet was issued to the respondent for availing leave without pay for 118 days between the period November 1987 to October 1988. ★ The charge sheet stated that the aforesaid act of the respondent amounted to misconduct within the meaning of para 4(ii) and 19(h) of the Standing Orders governing the conduct of DTC employees. ★ The charge sheet also stated that the respondent's past record would also be taken into account at the time of passing of the order. ★ The past record of the respondent showed that he was punished with stoppage of one increment with cumulative effect on three occasions for availing excessive leave. ★ After holding disciplinary proceedings, the workman was dismissed from services on the ground of absents without authorised leave. ★ The respondent raised an industrial dispute. ★ The Labour Court passed an Award in favour of the respondent. ★ The appellant challenged the said Award before the Delhi HC.
Legal Principles held—	★ The Delhi HC relying on the judgement held in DTC v. Sardar Singh (2004): ☞ The SC held that when an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. ☞ Para 19(h) of the Standing Orders relates to habitual negligence of duties and lack of interest in the Authority's work.

	☛ When an employee absents himself from duty without sanctioned leave, the Authority can come to a conclusion about the employee being habitually negligent in duties and has exhibited lack of interest in the employer's work, on the basis of the record. ☛ Conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorized. ☛ It also held that an order passed treating absence as leave without pay after passing an order of termination is only for the purpose of maintaining correct record of service. ★ The Delhi HC consider the following facts before passing the final order: (a) The past conduct of the respondent reveals absence for a very long duration of 143 days (1986), 103 days (1987) and three adverse entries are about availing leave without pay. (b) The charge in the case in hand is absence without obtaining leave in advance. (c) The plea of the respondent was the leave he had taken was for his as well as his children's illness. Against 118 days, medical certificates for 41 days was submitted, still 77 days of leave was unaccounted for. It is not the case of the respondent that the leave for those days was taken in advance. (d) This sufficiently reveals that the conduct of the employee is nothing but irresponsible and can hardly be justified and in view of the Standing Orders, unauthorized leave can be treated as misconduct. (e) On a perusal of para 4 of the Standing Orders, it is clear, that it shows the seriousness attached to habitual absence. Clause (i) shows, there is a requirement for prior permission. Non-observance of clause (i) renders the absence unauthorized. (f) The circumstances does suggest that the respondent was guilty of the misconduct under para 4 and 19 of the Standing Orders and the case in hand is squarely covered by the law laid down by the SC in the case of Sardar Singh (supra). (g) Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. (h) Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials.
Decision	★ The Delhi HC decide the case in favour of the Appellant. ★ The Delhi HC held that the aforesaid facts sufficiently reveals that the conduct of the employee is nothing but irresponsible and can hardly be justified and in view of the Standing Orders, unauthorized leave can be treated as misconduct. ★ Therefore, Delhi HC held that the workman was dismissed from services on the ground of absents without authorised leave is justified and tenable in law.

67. M/S SILVER TOUCH ENTERPRISES v. RADHA SHARMA & ANR [DEL]

Hint: The appellant is the employer, **who has been directed to pay compensation of Rs. 6,67,984/- with interest in proceedings** under the Employee's Compensation Act, 1923 while **holding that deceased had died during the course of employment**. The Appellant contends that 3 months prior to her death, Smt. Laxmi Lachho had resigned and on the day of incident, **she had come to appellant's premises to visit her friend and she had died natural death**. The respondents claimants contends that due to the work pressure, the **deceased was under tremendous pressure and because of the excessive stress and strain of her employment, she had died at her work place**. Appellant **challenge the impugned order by filing appeal before the HC**.

Decision:

- ★ The Delhi HC decide the case in favour of the Appellant.

- ☆ The **Delhi HC set aside the impugned order** and direct the Commissioner, under the Employee's Compensation Act to **permit the parties to lead evidence on the issue of resignation** and thereafter **return the finding about existence of relationship of employer-employee on the date of incident.**

Fact of the Case	☆ The appellant is the employer, who has been directed to pay compensation of Rs. 6,67,984/- with interest in proceedings under the Employee's Compensation Act, 1923 while holding that deceased had died during the course of employment. ☆ The Appellant contends that 3 months prior to her death, Smt. Laxmi Lachho had resigned and on the day of incident, she had come to appellant's premises to visit her friend and she had died natural death. ☆ The respondents claimants contends that due to the work pressure, the deceased was under tremendous pressure and because of the excessive stress and strain of her employment, she had died at her work place. ☆ Appellant challenge the impugned order by filing appeal before the HC.
Legal Principles held –	☆ The Delhi HC consider the following facts before passing the final order: (a) On perusal of impugned order, the plea of resignation has not been dealt at all in the impugned order. (b) In view of mandate of Section 25A of the Employee's Compensation Act, 1923, the Commissioner shall make all endeavours to decide the claim petition within the time stipulated in the aforesaid provision. (c) Since, it is the case of appellant that deceased had come to the premises of the appellant to meet her friend. Therefore, it is necessary ingredient of 'accident taking place during the course of employment' has to be considered by the trial court in right perspective, after the evidence is led by the parties.
Decision	☆ The Delhi HC decide the case in favour of the Appellant. ☆ The Delhi HC set aside the impugned order and direct the Commissioner, under the Employee's Compensation Act to permit the parties to lead evidence on the issue of resignation and thereafter return the finding about existence of relationship of employer-employee on the date of incident.

68. JORSINGH GOVIND VANJARI v. DIVISIONAL CONTROLLER MAHARASHTRA STATE ROAD TRANSPORT CORPORATION [SC]

Hint: The appellant was as an employee of the Respondent. Respondent terminate the appellant from service (i.e. Respondent passed dismissal order). Appellant file application before the Labour Court against the dismissal order. The Labour Court set aside the dismissal order dated 26.08.2002. However, **noticing that the appellant had already crossed the date of superannuation, viz., 31.05.2005, it was ordered that from the date of termination to the date of superannuation, the appellant would be entitled to all service benefits except back wages which were limited to 50% in lieu of reinstatement.** The respondent challenged the labour court award before the Bombay HC. Bombay HC modified the award by granting **only a one-time compensation of an amount equivalent to 50 % of the back wages as awarded by the Labour Court.**

Question arise:

Labour court **awarded all service benefits** and 50% of back wages in lieu of reinstatement and HC modified the award by allowing **only 50% of the back wages.** **Whether the action of HC is tenable? NO**

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC held that the award of the Labour Court **is restored.**
- ☆ Consequently, **the appellant shall be entitled to gratuity in respect of his continuous service from his original appointment till the date of his superannuation.**

Fact of the Case	☆ The appellant was as an employee of the Respondent. Respondent terminate the appellant from service (i.e. Respondent passed dismissal order). ☆ Appellant file application before the Labour Court against the dismissal order.
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	☆ The Labour Court set aside the dismissal order dated 26.08.2002. However, noticing that the appellant had already crossed the date of superannuation, viz., 31.05.2005, it was ordered that from the date of termination to the date of superannuation, the appellant would be entitled to all service benefits except back wages which were limited to 50% in lieu of reinstatement. ☆ The respondent challenged the labour court award before the Bombay HC. ☆ Bombay HC modified the award by granting only a one-time compensation of an amount equivalent to 50 % of the back wages as awarded by the Labour Court. ☆ The Appellant file appeal before the SC against the impugned order of the HC.
Legal Principles held –	The SC consider the following facts before passing the final order: (a) On the basis of the facts come before us, it is clear that the HC has gone wrong in holding that the Labour Court did not follow the procedure. (b) It is seen from the award that the management had not sought for an opportunity for leading evidence and despite granting an opportunity, no evidence was adduced after the Labour Court held that the findings of the inquiry officer were perverse. (c) Therefore, the Labour Court cannot be faulted for answering the Reference in favour of the appellant. (d) On the available materials on record, the Labour Court found that the termination was unjustified on the basis of a perverse finding entered by the inquiry officer. There was no attempt on the part of the management before the Labour Court to establish otherwise. (e) It appears that the HC itself has granted compensation since the Court felt that the termination was unjustified and since reinstatement was not possible on account of superannuation. In case, the HC was of the view that termination was justified, it could not have ordered for payment of any compensation. (f) In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that the award of the Labour Court is restored. ☆ Consequently, the appellant shall be entitled to gratuity in respect of his continuous service from his original appointment till the date of his superannuation.

69. Lanco Anpara Power Ltd v. State of Uttar Pradesh & Ors [SC]

Hint: Question arises whether Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Buildings and Other Construction Workers Welfare Cess Act, 1996 read with Factories Act, 1948, the provisions of BOCW Act is applicable on the construction worker engaged in construction of factory building?

Decision:

- ☆ The SC decide the case in favour of the Respondent.
- ☆ The SC held that the Factories Act on the one hand and BOCW Act/ Welfare Cess Act on the other hand are welfare legislations. If we accept the contention of the appellants, **the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of BOCW Act/Welfare Cess Act.** That could not have been the intention of the Legislature. BOCW Act and Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers.
- ☆ Accordingly, SC further held that provisions of BOCW Act are applicable to the Appellant.

Fact of the Case	APPELLANT RECEIVED SHOW CAUSE NOTICE:
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	Appellants received show cause notices issued by the concerned authorities under the provisions of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'BOCW Act') and Buildings And Other Construction Workers Welfare Cess Act, 1996 (hereinafter referred to as 'Welfare Cess Act'). <u>APPELLANT NOT COMMENCED MANUFACTURING OPERATION:</u> It may be mentioned that at the relevant time NO manufacturing operation had commenced by the appellants. In fact, all these appellants were in the process of construction of civil works/factory buildings etc. wherein they had planned to set up their factories. <u>DISPUTE RAISED:</u> ★ As the process of construction of civil works was undertaken by the appellants wherein construction workers were engaged, the respondent authorities took the view that the provisions of the aforesaid Acts which were meant for construction workers became applicable and the appellants were supposed to pay the cess for the welfare of the said workers engaged in the construction work. <u>CONTENTION OF APPELLANT:</u> <u>The appellants had submitted that Section 2(d) of the BOCW Act which defines 'building or other construction work' specifically states that it does not include any building or construction work to which the provision of the Factories Act, 1948 or the Mines Act, 1952 apply. Since the appellants stood registered under the Factories Act, they were not covered by the definition of building or other construction work as contained in Section 2(d) of the Act and, therefore, said Act was not applicable to them by virtue of Section 1(4) thereof.</u> <u>APPELLANT FILE WRIT PETITION BEFORE THE HC:</u> The appellant had challenged those notices by filing writ petitions in the HCs on the ground that the provisions of BOCW Act or Welfare Cess Act were NOT applicable to them because of the reason that they were registered under the Factories Act, 1948. <u>HCS DENIED TO ACCEPT THE CONTENTION OF THE APPELLANT:</u> All the HCs denied the aforesaid plea of the appellants on the ground that the appellants would not be covered by the definition of factory defined under Section 2(m) of the Factories Act in the absence of any operations/ manufacturing process. Therefore, mere obtaining a licence under Section 6 of the Factories Act would not suffice and rescue them from their liability to pay cess under the Welfare Cess Act. <u>APPELLANT FILE APPEAL BEFORE THE SC:</u> Appeal filed by the appellants before the SC challenging the orders passed by different HCs viz. Allahabad HC, Orissa HC, Madhya Pradesh HC and Karnataka HC. However, these HCs are unanimous in their approach and have reached the same conclusion.
Legal Principles held—	The SC consider the following facts before passing the order: 1. The central issue is the meaning that is to be assigned to the language of Section 2(d) of the Act, particularly that part which is exclusionary in nature, i.e. which excludes such building and construction work to which the provisions of Factories Act apply. (a) Keeping in view the objective of the respective Acts, we now deal with the scope and ambit of Section 2(d) of BOCW Act. As noticed above, one of the submissions of the appellants is that literal interpretation needs to be given to the said provision as it categorically excludes those building or construction work to which Factories Act apply.

(b) It is argued that as the benefit under the Factories Act are already given to the construction workers who are involved in the construction work, there is no need for covering the construction workers who are engaged in building or construction work of the appellants under BOCW Act or Welfare Cess Act.

2. On the conjoint reading of the provisions of Section 2(m) "factory", section 2(k) "manufacturing process" & Section 2(l) "worker", it becomes clear that

(a) "factory" is that establishment where manufacturing process is carried on with or without the aid of power. Thus, carrying on this manufacturing process or manufacturing activity is a prerequisite.

(b) It is equally pertinent to note that it covers only those workers who are engaged in the said manufacturing process. Insofar as these appellants are concerned, construction of building is not their business activity or manufacturing process. In fact, the building is being constructed for carrying out the particular manufacturing process such as generation, transmission and distribution of power. Obviously, the workers who are engaged in construction of the building also do not fall within the definition of 'worker' under the Factories Act.

On these two aspects there is no cleavage (i.e. difference) and both parties are at ad idem. What follows is that these construction workers are not covered by the provisions of the Factories Act.

3. Having regard to the above, if the contention of the appellants is accepted, the construction workers engaged in the construction of building undertaken by the appellants which is to be used ultimately as factory, would stand excluded from the provisions of BOCW Act and Welfare Cess Act as well. Could this be the intention while providing the definition of 'building and other construction work' in Section 2(d) of BOCW Act?

4. Section 2(d) of the BOCW Act dealing with the building or construction work is in three parts.

(a) In the first part, different activities are mentioned which are to be covered by the said expression, namely, construction, alterations, repairs, maintenance or demolition.

(b) Second part of the definition is aimed at those buildings or works in relation to which the aforesaid activities are carried out.

(c) The third part of the definition contains exclusion clause by stipulating that it does not include 'any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, applies'.

Thus, first part of the definition contains the nature of activity; second part contains the subject matter in relation to which the activity is carried out and third part excludes those building or other construction work to which the provisions of Factories Act or Mines Act apply.

5. It is not in dispute that construction of the projects of the appellants is covered by the definition of "building or other construction work" as it satisfies first two elements of the definition pointed out above. In order to see whether exclusion clause applies, we need to interpret the words 'but does not include any building or other construction work to which the provisions of the Factories Act apply'.

6. The question is as to whether the provisions of the Factories Act apply to the construction of building/project of the appellants. We are of the firm opinion that they do not apply. The provisions of the Factories Act would "apply" only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project.

Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that the Factories Act on the one hand and BOCW Act/ Welfare Cess Act on the other hand are welfare legislations. If we accept the contention of the appellants, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of BOCW Act/Welfare Cess Act. That could not have been the intention of the Legislature. BOCW Act and Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers. ☆ Accordingly, SC further held that provisions of BOCW Act are applicable to the Appellant.
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70. THE MANAGEMENT OF STATE BANK OF INDIA v. SMITA SHARAD DESHMUKH & ANR [SC]

Hint: In the present case, employee furnishing a forged certificate as to higher qualification and on this ground, drawn additional emoluments on the basis of the forged certificate. Later on, Management after conducting disciplinary proceedings dismissed the employee from the service. Whether the action of the Management is tenable in law?

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ The SC **held that is an admitted position that the certificate produced by the employee is a forged one. Therefore, there was no requirement on the part of the Management to establish whether she had known, at the time of submission of the document, that it was a forged one.**
- ☆ Therefore, SC further upheld action of the **Disciplinary Authority, based on the finding in a domestic enquiry that the certificate was a forged one, dismissed her from service on 01.08.2003.**

Fact of the Case	☆ While working with the Management, the employee submitted a certificate purportedly issued by the Indian Institute of Bankers claiming that she had passed the CAIIB Part-II Examination, and on that basis, started drawing additional monetary benefits. ☆ The Disciplinary Authority, based on the finding in a domestic enquiry that the certificate was a forged one, dismissed her from service on 01.08.2003. ☆ The punishment was upheld by the Appellate Authority vide order dated 10.06.2006. The Industrial Tribunal-cum-Labour Court declined to grant any relief. ☆ However, Respondent employee file appeal before the HC against the order of Industrial Court. Later on, the HC reversed the order passed by the Industrial Tribunal-cum- Labour Court and ordered reinstatement with 50 % back wages. ☆ The Appellant filed appeal before the SC against the impugned order of the HC.
Legal Principles held –	The SC consider the following facts before passing the order: (a) We find it difficult to appreciate the strange stand taken by the HC. The Labour Court had clearly analysed the entire evidence and had come to the conclusion that the employee was fully aware of the forgery. The Tribunal took note of the fact that she had produced a copy of the postal receipt of dispatching the certificate from the Institute of Bankers in her evidence but failed to explain the source of the postal receipt. (b) The evidence led by the employee as rightly appreciated by the Industrial Tribunal, would clearly show that she had the knowledge that the document she produced was a forged one. Therefore, there was no requirement on the part of the Management to establish whether she had known, at the time of submission of the document, that it was a forged one. (c) It is an admitted position that the certificate produced by the employee is a forged one.

Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that is an admitted position that the certificate produced by the employee is a forged one. Therefore, there was no requirement on the part of the Management to establish whether she had known, at the time of submission of the document, that it was a forged one. ☆ Therefore, SC further upheld action of the Disciplinary Authority, based on the finding in a domestic enquiry that the certificate was a forged one, dismissed her from service on 01.08.2003.
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71. ALL ESCORTS EMPLOYEES UNION v. THE STATE OF HARYANA [SC]

Hint: It is a registered Trade Union which was representing the employees of Escorts Group of Industries and is duly recognised by the employers as well. Some of the Establishments of Escorts Group were Escorts Ltd., Escorts Yamaha Ltd., Escorts JCB Ltd., Escorts Class Ltd. and Escorts Hospital. It is an undisputed fact that the workmen from all these industries were members of the appellant-Union. As far as Escorts Yamaha Ltd. is concerned, it was a joint venture of Escorts Management and Yamaha Motor Company, Japan. In the year 2001, this company was taken over by Yamaha Motor Company, Japan and its name was changed to Yamaha Motor India Private Limited (hereinafter referred to as the 'Yamaha'). After this separation, the workmen working in Yamaha ceased to be the members of the appellant-Union, in view of Clause 4 of its Constitution which spelled out who could be the members of the Union. With an intention to take them within its fold again, the appellant-Union amended Clause 4 of its Constitution. This amendment was sent to the Registrar, Trade Union, Haryana for its record and approval. The Registrar, Trade Union did not approve the amendment.

Question: Whether amendment in the constitution of the Trade Union is permitted in order to include the worker of other establishment?

Decision:

- ☆ The SC decide the case in favour of the Respondent.
- ☆ The SC held that Appellant union is not allowed to amend the clause 4 of its constitution for the purpose of broadening its scope by opening membership even to those who are not the employees of the establishment in respect of which the said Union has been formed.

Fact of the Case	☆ The appellant-Union was formed way back in the year 1968. ☆ It is a registered Trade Union which was representing the employees of Escorts Group of Industries and is duly recognised by the employers as well. ☆ Some of the Establishments of Escorts Group were Escorts Ltd., Escorts Yamaha Ltd., Escorts JCB Ltd., Escorts Class Ltd. and Escorts Hospital. ☆ It is an undisputed fact that the workmen from all these industries were members of the appellant-Union. ☆ As far as Escorts Yamaha Ltd. is concerned, it was a joint venture of Escorts Management and Yamaha Motor Company, Japan. ☆ In the year 2001, this company was taken over by Yamaha Motor Company, Japan and its name was changed to Yamaha Motor India Private Limited (hereinafter referred to as the 'Yamaha'). After this separation, the workmen working in Yamaha ceased to be the members of the appellant-Union, in view of Clause 4 of its Constitution which spelled out who could be the members of the Union. ☆ With an intention to take them within its fold again, the appellant-Union amended Clause 4 of its Constitution. This amendment was sent to the Registrar, Trade Union, Haryana for its record and approval. The Registrar, Trade Union did not approve the amendment. ☆ The Appellant union challenging the decision of the Registrar via writ petition before the Punjab & Haryana HC. ☆ The P & H HC dismissed the appeal and upheld the decision of the Registrar.
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	☆ The Appellant Union filed appeal before the SC against the impugned order of the HC.
Legal Principles held –	The SC consider the following facts before passing the order: (a) As per Clause 4 as originally stood, only those workmen who were employed in Escorts Group of Industries could become members of the appellant-Union. This Clause also made it clear that the membership of a workman who ceases to be employee of Escorts Group shall automatically be terminated. Thus, it was clear that the appellant-Union wanted only those workmen to be its members who are the employees of the Establishment in question, namely, the Escorts Group. (b) After the hiving off (i.e. closing off) motorcycle manufacturing unit from the Escorts Group and take over thereof by Yamaha, this unit has no common interest with the workers of the Escorts Group. (c) This becomes clear as the workers of the two plants of the said motorcycle unit were taken over by Yamaha. Thereafter, these workers have become the workers of Yamaha. Thus, by virtue of original/unamended Clause 4, they no longer remain members of the appellant-Union. (d) From the definition of Trade Union contained in Section 2(h) of the Act, it becomes apparent that such a Union is formed primarily for the purpose of regulating the relations between workmen and employers (which is the instant case) or it can be between workmen and workmen or between employers and employers. It includes any federation of two or more Trade Unions also though we are not concerned with it. (e) When we keep in mind the aforesaid objective of formation of a Trade Union, namely, regulating the relations between the workmen and its employer, normally such a Union of workmen would be of those workmen who work in a particular Establishment. This gets further strengthened when we peruse the definition of Trade Dispute contained in Section 2(g) of the Act. The Trade Unions of workmen while regulating their relations between the employers would normally have negotiations representing its workmen before the employer and in case those negotiations do not result in amicable settlement or resolution of disputes, such Trade Unions would raise trade dispute with its employer. (f) Section 6 of the Act mandates a Trade Union to have its Constitution/ Bye-Laws/Rules by incorporation of the provisions contained therein i.e. under Section 6. Clause (e) deals with admission of ordinary members and specifically provides that ordinary members should be those persons who are actually engaged or employed in an industry with which the Trade Union is connected. This provision implicitly confines the membership to those who are the workmen of the industry where they are employed. (g) The moot (i.e. debatable) question here is as to <u>whether such a Trade Union which primarily has the membership of the worker of particular Establishment or industry can broaden its scope by opening the membership even to those who are not the employees of the Establishment in respect of which the said Trade Union has been formed.</u> (h) At this juncture, it becomes pertinent to note that the workers of Yamaha have formed their own separate Union, known as Yamaha Motor Employees Union. This Union is duly registered by the Registrar, Trade Union, Kanpur (Uttar Pradesh) having Registration No. 7179. It is this Union which now stands recognised by the Management of Yamaha. In these circumstances, the very purpose in amending Clause 4 in the manner it seeks to do stands frustrated.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that Appellant union is not allowed to amend the clause 4 of its constitution for the purpose of broadening its scope by opening membership even to those who are not the employees of the establishment in respect of which the said Union has been formed.

72. EMPLOYEES STATE INSURANCE CORPORATION v. MANGALAM PUBLICATIONS (INDIA) PVT. LTD [SC]

Hint: The premises of the respondent-company was inspected by the Insurance Inspector of the appellant-Corporation on 13.06.2000, wherein **it was found that the respondent had not paid any contribution on the interim wages paid by it to its employees during the period from 01.04.1996 to 31.03.2000.**

Question: Interim wages paid to employees is covered under definition of “wages” as defined in section 2(22) of the ESI Act for the ESI contribution?

Decision:

☆ The SC **decide the case in favour of the Appellant.**

☆ The SC held that the interim relief paid by the respondent to its employees is not a “gift” or “inam”, but is a part of wages as defined under Section 2(22) of the ESI Act. In view of the above, **we hold that the payment made by way of interim relief to the employees by the respondent for the period from 1.04.1996 to 31.03.2000 comes within the definition of “wages”, as contained in Section 2(22) of the ESI Act. Hence, the respondent is liable to pay ESI contribution.**

Fact of the Case	☆ The respondent is engaged in the business of printing and publishing of a daily Malayalam newspaper called “Mangalam” and establishment of the respondent an establishment covered by the provisions of the ESI Act. ☆ The premises of the respondent-company was inspected by the Insurance Inspector of the appellant-Corporation on 13.06.2000, wherein it was found that the respondent had not paid any contribution on the interim wages paid by it to its employees during the period from 01.04.1996 to 31.03.2000. ☆ The Respondent contends that it was not required to pay any contribution on the interim relief paid by it to its employees in view of CG’s office memorandum dated 19.08.1998. Since the contribution was not paid by the respondent, as mentioned supra, a notice dated 18.07.2000 was issued by the appellant to the respondent to pay contribution of the afore-mentioned amount for the afore-mentioned period. ☆ The Respondent filed appeal before the ESI Court against the demand order of appellant corporation. ESI Court passed impugned order against the respondent. ☆ Accordingly, the Respondent challenged the order of the ESI court before the HC. The HC set-aside the demand order of the Appellant Corporation. ☆ The Appellant Corporation filed appeal before the SC against the impugned order of the HC.
Legal Principles held—	The SC consider the following facts before passing the order: 1. A plain reading of the definition of Section 2(22) of the ESI Act makes it amply clear that “wages” means all remuneration paid or payable in cash to an employee, if the terms of the contract of the employment, expressed or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months. 2. However, payments made on certain contingencies under Clauses (a) to (d) of Section 2(22) of the ESI Act, do not fall within the definition of “wages”. The interim relief paid to the employees of the respondent in the matter on hand, as mentioned supra, will definitely not fall within the excluded part of clauses (a) to (d) of Section 2(22) of the ESI Act, in so far as such payment is not ✎ Travelling allowance or the value of any travelling concession, contribution paid by the employer to any pension fund or provident fund; ✎ Sum paid to an employee to defray special expenses entailed on him by the nature of his employment; or ✎ Any gratuity payable on discharge.

	3. The inclusive part and exclusive portion of the definition of “wages” clearly indicate that the expression “wages” has been given wider meaning. As mentioned supra, under the definition, (a) Firstly whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, expressed or implied, is “wages”. (b) Secondly, whatever payment is made to an employee in respect of any period of authorized leave, lock-out etc. is “wages”. (c) Thirdly, other additional remuneration, if any, paid at intervals not exceeding two months is also “wages”. Any ambiguous expression, according to us, should be given a beneficent construction in favour of employees by the Court. 4. If the definition of “wages” is read in its entirety including the inclusive part as well as the exclusive portion, it appears that inclusive portion is not intended to be limited only of items mentioned therein, particularly, having regard to the objects and reasons for which the ESI Act is enacted. 5. The HC while allowing the appeal filed by the respondent has mainly relied upon the office memorandum dated 19.08.1998 issued by the Department of Public Enterprises, Ministry of Industry, New Delhi, which is not applicable to the facts of this case. The said notification makes it abundantly clear that the instructions contained in the said office memorandum are applicable to Central Public Sector Enterprises (PSES) only. Admittedly, the respondent is a private limited company and hence the instructions contained in office memorandum dated 19.08.1998 are not applicable to the respondent company. 6. On the one hand, the appellant claimed ESI contribution only on the amount paid by the respondent as interim relief to its employees, treating the same as “wages” as per Section 2(22) of the ESI Act. The amount paid as interim relief by the respondent to its employees definitely falls within the definition of “wages” as per Section 2(22) of the ESI Act. 7. On the other hand, the HC has strangely observed that the interim relief paid for the period from 01.04.1996 to 31.03.2000 can only be treated as “ex-gratia payment” paid by the employer to its employees and cannot be treated as “wages” for the purpose of ESI contribution. The respondent paid interim relief as per a scheme voluntarily promulgated by it (in accordance with the notification dated 20.04.1996 issued by the Government of India) in view of the recommendations of “Manisana’ Wage Board, pending revision of rates of wages. It was not an ex-gratia payment.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that the interim relief paid by the respondent to its employees is not a “gift” or “inam”, but is a part of wages as defined under Section 2(22) of the ESI Act. In view of the above, we hold that the payment made by way of interim relief to the employees by the respondent for the period from 1.04.1996 to 31.03.2000 comes within the definition of “wages”, as contained in Section 2(22) of the ESI Act. Hence, the respondent is liable to pay ESI contribution.

73. UTTARAKHAND TRANSPORT CORPORATION & ORS. v. SUKHVEER SINGH [SC]

Hint: The Respondent was appointed as a driver with the Appellants- Road Transport Corporation in the year 1989. On 27th October, 1995, while driving a vehicle on Karnal-Haridwar route, **the Respondent did not stop the vehicle when the inspection team signalled.** The inspection team had to **follow the vehicle which was stopped six kilometres away from where it was signalled to stop.** On verification, it was found **that 61 passengers were travelling without a ticket.** The Respondent was placed under suspension on 31st October, 1995 and

disciplinary proceedings were initiated by issuance of a charge sheet on 3rd November, 1995. After prolonged disciplinary proceeding and inquiry, **the Respondent was dismissed from services.**

Question: Dismissal of employee on the ground of Misappropriation charges viz. Driver in connivance with conductor allowed passengers to travel without tickets is tenable in law?

Decision:

☆ The SC decide the case in favour of the Appellant.

☆ The SC held that **that the Respondent had committed the misconduct in collusion with the conductor allowed the passengers to travel without tickets. Accordingly, we upheld the decision of the Labour Court in regard to the dismissal of the Respondent from the service of the Appellant.**

Fact of the Case	☆ The Respondent was appointed as a driver with the Appellants- Road Transport Corporation in the year 1989. ☆ On 27th October, 1995, while driving a vehicle on Karnal-Haridwar route, the Respondent did not stop the vehicle when the inspection team signalled. ☆ The inspection team had to follow the vehicle which was stopped six kilometres away from where it was signalled to stop. On verification, it was found that 61 passengers were travelling without a ticket. ☆ The Respondent was placed under suspension on 31st October, 1995 and disciplinary proceedings were initiated by issuance of a charge sheet on 3rd November, 1995. ☆ After prolonged disciplinary proceeding and inquiry, the Respondent was dismissed from services. ☆ The Respondent filed complaint before the Labour Court. Labour Court passed impugned order against the respondent. Accordingly, the Respondent challenged the award of the labour court before the HC. ☆ The HC set-aside the dismissal order and directed that the Respondent should be deemed to be in service with all consequential benefits. ☆ The Appellant union filed appeal before the SC against the order of the HC.
Legal Principles held –	The SC consider the following facts before passing the order: (a) Appellants contends that the impugned judgment of the HC is contrary to the law laid down in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (1993). (b) It is further submitted that a copy of the inquiry report was in fact supplied to the Respondent. The other point that was canvassed (thoroughly discussed) by the Appellants is that the Respondent neither pleaded nor proved that any prejudice was caused to him by the non-supply of the inquiry report prior to the issuance of show cause notice. (c) The counsel for the Respondent supported the judgment of the HC by submitting that it was incumbent upon the disciplinary authority to supply the inquiry report prior to the issuance of the show cause notice as per the judgment of this Court in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). He also relied upon certain findings in the inquiry report which were in favour of the Respondent. He finally submitted that the punishment of dismissal from service is disproportionate to the delinquency. (d) The award of the labour court was set aside by the HC on the sole ground that non-supply of the inquiry report prior to the show cause notice vitiated the disciplinary proceedings. The SC held that the HC committed an error in its interpretation of the judgment in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). It is no doubt true that this Court in the said judgment held that a delinquent employee has a right to receive the report of the inquiry officer before the disciplinary authority takes a decision regarding his guilt or innocence. Denial of a reasonable opportunity to the employee by not furnishing the inquiry report before such decision on the charges was found to be in violation of principles of natural justice.

	(e) In the instant case, the disciplinary authority communicated the report of the inquiry officer to the Respondent along with the show cause notice. There is no dispute that the Respondent submitted his reply to the show cause notice after receiving the report of the inquiry officer. On considering the explanation submitted by the Respondent, the disciplinary authority passed an order of dismissal. (f) It is clear from the above that mere non-supply of the inquiry report does not automatically warrant re-instatement of the delinquent employee. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report. (g) The Respondent contended that the punishment of dismissal is disproportionate to the delinquency. It is submitted that he was working as a driver and the irregularity in issuance of tickets was committed by the conductor. We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the labour court that the Respondent had committed the misconduct in collusion with the conductor. It is no more res integra that acts of corruption/misappropriation cannot be condoned, even in cases where the amount involved is meagre. (See - U.P.SRTC v. Suresh Chand Sharma (2010)).
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that that the Respondent had committed the misconduct in collusion with the conductor allowed the passengers to travel without tickets. Accordingly, we upheld the decision of the Labour Court in regard to the dismissal of the Respondent from the service of the Appellant.

74. P. KARUPPAIAH (D) THROUGH LRS. v. GENERAL MANAGER, THIRIUVALUVAR TRANSPORT CORPORATION [SC]

Hint: Question involved in the appeal filed by an employee against his employer is whether the appellant is entitled to claim back wages for the period in question, i.e., 21.07.1994 to 31.08.1999? (i.e. Reinstatement allowed but back wages was not allowed) No.

Decision:

- ★ The SC decide the case in favour of the Respondent.
- ★ On the basis of facts and circumstances, the SC held that back wages are not allowed while passing the order of reinstatement.

Fact of the Case	★ In the present case, the appeal filed by the appellant before the SC against the order of Madras HC. ★ The only question involved in the appeal filed by an employee against his employer is whether the appellant is entitled to claim back wages for the period in question, i.e., 21.07.1994 to 31.08.1999?
Legal Principles held –	The SC consider the following facts before passing the order: (a) The law on the question of award of back wages has taken some shift. (b) It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See M.P. State Electricity Board vs. Jarina Bee, (2003)) (c) Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his re-joining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

	(d) On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. (e) The Courts have also applied in appropriate cases the principle of “No work-No pay” while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case. (f) Having seen the record of the case, we are satisfied that there was no evidence brought on record by the appellant (employee) in his writ petition to claim the back wages for the period in question either in full or part. (g) Indeed, the appellant should feel satisfied that he was able to secure reinstatement in service despite his involvement in a murder case.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ On the basis of facts and circumstances, the SC held that back wages are not allowed while passing the order of reinstatement.

75. NATIONAL KAMGAR UNION v. KRAN RADER PVT LTD & ORS. [SC]

Hint: In 1990, Respondent No.1 suffered business loss in running the said manufacturing unit and, therefore, decided to close down the said unit permanently. The appellant-Union filed complaint against Respondent No. 1 before the Industrial Court because appellant is aggrieved by the closure notice issued by Respondent No. 1. In substance, the grievance of the appellant in their complaint was that since Respondent No. 1 had employed more than 100 workers on an average per working day for preceding 12 months in their manufacturing unit, the provisions of Chapter VB (Section 25-K) of the ID Act and, in turn, all the relevant provisions contained therein were applicable to Respondent No. 1. Respondent denied the said allegation and claimed that it had employed less than 100 workers. However, Industrial tribunal held that respondent had employed more than 100 workers and on appeal, the HC held that the respondent had employed less than 100 workers.

Decision:

- ☆ The SC decide the case in favour of the Respondent.
- ☆ The SC held that Respondent No. 1 had employed 99 workers in their manufacturing Unit at the time of declaring the closure of the Unit in 1990. Since **the strength of workers was below 100, it was not necessary for Respondent No. 1 to ensure compliance of Chapter VB. In other words, in such circumstances, the provisions of Section 25-K had no application to Respondent No. 1.**

Fact of the Case	☆ In 1990, Respondent No.1 suffered business loss in running the said manufacturing unit and, therefore, decided to close down the said unit permanently. ☆ The appellant-Union filed complaint against Respondent No. 1 before the Industrial Court because appellant is aggrieved by the closure notice issued by Respondent No. 1. ☆ In substance, the grievance of the appellant in their complaint was that since Respondent No. 1 had employed more than 100 workers on an average per working day for preceding 12 months in their manufacturing unit, the provisions of Chapter VB (Section 25-K) of the ID Act and, in turn, all the relevant provisions contained therein were applicable to Respondent No.1. ☆ Respondent denied the said allegation and claimed that it had employed less than 100 workers. ☆ However, Industrial tribunal held that respondent had employed more than 100 workers and on appeal, the HC held that the respondent had employed less than 100 workers.
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	☆ The Appellant union filed appeal before the SC against the order of the HC.
Legal Principles held—	The SC consider the following facts before passing the order: Q1. “How many workers were working in the unit of Respondent No. 1?” (a) The main question, which arises for consideration in this appeal, is only one, viz., how many workers were working in the Unit of Respondent No. 1 at all relevant time, whether the strength of the workers was above 100 or below 100. In other words, the question, which arises for consideration, is whether the provisions of Section 25-K of Chapter VB of the ID Act were applicable to respondent No. 1-Unit at the relevant time. (b) After consideration of the facts and documents produced to us, we hold that Respondent No. 1 had employed 99 workers in their manufacturing Unit at the time of declaring the closure of the Unit in 1990. Since the strength of workers was below 100, it was not necessary for Respondent No. 1 to ensure compliance of Chapter VB. In other words, in such circumstances, the provisions of Section 25-K had no application to Respondent No. 1. Q2. How much compensation and under which heads the workers are entitled to receive from Respondent No. 1 (Company)? (c) The next question as to how much compensation and under which heads the workers are entitled to receive from Respondent No. 1 (Company). It was also stated that now hardly 16 workers or so remain unpaid because they did not accept the compensation when offered to them and preferred to prosecute the present litigation. (d) Respondent No. 1 stated that the total compensation paid to every worker in 1990-1991 varies between Rs. 1 lakh to Rs. 2 lakhs. Taking into consideration the aforementioned background facts and circumstances of the case, we consider it just and proper to award in lump sum a compensation of Rs. 2,50,000/- to each worker who did not accept the compensation. Q3. How to pay such compensation to the workers who are entitled to receive from Respondent No. 1 (Company)? (e) Let Rs. 2,50,000/- be paid to each such worker after making proper verification. If any worker is not available for any reason, the amount payable to such worker be paid to his legal representatives or nearest relatives after making proper verification. (f) Accordingly, Respondent No. 1 will deposit the entire compensation payable to all such workers with details in the Industrial Court, Pune. A notice will then be served to each worker or his legal representatives by the Industrial Court to enable the workers to withdraw the amount from the Industrial Court. (g) The amount will be paid to every worker or his nominee by the demand draft issued in his/her name or in the name of legal representatives. It will be duly deposited in his/her Bank account to enable him/her to withdraw the same.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that Respondent No. 1 had employed 99 workers in their manufacturing Unit at the time of declaring the closure of the Unit in 1990. Since the strength of workers was below 100, it was not necessary for Respondent No. 1 to ensure compliance of Chapter VB. In other words, in such circumstances, the provisions of Section 25-K had no application to Respondent No. 1.

Hint: In the present case, the Batra Hospital Employees Union claims filed petition under Articles 226 and 227 of the Constitution of India against the award passed by the Industrial Tribunal-I, Karkardooma (hereinafter referred to “the Tribunal”), **which holds that the provisions of the Payment of Bonus Act, 1965 do not apply to the Batra Hospital and Medical Research Centre.**

Question: Whether charitable institution running hospital is entitled for exemption from the provision of Payment of Bonus Act, 1965: No.

Decision:

- ☆ The Delhi HC decide the case in favour of the Appellant.
- ☆ The Delhi HC **held that the impugned Award, of the Tribunal, is quashed and set aside. The respondent-Hospital is declared to be covered by the Payment of Bonus Act, 1965, and not entitled to the benefit of Section 32(v) (c) thereof.**

Fact of the Case	In the present case, the Batra Hospital Employees Union claims filed petition under Articles 226 and 227 of the Constitution of India against the award passed by the Industrial Tribunal-I, Karkardooma (hereinafter referred to “the Tribunal”), which holds that the provisions of the Payment of Bonus Act, 1965 do not apply to the Batra Hospital and Medical Research Centre.
Legal Principles held –	The Delhi HC consider the following facts before passing the order: (a) For the purpose of an establishment to claim the benefit of Section 32 (V)(c) of the Act, it is necessary to decide whether an establishment is being run “not for the purpose of profit”. If we apply said test to the respondent-Hospital, it is difficult to accept the contention of the respondent-Hospital that it could be regarded as established “not for the purpose of profit”. (b) It is positively found by the Tribunal, that profits were earned by the respondent- Hospital, but the said aspect has been discounted on the reasoning that the profits were funnelled back into the respondent-Hospital to enhance its services. As a result thereof, the Tribunal holds that the Hospital had expanded, from a small institution in 1986 to a 312-bedded hospital as on the date of the Award which, needless to say, would have further expanded, manifold, over the period of nearly a decade and a half during which this litigation has remained pending before this court. (c) The Tribunal has held in favour of the respondent by relying on the “object of the Trust”, as set out in its Bye-laws. (d) It is observed from the impugned Award that “one of the object of the trust is setting up of hospitals or other medical institutions for administrating medical relief to needy, carrying out medical and clinical research, grant of medical help to poor which clearly goes to show that the objective for which the society is formed and for which the hospital is established is not for earning profits”. The finding, in my view is totally presumptuous in nature. (e) The Tribunal does not disclose how, or why, it presumes that a Trust, which sets up hospitals which provide free treatment to needy patients, is not working “for the purpose of profit”. It has to be realised, in this context, that expectation of profit, while running an enterprise, is not a sin. (f) Neither is it immoral to run a hospital on commercial lines. However, earning of such profit would necessarily entail the responsibility of sharing some part of such profit with the employees or workmen, whose effort have significantly contributed towards the earning of the profit. That is all that the Act requires, and it would be ex facie unconscionable, for the enterprise, to shirk the said responsibility. ☆ Therefore, ex facie the respondent-Hospital cannot be regarded as established “not for the purpose of profit”, as required by Section 32(v) (c) of the Act.
Decision	☆ The Delhi HC decide the case in favour of the Appellant.

	☆ The Delhi HC held that the impugned Award, of the Tribunal, is quashed and set aside. The respondent-Hospital is declared to be covered by the Payment of Bonus Act, 1965, and not entitled to the benefit of Section 32(v) (c) thereof.
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77. THAI AIRWAYS INTERNATIONAL LTD v. GURVINDER SINGH [DEL]

Hint: In the present case, the respondent filed a claim application before the Controlling Authority for determination of the amount of gratuity payable to him. After hearing both the parties, the Controlling Authority has passed the order with respect to amount of gratuity payable. The Appellant filed writ petition before the Delhi HC against the said order.

Question: Under Section 7 of PGA, 1972, Controlling authority directing payment of gratuity. Whether the decision of the controlling authority could be challenged via writ jurisdiction under article 226/227 of the Constitution of India even the petitioner is having an alternative effective statutory remedy of appeal under the said section of PGA, 1972.

Decision:

- ☆ The Delhi HC decide the case in favour of the Respondent.
- ☆ The Delhi HC held that present writ petition cannot be entertained by this Court under Article 226/227 of the Constitution of India on the ground **that the petitioner is having an alternative effective statutory remedy of appeal available against the impugned order passed by the Controlling Authority under Section 7(4) of the Payment of Gratuity Act, 1972 to prefer an appeal to the appropriate Government or such other authorities as may be specified under Section 7(7).**

Fact of the Case	☆ In the present case, the respondent filed a claim application before the Controlling Authority for determination of the amount of gratuity payable to him. ☆ After hearing both the parties, the Controlling Authority has passed the order with respect to amount of gratuity payable. ☆ The Appellant filed writ petition before the Delhi HC against the said order.
Legal Principles held—	The Delhi HC consider the following facts before passing the order: 1. In pursuance of Section 7(7) of the Payment of Gratuity Act, 1972, if petitioner aggrieved by an order passed under Section 7(4) could prefer an appeal within 60 days from the date of receipt of the order to the appropriate Government or such other authority as has been specified by the Government. 2. It is trite (i.e. overused) that when the petitioner is having an alternative effective statutory remedy of appeal, the writ petition under Article 226/227 of the Constitution of India cannot be allowed to be entertained. 3. The Delhi HC relying on the decision held in Transport & Dock Workers Union vs. Mumbai Port Trust 2011, wherein the Hon'ble SC held that:- (a) The writ petition filed by the appellants should have been dismissed by the HC on the ground of existence of an alternative remedy under the Industrial Disputes Act. (b) It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. (c) In this case, there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the HC entertained the writ petition. (d) It seems to us that some HCs by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. ☆ In the circumstances when, the.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ The Delhi HC held that present writ petition cannot be entertained by this Court under Article 226/227 of the Constitution of India on the ground that the petitioner is having an alternative effective statutory remedy of appeal available against the impugned

	order passed by the Controlling Authority under Section 7(4) of the Payment of Gratuity Act, 1972 to prefer an appeal to the appropriate Government or such other authorities as may be specified under Section 7(7).
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78. PARADEEP PHOSPHATES LIMITED v. STATE OF ORISSA & ORS [SC]

(V. Imp.) Hint: In the present case, the certified standing orders of the appellant company provided that the retirement age of the workmen would be 58 years of age. In the year 1998, the appellant enhanced the retirement age to 60 years as a temporary measure, to retain employees and to cut costs. However, in the year 2002 the appellant withdrew the enhancement and restored the retirement age to 58 years. The trade Union agitated this before the Industrial tribunal contending that the change is in violation of the provisions of section 9A of the Industrial Disputes Act.

Question: Certified standing orders provided retirement age as 58 years. Management enhanced the same to 60 and later reduced to 58. Whether change of retirement age of the workmen amounts to violation of section 9A of the Industrial Disputes Act, 1947? Yes

Decision:

- ★ The SC decide the case in favour of the Appellant/Respondent.
- ★ The SC held that the grievance of the Trade Union before the Tribunal was that withdrawal of the age of superannuation i.e., restoration of the age from 60 years to 58 years, amounts to contravention of Clause 8 of the Fourth Schedule (accordingly, it is violation of section 9A of the Industrial Disputes Act, 1947). Hence, employer was bound to give prior notice which employer cannot escape. Therefore, the action of the employer is bad in law and liable to be set aside which was eventually upheld by the Tribunal and the HC.

Fact of the Case	★ In the present case, the certified standing orders of the appellant company provided that the retirement age of the workmen would be 58 years of age. ★ In the year 1998, the appellant enhanced the retirement age to 60 years as a temporary measure, to retain employees and to cut costs. ★ However, in the year 2002 the appellant withdrew the enhancement and restored the retirement age to 58 years. ★ The trade Union agitated this before the Industrial tribunal contending that the change is in violation of the provisions of section 9A of the Industrial Disputes Act. ★ The Tribunal allowed the claim and on appeal, the HC affirmed it. ★ The Appellant company file appeal against the impugned order of the HC before the SC.
Legal Principles held—	The SC consider the following facts before passing the order: (a) The relationship of the employer and employee is of utmost faith and, as a result, it falls under the ambit of fiduciary relationship. (b) In order to regulate such relationship, legislature came up with legislation i.e., the Industrial Disputes Act, 1947. (c) The purpose of the Act is to protect the interest of employees as they are the weaker sections since time immemorial. In order to safeguard the rights of the employees, certain amendments have been made subsequently in the Statute. (d) In 1956, legislature inserted Section 9A of the Act which makes it obligatory on the part of the employer that he is bound to give advance notice to the employee if he intends to change certain things as envisaged under Section 9A of the Act read with Fourth Schedule. (e) At the first sight of the provision, prima facie, it appears that the employer is bound to give minimum 21 days' notice to the employee if employer intends to change any material terms of service. Section 9A of the Act is a provision in consonance with

	the Constitutional mandate which assures the protection of principles of natural justice i.e., no one shall be condemned unless heard. (f) For the guidance, legislature prescribed the Fourth Schedule and it is clearly mentioned in Section 9A of the Act that before changing either of the things as envisaged in the Fourth Schedule, prior notice must be given to the employee. (g) Moreover, the contention of the appellant-Company that the object of enhancement of superannuation age was just to save the industries from huge losses. Therefore, it does not violate any statutory right of the employees, cannot be sustained in the eyes of law and also it does not give the license to the appellant Company to act in contravention of law since it is a cannon of law that everyone is expected to act as per the mandate of law. (h) No doubt, the enhancement of the superannuation age was temporary in nature in order to achieve certain objectives and also it is not deniable that yet employees would be governed by the Service Rules and the Certified Standing Orders which were not amended. However, if we allow the plea of the appellant-Company then it would defeat the object of legislature because legislature could never have intended that employees would be condemned without giving them right of reasonable hearing. (i) Naturally, every employee is under the expectation that before reducing his superannuation age, he would be given a proper chance to be heard. Right to work is a vital right of every employee and in our view, it shall not be taken away without giving reasonable opportunity of being heard otherwise it would be an act of violation of the Constitutional mandate.
Decision	★ The SC decide the case in favour of the Appellant/Respondent. ★ The SC held that the grievance of the Trade Union before the Tribunal was that withdrawal of the age of superannuation i.e., restoration of the age from 60 years to 58 years, amounts to contravention of Clause 8 of the Fourth Schedule (accordingly, it is violation of section 9A of the Industrial Disputes Act, 1947). Hence, employer was bound to give prior notice which employer cannot escape. Therefore, the action of the employer is bad in law and liable to be set aside which was eventually upheld by the Tribunal and the HC. ★ The SC further held that the order of enhancement of superannuation of the employees came into force though temporary in nature, it would amount to privilege to employees since it is a special right granted to them. Hence, any unilateral withdrawal of such privilege amounts to contravention of Section 9A of the Act and such act of the employer is bad in the eyes of law.

79. DTC SECURITY STAFF UNION (REGD.) v. DTC & ANR [SC]

Hint: The Appellant sought a Reference on 24.10.1979, under the Industrial Disputes Act, 1947 with regard to revision of pay scale of Security Staff up to the rank of Assistant Security Inspector, in the Delhi Transport Corporation (hereinafter referred to as 'the Corporation'). The Industrial Tribunal passed award, herein it was held that Assistant Security Officer, Security Havaladar and Security Guard in the services of the Corporation were entitled to the pay scale of Rs.4,25,700/, Rs. 2,60,350/ and Rs. 2,25,308/- respectively, with effect from 01.10.1979, at par with their counterparts in the Delhi Police Force.

Question: Pay scale of the security staff service in the corporation should be at par with the pay scale of the security staff service in the Delhi Police Force.

Decision:

- ★ The SC decide the case in favour of the Respondent.
- ★ After consideration of the facts, the SC held that pay scale of the security staff service in the corporation should NOT be at par with the pay scale of the security staff service in the Delhi Police Force.

Fact of the Case	☆ The Appellant sought a Reference on 24.10.1979, under the Industrial Disputes Act, 1947 with regard to revision of pay scale of Security Staff up to the rank of Assistant Security Inspector, in the Delhi Transport Corporation (hereinafter referred to as 'the Corporation'). ☆ The Industrial Tribunal passed award, herein it was held that Assistant Security Officer, Security Havaldar and Security Guard in the services of the Corporation were entitled to the pay scale of Rs.4,25,700/, Rs. 2,60,350/ and Rs. 2,25,308/- respectively, with effect from 01.10.1979, at par with their counterparts in the Delhi Police Force. ☆ The Corporation challenged the award before the HC. The Division Bench of the HC set aside the Award. ☆ The Appellant file appeal against the impugned order of the HC before the SC.
Legal Principles held –	The SC consider the following facts before passing the order: (a) There is no material to hold that pay scale of Deputy Security Officer and Security Officer in the Corporation was consciously kept at par with that of the Delhi Police keeping in mind aspects with regard to the qualifications, nature of duties etc. (b) Merely because the pay scale may have been and remained the same, it cannot lead to the conclusion of a conscious parity on the principle of equal pay for equal work so as to make it discriminatory and a ground for grant of parity to Assistant Security Officer, Security Havildar and Security Guard also. (c) Though the Tribunal examined the pay scales given to similarly situated security personnel in other organisations, and also the next below post principle in the Corporation itself, ignoring the difference in the methods of recruitment and qualifications for appointment in the two organisations. It primarily based its conclusion to grant parity of pay scale to Assistant Security Officer, Security Havaldar and Security Guard merely for the reason that parity of pay scale existed for the posts of Deputy Security Officer and Security Officer with that of the Delhi Police. (d) It is not in dispute that the pay scale of the employees of the corporation, including the security cadre, have been revised from time to time in accordance with the recommendations of 4th, 5th, 6th Pay Commission and now the 7th Pay Commission. There is no material on record that the appellant at any time filed any objection or raised issues for grant of appropriate pay scale either before the 4th Pay Commission or the successive Commissions. (e) If the award of the Tribunal is to be implemented today, it will create a highly anomalous position in the Corporation, and it shall lead to serious complications with regard to the issues of pay scale vis-a-vis recommendations of the Pay Commission and would generate further heartburn and related problems vis-à-vis other employees of the Corporation. (f) The Government of Delhi, which would have had to bear the financial burden, did not concur with the Board of the Corporation to abide by the Award. (g) The vast difference in the nature of general duties performed by personnel of the police force in contradistinction to that of security personnel discharging limited security duties in the confines of the Corporation hardly needs any emphasis.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ After consideration of the aforesaid facts, the SC held that pay scale of the security staff service in the corporation should NOT be at par with the pay scale of the security staff service in the Delhi Police Force.

80. CHENNAI PORT TRUST v. The Chennai Port Trust Industrial EMPLOYEES CANTEEN WORKERS WELFARE ASSOCIATION & ORS. [SC]

Hint: The Association-respondent No. 1 filed a writ petition being W.P. No.6872 of 2001 in the Madras HC against the appellant herein (Chennai Port Trust) espousing (i.e. support) the cause of their members (employees working in the Canteen) and sought a writ of mandamus against the appellant - Chennai Port Trust (Respondent No. 3) directing the appellant to treat the employees working in the Canteen to be the regular employees of the

Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust.

Question: Whether Demand for regularisation of canteen employees is allowable – Held, Yes.

Decision:

☆ The SC decide the case in favour of the Respondent.

☆ The SC direct the **appellant to treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust.**

Fact of the Case	☆ The appellant has been in existence for the last many decades and has a large administrative and technical set up to run their multifarious activities on the Port. ☆ Large numbers of workers/employees are employed by the Port Trust who work round the clock in shifts to run and maintain the activities of the Port Trust. ☆ These Port Trust workers/employees are provided with the facility of canteen. This canteen has employed a large number of employees to run the canteen. ☆ The employees working in the canteen have formed an Association known as “Chennai Port Trust Industrial Employees Canteen Workers Welfare Association” (for short called “Association”) -referred to as Respondent No. 1. ☆ The Association-respondent No. 1 filed a writ petition being W.P. No.6872 of 2001 in the Madras HC against the appellant herein (Chennai Port Trust) espousing (i.e. support) the cause of their members (employees working in the Canteen) and sought a writ of mandamus against the appellant - Chennai Port Trust (Respondent No. 3) directing the appellant to treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust. ☆ The Madras HC allowed the writ petition and accordingly issued a writ of mandamus against the appellant (Chennai Port Trust), as prayed by the writ petitioner in their writ petition. ☆ The appellant filed appeal before the SC against the Madras HC impugned order.
Legal Principles held –	The SC consider the following facts before passing the order: (a) In our opinion, the Division Bench rightly relied upon the decision of this Court in Indian Petrochemicals Corporation Ltd. & ANR. vs Shramik Sena & Ors (1999) and compared the facts of the above case with that of the case at hand and found great similarities in both for granting relief to the members of the respondent (Association). (b) The Division Bench in Paras 14 and 15 of the impugned judgment took note of 20 factors of this case, which were found identical to the facts involved in Indian Petrochemical’s case (supra) wherein this Court had issued a writ of mandamus against the main employer in relation to such employees working in the canteen run for the benefit of the employer. (c) These findings were recorded on the basis of undisputed facts and documents on record of the case. That apart, these findings were recorded keeping in view the facts involved and law laid down by this Court in the case of Indian Petrochemicals (supra). (d) In other words, if on the undisputed facts, this Court has granted benefit to the canteen workers in the case of Indian Petrochemicals (supra). (e) It is more so when no distinguishable facts are pointed out in this case qua Indian Petrochemical’s case (supra).
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC direct the appellant to treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust.

81. ANSAL PROPERTIES & INDUSTRIES LTD v. NEELAM BHUTANI [DEL]

Hint: In the present case, the respondent is an employee of the petitioner. Due to some employment contract disputes, petitioner terminate the Respondent from the service. Due to dismissal from the service, Respondent file complaint before the Labour Court against the employee. The Labour Court passed order against the petitioner and the petitioner was directed to reinstate the work woman back on duty along with full back wages and continuity of services within a period of 30 days from the date of publication of the award. In case of non-compliance of direction, the Management of petitioner would be liable to pay the interest at the rate of 12 % per annum till the actual payment. Labour Court was allowed to the extent that the work woman was held entitled to increment of 10 % for every year in her total salary, taking her basic salary to be Rs. 10,850/-; HRA Rs. 2,300/-; Conveyance allowance Rs. 1,200/- and medical one month basic salary per annum and LTC to its one month basic salary per annum as part back wages and apart from the same the Management was also directed to pay a sum of Rs. 20,000/- to the workmen towards the cost of litigation.

Question: Whether Section 33C(2) of the Industrial Disputes Act, 1947 is invoked or not in the present case? YES

Decision: The Delhi HC decide the case in favour of the Respondent.

Fact of the Case	☆ In the present case, the respondent is an employee of the petitioner. Due to some employment contract disputes, petitioner terminate the Respondent from the service. ☆ Due to dismissal from the service, Respondent file complaint before the Labour Court against the employee. ☆ The Labour Court passed order against the petitioner and the petitioner was directed to reinstate the work woman back on duty along with full back wages and continuity of services within a period of 30 days from the date of publication of the award. In case of non-compliance of direction, the Management of petitioner would be liable to pay the interest at the rate of 12 % per annum till the actual payment. ☆ Labour Court was allowed to the extent that the work woman was held entitled to increment of 10 % for every year in her total salary, taking her basic salary to be Rs. 10,850/-; HRA Rs. 2,300/-; Conveyance allowance Rs. 1,200/- and medical one month basic salary per annum and LTC to its one month basic salary per annum as part back wages and apart from the same the Management was also directed to pay a sum of Rs. 20,000/- to the workmen towards the cost of litigation. ☆ The Petitioner file appeal before the Delhi HC against the order of the Labour Court.
Applicable Law	Section 33C(2) of the Industrial Disputes Act, 1947: Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months: Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.
Legal Principles held—	The Delhi HC consider the following facts before passing the order: (a) Petitioner/management placed reliance on decision held in Municipal Corporation of Delhi v. Ganesh Razak & ANR, (1995). In this case, the appeals therein against the invocation of Section 33C(2) of the Industrial Disputes Act, 1947 have been allowed, it is essential to observe that in that case the claim of the respondents/workmen was to the effect that they were all daily rated/casual workers and they were seeking wages to be paid to them on the same rate as the regular workers and the said aspect had not earlier been settled by adjudication and recognition by the employer and

	thus the stage of computation of that benefit could not have been said to have reached. In this case, the claim of the workman of equal pay for equal work was disputed and thus without adjudication of the dispute resulting in acceptance of their claim. Hon'ble SC held that there could be no occasion for computation of the benefit on that basis to attract Section 33C(2) of the Industrial Disputes Act, 1947. (b) The verdict of this Court relied upon equally on behalf of the petitioner and on behalf of the respondent in <i>Piara Lal v. Lt. Governor & Ors</i>, 2001 (1) L.L.N. 235.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ The Delhi HC passed the order wherein it contains the followings: (a) It makes apparently clear that the powers under Section 33C(2) of the Industrial Disputes Act, 1947 could have been invoked by the respondent in the facts and circumstances of the instant case to the extent that she claimed increments, DA and revision in pay scales as was granted to other employees from time to time in the category of the respondent and would fall within the ambit of the claims to which the respondent would be entitled to claim having been directed to be reinstated back on duty thus to continue in service along with full back wages vide the award. (b) Thus, the impugned order, to the extent that it permits the entitlement of full back wages w.e.f. 16.06.2001 onwards, i.e., to the tune of Rs.1,02,713/- and qua increment to the tune of Rs.13,88,711.52/- and the interest at the rate of 12 % per annum on the said amount from 16.06.2001 till the date of actual payment of Rs. 18,22,262.52/- with the cost of litigation to the tune of Rs. 20,000/- to the respondent/ work woman in terms of provisions of Section 11(7) of the Industrial Disputes Act, 1947 is upheld. (c) However, as regards the claim for LTC for the years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 qua LTC and Medical reimbursement as granted vide impugned order, without adjudication of the entitlement of the petitioner for reimbursement in relation thereto without it being proved on record as to whether the respondent had undertaken any travel in a particular year for the claim for the LTC and qua the respondent having incurred expenses in availing medical facilities for claiming medical reimbursement, cannot be upheld and is set aside. Delhi HC remanded back the matter to the Labour Commissioner to give an opportunity to both the parties to give their calculations in relation to the LTC claims and for medical reimbursements to ascertain as to what is the money due to which the respondent would be entitled to in relation thereto with the request to Labour Commissioner to undertake the necessary exercise within a period of 3 months from the date of receipt of this order.

82. M/S. G4S FACILITY SERVICES INDIA PVT LTD v. REGIONAL PROVIDENT FUND COMMISSIONER-I [DEL]

Hint: In the present case, Respondent directing the appellant to pay Rs. 15.40 Crores towards PF payable under section 7A of the EPF & MP Act, 1952. Appellant filed an appeal against EPFC decision before the tribunal along with an **application seeking waiver of the deposit of the determined demand.** After hearing the parties, the Tribunal **directed admission of the appeal subject to pre-deposit of 50% of the amount assessed within 6 weeks.** The Appellant filed appeal before the Delhi HC against **the order of Tribunal with respect to pre-deposit of 50% of the amount assessed within 6 weeks.**

Question: Whether the action of Tribunal is tenable in law? YES

Decision:

☆ The Delhi HC decide the case in favour of the Respondent.

☆ The Delhi HC held that Appellant **is directed to pre-deposit 50% of assessable amount.**

Fact of the Case	☆ The appellant provides security and other related services through contracts. ☆ The Appellant enters into contracts with institutions and commercial organizations. ☆ The EPFC after affording an opportunity of hearing to the petitioner and affording it hearing, passed the final order under Section 7A directing the appellant to pay about Rs.15.40 Crores. ☆ Appellant filed an appeal against EPFC decision before the tribunal along with an application seeking waiver of the deposit of the determined demand. ☆ After hearing the parties, the Tribunal directed admission of the appeal subject to pre-deposit of 50% of the amount assessed within 6 weeks. ☆ The Appellant filed appeal before the Delhi HC against the order of Tribunal with respect to pre-deposit of 50% of the amount assessed within 6 weeks.
Applicable Law	Section 7-O bars the hearing of any appeal by an employer unless its conditions are satisfied: "No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined". However, the tribunal is authorized by the proviso to "for reasons to be recorded in writing, waive or reduce the amount to be deposited."
Legal Principles held—	The Delhi HC consider the following facts before passing the order: (a) In the present case, there is a determination by the EPFC that the appellant used to charge amounts including sums on account of provident fund dues payable, but artificially segregate wage calculations, to exclude portions of the wages paid to its workers. These are findings of fact. (b) The appellant disputes them; it urges that the ceiling of Rs. 6500/- mandated by the EPF scheme was not taken into account; that the EPFC considered materials relating to a period other than the notice period and that "wage" is a restrictive statutory concept under the EPF Act. (c) The appellant complains is that the relief should have been not confined to 50% waiver, but of the whole amount. Now, while it may be justified in so urging, there ought to be exceptional and compelling reasons for an appellate court (in a third guessing jurisdiction, so to speak) exercising appeal powers over a writ court's order (in respect of an interim order of the tribunal) to hold that such determination is unreasonable. In other words, the threshold of interference in appeals over writ determinations of interim orders is necessarily very high. (d) Keeping in mind the limitations spelt out above, the court nevertheless scrutinized the order of the EPFC. That official not only considered these specific contentions in the light of the materials, but analyzed them in the light of the amounts charged from the appellant's clients, by it. (e) The EPFC found that separate accounts towards wages, HRA, overtime allowances, etc. were not maintained by the appellant and in fact of the total wage, the segregation made was to the extent that house rent allowance (HRA) amounts were shown to be 25% of the total wage. (f) The finding was that a lump-sum figures, which included PF contributions, based on total amounts calculated, were charged and recovered from the appellant's clients by it. (g) In the present case, undoubtedly, waiver was granted to the extent of 1/3rd of the extent of the statutory compulsion. Instead of 75%, the appellant was permitted to deposit 50%. (h) Given all these factors, this court is of the opinion that the order of the tribunal cannot be characterized as unreasonable or erroneous to such extent as to be interfered with in judicial review.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ The Delhi HC held that Appellant is directed to pre-deposit 50% of assessable amount.

83. MAHENDRA SINGH v. DELHI POWER SUPPLY CO. LTD. [DEL]

Hint: In the present case, petitioner accepted bribe Rs. 10,000 from Mr. Sushil Bansal (who is electricity consumer) be way of threatening him in the alternative, **with disconnection of his electricity supply and issuance of inflated bills regarding electricity consumption by him** for earlier periods, as the **electricity meter installed** at Mr. Bansal's premises **was defective**. Mr. Sushil Bansal file complaint against the Petitioner before the Respondent. On receipt of the complaint, Respondent file charge sheet against the Petitioner. Consequently, **disciplinary proceedings initiated against him. Later on, Petitioner was dismissed from the service.**

Decision:

- ☆ The Delhi HC decide the case in favour of the Respondent.
- ☆ In view of the above discussion and findings, **this Court must necessarily refuse succour (i.e. relief) to the petitioner from the rigour of the impugned order dismissing him from the service of the respondent.**

Fact of the Case	☆ In the present case, petitioner accepted bribe Rs. 10,000 from Mr. Sushil Bansal (who is electricity consumer) be way of threatening him in the alternative, with disconnection of his electricity supply and issuance of inflated bills regarding electricity consumption by him for earlier periods, as the electricity meter installed at Mr. Bansal's premises was defective. ☆ Mr. Sushil Bansal file complaint against the Petitioner before the Respondent. ☆ On receipt of the complaint, Respondent file charge sheet against the Petitioner. Consequently, disciplinary proceedings initiated against him. Later on, Petitioner was dismissed from the service. ☆ The Petitioner file writ petition before the Delhi HC against the dismissal order.
Legal Principles held—	The Delhi HC consider the following facts before passing the order: (a) In these circumstances, drawing an analogy from Section 106 of the Indian Evidence Act, 1872, it was for the petitioner to explain the circumstances in which he accepted the said money from Sushil Bansal outside a juice shop, and the circumstances in which ₹ 5000/- was recovered from him by the CBI team. No such explanation worth its name has been forthcoming, from the petitioner at any point of time. (b) In these circumstances, this Court has necessarily to concur with the conclusion of the Investigating officer and the disciplinary authority that the fact of acceptance of bribe from Sushil Bansal by the petitioner stands established and proved beyond reasonable doubt. (c) The discrepancies regarding the nature of the meter installed at Sushil Bansal's premises, as well as the non-reflection of the "untainted" ₹ 5,000/- also allegedly recovered from the petitioner in the Recovery Memo, cannot, as has rightly been observed by the Investigating Officer detract from the factum of acceptance by the petitioner from Sushil Bansal of bribe of ₹ 5,000/-, and the recovery of the said amount by the CBI team. (d) Coming to the last issue regarding proportionality of the punishment awarded to the petitioner, it is clear that in the above circumstances, it cannot be said that the punishment awarded to the petitioner was disproportionate to the misconduct committed by him. (e) The petitioner having been proved to have taken from Sushil Bansal bribe of at least ₹ 5,000/- , it is not possible to say that in dismissing him from service the disciplinary authority was unduly harsh.
Decision	☆ The Delhi HC decide the case in favour of the Respondent. ☆ In view of the above discussion and findings, this Court must necessarily refuse succour (i.e. relief) to the petitioner from the rigour of the impugned order dismissing him from the service of the respondent.

84. EXECUTIVE ENGINEER, PWD & ORS v. COMMISSIONER WORKMEN'S COMPENSATION [J&K]

Hint: The respondent No. 2 is an ironsmith by profession and he was engaged by respondent No. 3 as labour for construction of road for Appellant. While working with respondent No. 3, Respondent No. 2 faced sustained grievous injuries in an accident. Respondent No. 2 was immediately shifted to Hospital where owing to his injuries, his right forearm below elbow was amputated. As a result of these injuries, Respondent No. 2 was rendered permanently disabled. He preferred a claim petition before respondent No. 1, which was allowed.

Question: Under Workmen's Compensation Act, 1923, Injury caused to contract labour as a result, contract labour is Permanent disablement. Whether principal employer is liable to pay compensation to the contract labour.

Decision:

- ☆ The J & K HC decide the case in favour of the Respondent.
- ☆ The J & K held that the appellant cannot avoid its liability to compensate the respondent No. 2. The appellant being a principal employer was liable to pay the compensation to the respondent No. 2 on account of permanent disablement suffered by him during and in the course of his employment with the appellant. Even on facts, the job of repairing the compressor rod was entrusted to respondent No. 2 by the appellant.

Fact of the Case	☆ The respondent No. 2 is an ironsmith by profession and he was engaged by respondent No. 3 as labour for construction of road for Appellant. ☆ While working with respondent No. 3, Respondent No. 2 faced sustained grievous injuries in an accident. ☆ Respondent No. 2 was immediately shifted to District Hospital, Doda, where owing to his injuries, his right forearm below elbow was amputated. As a result of these injuries, Respondent No. 2 was rendered permanently disabled. ☆ He preferred a claim petition before respondent No. 1, which was allowed. ☆ The appellant appealed to the HC challenging the award passed by respondent No. 1 on the following grounds: – (a) That in the absence of the privity of contract between the appellant and respondent No. 2, the liability to pay compensation could not have been fastened on the appellant. (b) That the accident had not occurred during or in the course of employment and, therefore, the appellant was not liable to pay any compensation.
Legal Principles held –	The J & K HC consider the following facts before passing the order: (a) It was admitted that Respondent No. 3 was working as a contractor with the appellant and was executing the work allotted to him by none other than the appellant. It is also not in dispute that respondent No. 2 was engaged as labourer by respondent No. 3 for execution of the work of the appellant. (b) From the evidence led by the parties before respondent No. 1, it is further evident that the job of repairing the compressor rod was assigned to respondent No. 2 by the Junior Engineer of the appellant and not by respondent No. 3. (c) The plea of the appellant that there was no privity of contract between the respondent No. 2 and the appellant is misconceived and is noticed to be rejected only. (d) Therefore, both the pleas raised by the appellant to challenge the award fail.
Decision	☆ The J & K HC decide the case in favour of the Respondent. ☆ The J & K held that the appellant cannot avoid its liability to compensate the respondent No. 2. The appellant being a principal employer was liable to pay the compensation to the respondent No. 2 on account of permanent disablement suffered by him during and in the course of his employment with the appellant. Even on facts, the job of repairing the compressor rod was entrusted to respondent No. 2 by the appellant.

85. FEDERATION OF OKHLA INDUSTRIAL ASSOCIATION (REGD) & ORS v. Lt. GOVERNOR OF DELHI & ANR [DEL]

Hint: In the present case, petitions was filed before the Delhi HC to challenge the constitutional validity of the Notification bearing no. F.Addl.LC/Lab/MW/2016 dated 3rd of March 2017 published in the Official Gazette and on 4th March, 2017, again issued by the respondents **in exercise of power conferred by Section 5(2) of the enactment**. By this Notification, **minimum rates of wages for all classes of workmen/employees in all scheduled employments stand revised w.e.f. the date of the notification in the official gazette**. The challenge rests on the plea of the petitioners that **both these notifications are ultra vires the provisions of the enactment itself** and that **the respondents also violated the principles of natural justice** in issuance of the notifications.

Decision:

- ★ The Delhi HC decide the case in favour of the Appellant.
- ★ The Notification bearing no. F-13(16)/MW/1/2008/Lab/ 1859 dated 15th September, 2016 issued by the respondents constituting the Minimum Wages Advisory Committee for all scheduled employments is ultra vires Section 5(1) and Section 9 of the Minimum Wages Act, 1948 and **is hereby declared invalid and quashed**.

Fact of the Case	★ In the present case, petitions was filed before the Delhi HC to challenge the constitutional validity of the Notification bearing no. F.Addl.LC/Lab/MW/2016 dated 3rd of March 2017 published in the Official Gazette and on 4th March, 2017, again issued by the respondents in exercise of power conferred by Section 5(2) of the enactment. ★ By this Notification, minimum rates of wages for all classes of workmen/employees in all scheduled employments stand revised w.e.f. the date of the notification in the official gazette. ★ The challenge rests on the plea of the petitioners that both these notifications are ultra vires the provisions of the enactment itself and that the respondents also violated the principles of natural justice in issuance of the notifications.
Legal Principles held –	★ After an elaborate analysis of the law and the surrounding circumstances and referring to plethora of case laws, the Delhi HC arrived at the following conclusions: 1. The purport and object of the Act in fixing the minimum wage rate is clearly to prevent exploitation of labour. The hardship caused to individual employers or their inability to meet the burden of minimum wages or its upward revision has no relevance. 2. The object, intendment and provisions of the Minimum Wages Act, 1948 are clear and unambiguous. Therefore, the applicability of the beneficent rule of interpretation is completely unnecessary. 3. Minimum wages have to be more than wages at the subsistence level have to take into consideration all relevant factors and prescriptions made after due application of mind and must take into consideration the norms and component as approved by the SC in the Reptakos judgment. 4. The appropriate government is required to take into account the report and advice rendered by the Committee/ Advisory Board and to apply independent mind and take a balanced decision so far as fixation or revision of minimum wages is concerned. The Government is not bound by the recommendations of the Committee. It is open to the Government to accept (wholly or in part) or to reject the advice of the Board or report of the Committee. 5. While there is no absolute prohibition on an employee of the Government being nominated as an independent member of the Committee under Section 5 of the Minimum Wages Act, an objection to such nomination has to be decided on the facts and circumstances of the case. It is only when minimum wages are under consideration for an industry in which the State may be vitally interested as an employer, that it may not be proper to nominate an official to the Committee treating him to be an independent member. 6. A defect in composition of the Committee under Section 5 would not per se vitiate either its advice or the decision taken thereon. A defect in the composition of the Committee would vitiate its advice, or the ultimate decision of the Government

fixing the minimum wages, only if such illegality or defect has worked to the prejudice to a party, for example where the interest of a particular group of employer or employees has not been represented or has not been taken into consideration.

7. The **Delhi Metro Rail Corporation is not an employer engaged** in scheduled employment in Delhi and it **could not have been appointed on the Committee under Section 5 as a representative of the employer.**
8. Though the eligibility of **the officers of the Labour Department or the Director of Economics & Statistics as members of the Committee cannot be faulted**, however they failed to conduct themselves dispassionately & did not apply their independent minds. **The respondent has appointed the very officials as independent persons on a Committee, which had already taken a view in the matter and made recommendations as members of a Committee in the year 2016**, therefore, when appointed for the second time, they were clearly close-minded and proceeded in the matter in a predetermined manner.
9. The **respondents have denied the statutorily mandated representation to the actual employers in scheduled employments in Delhi which tantamount to non-compliance of Section 9 of the Minimum Wages Act, 1948 and failure on the part of the respondents to constitute a Committee required by law to be constituted.**
10. It is essential that under Section 5(1) of the MW Act, a Committee “properly constituted” is “genuinely invited” with an open (‘receptive’) mind to tender advice to the appropriate Government.
11. It has to be held **that employers in the scheduled employments as well as employees with divergent views stand ousted from the consideration and their interests certainly compromised to their prejudice.** This prejudice to the employers and employees would constitute a ‘most’ substantial ground (Ref: (2008) 5 SCC 428 (para 14), Manipal Academy of Higher Education vs. Provident Fund Commissioner) justifying interference by this court in exercise of jurisdiction under Article 226.
12. Clearly the Government of NCT of Delhi **was aware of the requirement of law and consciously failed to comport** to the same.
13. It is **not open to a representative to insist on an oral hearing before the Committee appointed under Section 5 or the Advisory Board under Section 7** of the Minimum Wages Act, 1948.
14. The **fixation of minimum wages in Delhi cannot be faulted simply because they are higher than the rates of minimum wages fixed** in surrounding States and Towns.
15. The Committee in **making its recommendations as well as the respondents in issuing the singular notification** for uniform minimum wages for all scheduled employments have **completely ignored vital and critical aspects having material bearing on the issue.**
16. Any change in the prescribed rates of minimum wages, is bound to impact both the industry and the workmen. **The respondents were bound to meaningfully comply with the principles of natural justice especially, the principles of fair play and due process.** The representatives of the employers, had a legitimate expectation of being heard as the advice of the Committee was to inevitably affect them, which has been denied to them before the decision to revise minimum wages was finalized.
17. The constitution of the Committee **was completely flawed** (i.e. imperfect) and **its advice was not based on relevant material and suffers from non-application of mind.** The Government decision based on such advice **is in violation of express statutory provision , principles of natural justice, denied fair representation to the employers well as the employees in fact without any effort even to gather relevant material and information.** The non-application of mind by the committee and the respondents, to the relevant material considerations offends, Article 14 of the Constitution of India.

Decision	☆ The Delhi HC decide the case in favour of the Appellant. ☆ The Notification bearing no. F-13(16)/MW/1/2008/Lab/ 1859 dated 15th September, 2016 issued by the respondents constituting the Minimum Wages Advisory Committee for all scheduled employments is ultra vires Section 5(1) and Section 9 of the Minimum Wages Act, 1948 and is hereby declared invalid and quashed.
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86. UNION BANK OF INDIA v. C.G. AJAY BABU [SC]

Hint: The respondent was **an employee of the appellant-Bank**. While serving as a **Branch Manager disciplinary proceedings were initiated** against him and the respondent **was dismissed from service**. In the meanwhile, **the respondent was issued a show-cause notice as to why the gratuity should not be forfeited on account of proved misconduct involving moral turpitude**. His explanation **was rejected and the gratuity was forfeited**.

Question: Whether forfeiture of gratuity, under The Payment of Gratuity Act, 1972 ('the Act'), is automatic on dismissal from service, is the issue for consideration in this case.

Decision:

- ☆ The SC decide the case in favour of the Respondent.
- ☆ The SC held that there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, **there is no justification for the forfeiture of gratuity on the ground that the "misconduct proved against you amounts to acts involving moral turpitude.**
- ☆ The SC held that forfeiture of gratuity is not automatic on dismissal from service. It is subject to Sections 4(5) and Section 4(6) of the Payment of Gratuity Act, 1972.

Fact of the Case	☆ The respondent was an employee of the appellant-Bank. While serving as a Branch Manager disciplinary proceedings were initiated against him and the respondent was dismissed from service. ☆ In the meanwhile, the respondent was issued a show-cause notice as to why the gratuity should not be forfeited on account of proved misconduct involving moral turpitude. His explanation was rejected and the gratuity was forfeited. ☆ The Respondent file appeal against the dismissal from the service and forfeiture of gratuity before the HC. ☆ The HC upheld the dismissal from the service but rejected the forfeiture of gratuity. ☆ The Appellant-bank file appeal against the order of HC before the SC.
Legal Principles held—	The SC consider the following facts before passing the order: (a) Appellant-Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. (b) To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. (c) In addition to the disciplinary proceedings initiated by the Appellant-Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. (d) Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction. (e) That the Act must prevail over the Rules on Payment of Gratuity framed by the employer is also a settled position as per Jaswant Singh Gill (supra). Therefore, the

	appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity. The SC relying on the decision held in Jaswant Singh Gill v. Bharat Coking Coal Limited & Ors (2007) 1 SCC 663. SC held in this case that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6) (b) (ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground that the "misconduct proved against you amounts to acts involving moral turpitude. ☆ The SC held that forfeiture of gratuity is not automatic on dismissal from service. It is subject to Sections 4(5) and Section 4(6) of the Payment of Gratuity Act, 1972.

87. COAL INDIA LTD v. NAVIN KUMAR SINGH [SC]

Hint: The Jharkhand HC held that the **past service of the respondent in the previous company of the appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request.**

Decision:

- ☆ The SC **decide the case in favour of the Respondent.**
- ☆ The SC held **that past services of the respondent employee in the previous company of the Appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request. Concededly,**
 - (a) **what is affected in terms of the policy for intercompany transfer on personal request is only the seniority position in the new (transferred) company - which would commence from the date of assuming office thereat. By no stretch of imagination, it can affect the length of service in E-2 Grade in the parent company.**
 - (b) **The two being distinct factors, neither the policy nor the office memorandum would be any impediment for reckoning the period of service rendered by the respondent from August, 1990 in DCC, albeit (i.e. though) a case of inter-company transfer on personal request.**

Fact of the Case	☆ The Jharkhand HC held that the past service of the respondent in the previous company of the appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request. ☆ The employer appellant filed appeal before the SC against the said HC Order.
Legal Principles held –	☆ The SC consider the following facts before passing the order: 1. There is no dispute that the respondent had rendered service in E-2 Grade on regular basis in DCC from where he was transferred to CMPDIL, on personal grounds. 2. The service rendered by him in DCC can be and ought to be taken into account for all other purposes, other than for determination of his seniority in E-2 Grade in the new company i.e. CMPDIL. 3. Indeed, his seniority in CMPDIL in E-2 Grade will have to be reckoned from the date of his assumption of charge on 15th May, 1991, but that can have no bearing while determining his eligibility criterion of length of service in E-2 Grade for promotion to E-3 Grade. 4. For determining the eligibility for promotion to E-3 Grade, the service rendered by him in DCC in E-2 Grade with effect from 4th August, 1990, ought to be reckoned. The view so taken by the HC commends (i.e. assigns) to us.

	5. Hence, no fault can be found with the direction given by the HC to assign notional date of promotion to the respondent in E-3 Grade with effect from 12th November, 1993. 6. On a fair reading of clause 11 of the policy, (a) There is nothing to indicate that the transferee would lose his past service rendered in the parent company for all purposes. (b) However, the policy of forfeiture of seniority in the parent company is limited to the executives who seek inter-company transfer on personal grounds. That is to ensure that no prejudice is caused to the executives already working in the transferred company. 7. For that reason, the seniority of the executives seeking inter-company transfer on personal request is fixed as if he had entered the concerned Grade on the date of assumption of charge in the transferred company. It has been made explicitly clear that the executive seeking inter- company transfer on personal grounds will lose his past seniority in the Grade. No more and no less. 8. As regards the Office Memorandum dated 5th June, 1985, the same does not militate (i.e. make war) against the respondent. (a) It is a different matter that it addresses the difficulty expressed about the denial of opportunity of promotion to the executives who opted for inter-company transfer. (b) On a fair reading of this Office Memorandum, it is discernible (i.e. noticeable) that the department has clarified the position that if the concerned executive has already completed service for a specified period including the period of service with the old company, would become entitled to be considered for promotion to the higher Grade. (c) If so, not granting similar advantage to the executive who opted for inter-company transfer on personal request and who incidentally enters at number one position in the seniority in the new company would be anomalous.
Decision	☆ The SC decide the case in favour of the Respondent. ☆ The SC held that past services of the respondent employee in the previous company of the Appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request. Concededly, (c) what is affected in terms of the policy for intercompany transfer on personal request is only the seniority position in the new (transferred) company - which would commence from the date of assuming office thereat. By no stretch of imagination, it can affect the length of service in E-2 Grade in the parent company. (d) The two being distinct factors, neither the policy nor the office memorandum would be any impediment for reckoning the period of service rendered by the respondent from August, 1990 in DCC, albeit (i.e. though) a case of inter-company transfer on personal request.

88. ANAND RAO KORADA RP v. M/S VARSHA FABRICS LTD. [SC]

New Case Law (V. Imp.):

Hint: Labour Commissioner has put certain properties on auction sale by virtue of HC Order but it was prohibited by Supreme Court in consideration of Section 14 of The IBC, 2016.

Fact of the Case	☞ In the writ petitions filed by the workers Union, the HC passed order directing the labour commissioner to determine the dues to the workers and <u>accordingly labour commissioner quantified the same and certain properties of the corporate debtor was put on auction sale.</u> ☞ Meanwhile, one financial creditor initiated corporate insolvency proceedings against the Respondent (Varsha) (corporate debtor) and <u>the NCLT fixed the moratorium under section 14 of the IBC, 2016.</u>
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	☞ The sale of the properties was to be made during the period of moratorium and the Appellant (Anand Rao RP) challenged the orders of the HC.
Applicable Provision:	☆ Section 238 of the IBC, 2016 “Provisions of this Code to override other laws” “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law”.
Decision	☆ That Section 238 of the IBC gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. ☆ The SC decide the case in favour of the Appellant (i.e. Anand Rao). ☆ The SC held that the properties of the corporate debtor should not have been auctioned. ☆ That the HC ought not to have proceeded with the auction of the property of the Corporate Debtor once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT

89. DUNCANS INDUSTRIES LTD. v. A. J. AGROCHEM (SC)

New Case Law: Section 16G(1)(c) of the Tea Act, 1953 require consent of CG w.r.t. proceedings of the winding up or for the appointment of the receiver. However, the CIRP is initiated to revive the corporate debtor and in case if CIRP fails, then Winding up is the last resort. So, Application made by Operational Creditor under section 9 of the IBC, 2019 was rightly accepted.

Fact of the Case	☞ The Appellant (Duncan) (Corporate Debtor) was a company which owned and managed 14 tea gardens out of which, the CG had taken over the control of 7 tea gardens under the Tea Act, 1953. ☞ The Respondent (A.J. Agrochem), an operational creditor of the Appellant, used to supply pesticides, insecticides, herbicides etc. to the Appellant. They initiated the proceedings against the appellant before the NCLT under Section 9 of the IBC, 2016. ☞ The NCLT dismissed the application as not maintainable as the consent of the CG was not obtained. However, on appeal, the NCLAT reversed the order of the NCLT. Hence, the present appeal by the corporate debtor.
Applicable Provisions	☞ Section 16G(1)(c) in The Tea Act, 1953 states that no proceeding for the winding up of such company or for the appointment of receiver in respect thereof shall lie in any court except with the consent of the CG. ☞ Section 238 of the IBC, 2016 “Provisions of this Code to override other laws” “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law”.
Legal Procedures	☞ That despite the notification under the Tea Act, the Appellant continued to be in management and control of the tea gardens/units and was running the tea gardens as if the notification dated under Section 16E had not been issued. ☞ That Section 16G (1) (c) of the Tea Act referred to the proceedings for winding up of such companies or for the appointment of receiver in respect thereof. ☞ That the proceedings under Section 9 of the IBC, 2016 is not be limited and/or restricted to winding up and/or appointment of receiver only. ☞ The winding up/ liquidation of the company is the last resort and only on an eventuality when the CIRP fails. ☞ That considering Section 238 of the IBC, 2016, the provisions of the IBC shall have an overriding effect over the Tea Act, 1953.
Decisions	☞ The SC decide the case in favour of the Respondent (A.J. Agrochem). ☞ The SC held that the application filed by the operational creditor was rightly accepted.

90. EXCEL METAL PROCESSORS LTD v. BENTELER TRADING INTL. GMBH & ANR. [NCLAT]

New Case Law [V.V. Imp.]

Hint: Any Suit or litigation was maintainable only in Germany Court in pursuance of agreement made between the parties is not a valid ground to prevent the CIRP under IBC, 2016.

Fact of the Case	★ The Respondent [Benteler Trading INL. GMBH, a German Company (Operational Creditor“)] filed application under Section 9 of the IBC, 2016 against the Appellant (Excel Metal) (“Corporate Debtor”) alleging that the Corporate Debtor committed a default in making the payment to an extent of US \$1,258,219.42 inclusive of interest @ 15% per annum. ★ The AA (NCLT) admitted the application. ★ The Appellant challenged the said order.
Legal Principles held	★ That Appellant contended that that as per the Agreement and as the office of the respondent is in Germany, any suit or case was maintainable only in the Court at Germany and therefore, no case could be filed in any Court in India. ★ Therefore, the Appellant has raised the question of jurisdiction of the NCLT in entertaining the application under Section 9 of the IBC, 2016. ★ NCLAT disagree with the aforesaid statement and considering the appellate Tribunal decision held in the case of Binani Industries Ltd v. Bank of Baroda & ANR, wherein it was held that ☞ ‘CIRP’/ insolvency proceedings is not a ‘suit’ or a ‘litigation’ or a ‘money claim’ for any litigation; ☞ No one is selling or buying the ‘Corporate Debtor’ a ‘Resolution Plan’; ☞ It is not an auction; ☞ It is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and ☞ It is not liquidation. The object is mere to get resolution brought about, so that the Company do not default on dues. ★ Pursuant to Section 408 of the Companies Act, 2013, the NCLT has been constituted in different States. In terms of the said provision, the CG has notified and vested the power on respective NCLT to deal with the matter within its territory, where the registered Offices of the Companies are situated. ★ As per Section 60(1) of the IBC, 2016 “The AA, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located”. ★ As admittedly, the Registered Office of the ‘Corporate Debtor’ is situated in Mumbai, we hold that the NCLT, Mumbai Bench has the jurisdiction to entertain an application under Section 9 of the IBC, 2016 and the Appellant cannot derive advantage of the terms of the Agreement reached between the parties.
Decision	☞ The SC decide the case in favour of the Respondent (i.e. Benteler Trading INL. GMBH).

91. AHLUWALIA CONTRACTS (INDIA) LTD v. RAHEJA DEVELOPERS LTD [NCLAT]

New Case Law:

(V. Imp.) Application of the Operational Creditor cannot be rejected on the ground that the after sending demand notice to the Corporate Debtor and Corporate Debtor Initiate Arbitration Proceeding against the Operation Creditor is not a valid ground to held that it is pre-existed disputed. Pre-existed dispute means any disputed claim exist prior to filing demand notice against the Corporate Debtor under section 8 of the IBC, 2016. [V.V. Important Case Law]

Fact of the Case	★ The Appellant [i.e. Ahluwalia Contract (India) Ltd.], being an Operational Creditor filed an application under Section 9 of the IBC, 2016 against the Respondent (Raheja Developers Ltd.) being a Corporate Debtor. ★ The AA rejected the application on the ground that the claim of the Appellant fell within the ambit of “disputed claim”. ★ It is pertinent to notice that the Respondent initiated arbitration proceedings only after the receipt of demand notice from the appellant. ★ The Appellant filed appeal before the NCLAT against the order of AA.
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Applicable Laws	☆ In an application under Section 9, it is always open to the Corporate Debtor to point out pre-existence of dispute. It is to be shown that the dispute was raised prior to the issuance of demand notice under Section 8(1). ☆ In Mobilox Innovations Pvt. Ltd v. Kirusa Software (P) Ltd, (2017), the Hon'ble SC held that the 'existence of the dispute' and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. That a "claim" means a right to payment even if it is disputed. ☆ The AA is required to admit the application filed under section 9 of the IBC, 2016, if the following conditions is satisfied: (a) The 'Operational Debt' is exceeding Rs. 1 lakh and (b) The application shows that the aforesaid debt is due and payable and has not been paid by the Corporate Debtor.' (c) In such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid 'operational debt'. ☆ In the present case, therefore, the fact that the "Corporate Debtor" has disputed the claim by showing that there was a certain counter claim, cannot be held that there is pre-existence of dispute.
Decision	☆ The NCLAT decide the case in favour of the Appellant (i.e. Ahluwalia). ☆ The NCLAT held that it is not in dispute that the arbitration proceeding was initiated by the Respondent after about 1 month from the date of issuance of demand notice under Section 8(1). Therefore, the 'Corporate Debtor' cannot rely on arbitration proceeding to suggest a pre-existing dispute. ☆ The AA wrongly rejected the claim on the ground that the claim raised by the Appellant falls within the ambit of disputed claim. Merely disputing a claim cannot be a ground, as held by Hon'ble SC in Innovative Industries Ltd. v. ICICI Bank and Anr (2018), wherein it is observed that "claim means a right to payment even if it is disputed. The Code gets triggered the moment default is of Rs. 1 lakh or more (Section 4).

92. SSMP INDUSTRIES LTD v. PERKAN FOOD PROCESSORS PVT. LTD [DEL]

Hint: In the given case the Plaintiff (i.e. SSMP) filed the present suit seeking recovery of Rs. 1,61, 47,336.44. The Defendant (Perkan) has filed its written statement/counter claim in which it avers that it is, in fact entitled to recover a sum of Rs. 59,51,548/- and NO amount was due and payable by it to the Plaintiff. The Plaintiff Company has since gone into insolvency and a RP has been appointed. The question has arisen as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the IBC, 2016.

Decision: Delhi HC held that **counter claim does NOT deserve to be stayed** under Section 14 of the IBC, 2016 on account of the various reasons as given in legal principles rules.

Fact of the Case	☆ In the given case, the Plaintiff (i.e. SSMP) filed the present suit seeking recovery of Rs. 1,61, 47,336.44. ☆ The Defendant (Perkan) has filed its written statement/counter claim in which it avers that it is, in fact entitled to recover a sum of Rs. 59,51,548/- and NO amount was due and payable by it to the Plaintiff. ☆ The Plaintiff Company has since gone into insolvency and a RP has been appointed. ☆ The question has arisen as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the IBC, 2016.
Applicable Law	☆ Section 14 of the IBC, 2016 of IBC, 2016 (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the AA shall by order declare moratorium for prohibiting all of the following, namely: (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

	(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the CG in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the CIRP: Provided that where at any time during the CIRP period, if the AA approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
Legal Principles held	★ The claim of the Plaintiff is much higher i.e. a sum of Rs.1, 61, 47,336.44, than what is claimed by the Defendant. The transaction between the parties would require to be adjudicated on the basis of correspondence and the agreement, which have been placed on record. ★ This Court would have to first determine the question as to whether any amount at all is payable to the Plaintiff. Even if the counter claim is decreed fully and the claim of the Plaintiff is also allowed. ★ In fact, the Plaintiff would be entitled to recover and not the Defendant. The possible outcome of the suit and the counter claim is in the realm (i.e. scope) of uncertainty. The question as to the amount that would be liable to be paid by either party to the other is not something that can be predicted at this point. ★ The entitlement of the Defendant to the amount claimed from the Plaintiff is also not concrete and settled. ★ There is no doubt that adjudication of the plaint and counter claim are interlinked with each other. (a) Power Grid Corporation of India v. Jyoti Structures Ltd., (2018): ☛ The court held that embargo of Section 14(1)(a) of the Code would NOT apply in all circumstances. ☛ A perusal of the judgment shows that until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor, it would not be prohibited under Section 14(1)(a) of the Code. (b) Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd & ANR.: ☛ The NCLAT held that until and unless the counter claim is itself determined, the claim and the counter claim deserve to be heard together and there is no bar on the same in the Code. ★ The Court has considered the plaint and the written statement/ counter claim. The adjudication of the plaint, defences in the written statement and the amounts claimed in the counter claim would have to be considered as a whole in order to determine as to whether the suit or the counter claim would be liable to be decreed. ★ A counter claim would be in the nature of a suit against the Plaintiff which in this case is the 'corporate debtor'.

	☆ Under Section 14(1) (a) of the Code, strictly speaking, a counter claim would be covered by the moratorium which bars the institution of suits or continuation of pending suits or proceedings against the corporate debtor". A counter claim would be a proceeding against the corporate debtor. ☆ However, the counter claim raised in the present case against the corporate debtor i.e., the Plaintiff, is integral to the recovery sought by the Plaintiff and is related to the same transaction. ☆ Delhi HC held that counter claim does NOT deserve to be stayed under Section 14 of the IBC, 2016 on account of the following reasons: (a) Section 14 has created a piquant situation i.e., that the corporate debtor undergoing insolvency proceedings can continue to pursue its claims but the counter claim would be barred under Section 14(1)(a). (b) When such situations arise, the Court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. (c) A blinkered approach cannot be followed and the Court cannot blindly stay the counter claim and refer the defendant to the NCLT/RP for filing its claims. The nature of a counter claim is such that it requires proper pleadings to be filed, defences and stands of both parties to be considered, evidence to be recorded and then issues have to be adjudicated. (d) The proceedings before NCLT are summary in nature and the RP does not conduct a trial. The RP merely determines what payment can be made towards the claims raised, subject to availability of funds. (e) The NCLT/RP cannot be burdened with the task of entertaining claims of the Defendant which are completely uncertain, undetermined and unknown. Moreover, the question as to whether the Defendant is in fact entitled to any amounts, if determined by the NCLT, prior to the adjudication of the plaintiff's claim for recovery, would result in the possibility of conflicting views in respect of the same transaction. ☆ Under these circumstances, this court is of the opinion that the Plaintiff's and the defendant's claim ought to be adjudicated comprehensively by the same forum. At this point, till the defence is adjudicated, there is NO threat to the assets of the corporate debtor and the continuation of the counter claim would NOT adversely impact the assets of the corporate debtor. ☆ Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered.
Decisions	☆ Delhi HC held that counter claim does NOT deserve to be stayed under Section 14 of the IBC, 2016.

93. LALIT MISHRA & ORS v. SHARON BIO MEDICINE LTD. & ORS. [NCLAT]

Hint: The Appellants have challenged the **order of approval of the 'Resolution Plan'** on two counts namely –

(a) The Appellants, promoters were the shareholders and for them **no amount has been provided under the 'Resolution Plan'**; and

(b) Some of the Appellants, promoters are also **'personal guarantors' who have been discriminated.**

Question arise in this case whether Personal guarantor claimed his subrogation right is tenable in law.

Decision: NCLAT decide the case in favour of the Respondents and held that Promoters (i.e. Personal Guarantors) **cannot claimed subrogation rights.**

Fact of the Case	☆ The Appellants are the promoters of 'Sharon Bio Medicine Ltd.'- ('Corporate Debtor').
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	☆ In the appeal they have challenged the order passed by the NCLT, whereby and where under, the 'Resolution Plan' submitted by the 3rd Respondent- 'Successful Resolution Applicant' has been approved. ☆ The Appellants have challenged the order of approval of the 'Resolution Plan' on two counts namely – (c) The Appellants, promoters were the shareholders and for them no amount has been provided under the 'Resolution Plan'; and (d) Some of the Appellants, promoters are also 'personal guarantors' who have been discriminated.
Legal Principles held –	☆ Learned counsel appearing on behalf of the Appellants submitted the following arguments before the NCLAT: 1. Payment terms provided in the 'Resolution Plan' is in contravention to the applicable provisions of law. 2. The 3rd Respondent- 'Successful Resolution Applicant' has arbitrarily reduced or written off substantial liabilities of the promoters/ shareholders without any legal basis. 3. It was further submitted that the lenders have not been treated similarly and restructuring for its entire claims of the 'Corporate Debtor' is against the provisions of the 'IBC. 4. It was submitted that the security interest which include the personal guarantees of the Appellants have been reduced to 'nil' and thereby the 'Resolution Plan' have been submitted in violation of the provisions of Sections 133 and 140 of the 'Indian Contract Act'. 5. The submissions made on behalf of the Appellants have been disputed by the learned counsel appearing on behalf of the 'RP' and the 3rd Respondent. 6. Section 4 of the 'Resolution Plan' deals with 'raising of funds under the proposed plan'. Under Clause 1 therein, the 'reduction of share capital' has been proposed and it is proposed that the Company undertakes a selective capital reduction of (a) The entire shareholding held by the Promoter Group and Secured Lenders; and (b) Upto 90% of the Equity Shares held by the public shareholders. It is mentioned that the minimum public shareholding requirement of 25% under Indian securities laws shall be adhered to. 7. The restructuring of the financial debt as part of the 'Resolution Plan' approved by the AA under the 'IBC' does not envisage complete discharge of the liability of personal guarantors of the 'Corporate Debtor'. This will be evident from Clause 12 of Section 5 of the 'Resolution Plan' which deals with 'treatment of security'. Therein it is mentioned that all securities/ collaterals/ margin money/ fixed deposit with lien provided by the Company shall be deemed to be released immediately on Effective Date. It is subsequently mentioned that the personal guarantee provided by the existing promoters of the Company, shall result in no liability towards the 'Company' or the 'Resolution Applicants'. This 'treatment of security' and with regard to personal guarantee provided by the existing promoters of the Company is alleged to be in violation of Section 140 and Section 133 of the 'Indian Contract Act'.
Decision	<u>Reply to Issue No. 01</u> ☆ However, the aforesaid submissions cannot be accepted, as on approval of the 'Resolution Plan', the claim of the entire stakeholders stand cleared and thereafter, the 'Personal Guarantor' cannot claim that they have been discriminated. All the stakeholders have already been cleared by the 3rd Respondent- 'Successful Resolution Applicant'. It was

open to them to say that the personal guarantee will not result into any liability towards the 'Company' or the 'Resolution Applicant'.

- ★ It was NOT the intention of the legislature to benefit the 'Personal Guarantors' by **excluding exercise of legal remedies available in law** by the creditors, to recover legitimate dues by enforcing the personal guarantees, which are independent contracts. It is a settled position of law that the liabilities of guarantors is **co-extensive with the borrower**. This Appellate Tribunal **held that the resolution under the 'IBC' is not a recovery suit**.

The **object of the 'IBC' is maximization of the value of the assets of the 'Corporate Debtor', then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the 'Corporate Debtor'**. While considering the 'Resolution Plan', the creditors focus on resolution of the borrower 'Corporate Debtor', in line with the spirit of the 'IBC'.

Reply to Issue No. 02

- ★ The present appeal has been preferred by the promoters, who are responsible for having contributed to the insolvency of the 'Corporate Debtor'.
- ☛ The 'IBC' prohibits the promoters from gaining, directly or indirectly, control of the 'Corporate Debtor', or benefiting from the 'CIRP' or its outcome.
 - ☛ The 'IBC' seeks to protect creditors of the 'Corporate Debtor' by preventing promoters from rewarding themselves at the expense of creditors and undermining the insolvency processes.
- ★ For the aforesaid reasons, it will be evident from the 'IBC' that:
- ☛ The powers of the promoters as the members of the BOD(s) of the 'Corporate Debtor' are suspended.
 - ☛ The voting right of the shareholders, including promoter shareholders, are suspended and shareholders' approval is deemed to have been granted for implementation of the 'Resolution Plan' as apparent from explanation to Section 30(2)(f) of the 'IBC'.
 - ☛ The promoters, being 'related parties' of the 'Corporate Debtor', have NO right of representation, participation or voting in a meeting of the 'Committee of Creditors'.
- ★ Admittedly, the shareholders and promoters are NOT the creditors and thereby the 'Resolution Plan' cannot balance the maximization of the value of the assets of the 'Corporate Debtor' at par with the 'Financial Creditors' or 'Operational Creditors' or 'Secured Creditors' or 'Unsecured Creditors'.

They are also ineligible to submit the 'Resolution Plan' to again control or takeover the management of the 'Corporate Debtor'.

In the aforesaid background, **if NO amount is given to the promoters/ shareholders and the other equity shareholders who are NOT the promoters have been separately treated by providing certain amount in their favour, the Appellant cannot claim to have been discriminated.**

94. FORECH INDIA LTD. v. EDELWEISS ASSETS RECONSTRUCTION CO LTD & ANR [SC]

Hint: In the given case, appellant is the operational creditor of Tecpro Systems Ltd (Respondent No. 2) and Respondent No. 1 (i.e. Edelweiss Asset Reconstruction Co. Ltd.) being a Financial Creditor of Tecpro Systems Ltd. Appellant filed winding up petition against the Respondent No. 1 Company on account of inability to pay dues. The notice under Rule 26 of the Companies (Court) Rules, 1959 in this petition was served as **recorded by an order of the Delhi HC**. Meanwhile, Financial Creditor i.e. Respondent No. 1 moved an insolvency petition before the

NCLT filed under Section 7 of the IBC, 2016. "The question arises whether the winding up petition filed under Companies is still in continuance or not after filing application under IBC, 2016".

Decision:

★ **The SC decide the case in favour of the Respondent.**

★ **The SC held that a financial creditor's application under Section 7 of the IBC, 2016 is an independent proceeding which must be decided in accordance with the provisions of the Code notwithstanding the winding up petitions filed against the same corporate debtor under the provisions of Companies Act, 1956.**

Fact of the Case	★ In the present case, the appellant is an Operational Creditor of Tecpro Systems Ltd against which appellant filed winding up petition in 2014. ★ The facts relevant for disposal of this appeal are as follows:- (a) A winding up petition was filed by the present appellant before the Delhi HC on 10.01.2014, against Respondent No. 2-Company alleging inability to pay dues. (b) The notice under Rule 26 of the Companies (Court) Rules, 1959 in this petition was served as recorded by an order of the Delhi HC. (c) Further orders which have been pointed out to the Court have gone on to state that there is a debt or liability which is in fact admitted. ★ It transpires (i.e. occurs) that another operational creditor, viz., SKF India Ltd. had filed an application under Section 9 of the IBC, 2016 against Respondent No. 2, which was allowed to be withdrawn so that the aforesaid operational creditor could go to the HC in a winding up petition. ★ Meanwhile, Respondent No. 1 (Edelweiss Asset Reconstruction Co. Ltd.) being a financial creditor of the same corporate debtor, moved an insolvency petition before the NCLT filed under Section 7 of the IBC, 2016. This petition was admitted on 07.08.2017. ★ Against the aforesaid order, an appeal was filed by appellant before the NCLAT. The NCLAT dismissed the appeal stating that the CIRP application maintainable since there was no winding up order by the HC in pursuance of Section 14 of the IBC. ★ The Appellant filed appeal before the SC against the order of NCLAT.
Legal Principles held—	★ The SC confirmed the order of NCLAT after considering the following facts: 1. The resultant position in law is that when the IBC, 2016 was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be transferred to the NCLT and treated as petitions under the IBC, 2016. 2. However, on a working of the Code, the Government realized that parallel proceedings in the HCs as well as before the AA in the IBC, 2016 would stultify (i.e. make fool) the objective sought to be achieved by the Code, which is to resuscitate (i.e. revive) the corporate debtors who are in the red. 3. In order to achieve the objective of the IBC, 2016, the related companies Rules being amended, and finally Section 434 under Companies Act, 2013 was itself amended in 2018 by adding proviso which states that in case of winding up petitions where notice has been served and which are pending in the HCs, any person could apply for transfer of such petitions to the NCLT under the IBC, which would then have to be transferred by the HC to the AA and treated as an insolvency petition under the Code. 4. The SC relied on the judgment held in Jaipur Metals & Electricals Employees Organization vs. Jaipur Metals & Electricals Ltd. & Ors., wherein it is clarify that if there is any inconsistency between Section 434 as substituted and the provisions of the IBC, 2016, the latter must prevail and the winding up petitions pending before the HC cannot be proceeded further in view of Section 238 of the Code. 5. The SC also approved the judgement of the Hon'ble Bombay HC in PSL Limited v. Jotun India Private Limited (2018) which had laid down that the remedies available to a person under the Code cannot be affected merely due to pendency of winding up proceedings before the HC.

	★ Section 11 is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. ★ From a reading of this Section, it does not follow that until a liquidation order has been made against the corporate debtor, an Insolvency Petition may be filed under Section 7 or Section 9 as has been held by the Appellate Tribunal. Hence, any reference to Section 11 in the context of the problem before us is wholly irrelevant. ★ However, we decline to interfere with the ultimate order passed by the Appellate Tribunal because it is clear that the financial creditor's application which has been admitted by the Tribunal is clearly an independent proceeding which must be decided in accordance with the provisions of the Code.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that a financial creditor's application under Section 7 of the IBC, 2016 is an independent proceeding which must be decided in accordance with the provisions of the Code notwithstanding the winding up petitions filed against the same corporate debtor under the provisions of Companies Act, 1956.

95. SWISS RIBBONS PVT LTD. v. UNION OF INDIA [SC]

Hint: The Petitioners (Swiss) filed **the instant petition challenging the Constitutional Validity of the IBC, 2016.**

Decision:

- ★ The SC held that the IBC, 2016 was constitutionally valid.
- ★ The SC decide the case in favour of the Respondent (i.e. UOI).

Fact of the Case	★ The Petitioners (Swiss) filed the instant petition challenging the Constitutional Validity of the IBC, 2016.
Legal Principles held –	★ The SC consider the following observations: (1) The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. (2) Earlier experiments of the GOI, as we have seen, in terms of legislations having failed, ultimately led to the enactment of the Code. (3) The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. (4) To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. (5) We have also seen that the working of the Code is being monitored by Expert Committees that have been set up by the CG in this behalf. (6) Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners. ★ The SC consider the following facts: (1) We are happy to note that in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. (2) Approximately 3300 cases have been disposed of by the AA based on out-of-court settlements between corporate debtors and creditors which themselves involved claims amounting to over Rs. 1,20,390 Crores. (3) 80 cases have since been resolved by resolution plans being accepted. Of these 80 cases, the liquidation value of 63 such cases is Rs. 29,788.07 Crores. However,

	the amount realized from the resolution process is in the region of Rs. 60,000 Crores, which is over 202% of the liquidation value. (4) As a result of this, the RBI has come out with figures which reflect these results. ☛ Thus, credit that has been given by banks and FI(s) to the commercial sector (other than food) has jumped up from Rs. 4952.24 Crores in 2016- 2017, to Rs. 9161.09 Crores in 2017-2018, and to Rs. 13195.20 Crores for the first 6 months of 2018-2019. ☛ Equally, credit flow from non-banks has gone up from Rs. 6819.93 Crores in 2016-2017, to Rs. 4718 Crores for the first six months of 2018-2019. Ultimately, the total flow of resources to the commercial sector in India, both bank and non-bank, and domestic and foreign (relatable to the non-food sector) has gone up from a total of Rs 14530.47 Crores in 2016-2017, to Rs. 18469.25 Crores in 2017- 2018, and to Rs. 18798.20 Crores in the first six months of 2018-2019. ☛ These figures show that the experiment conducted in enacting the Code is proving to be largely successful. (5) The defaulter's paradise is lost. In its place, the economy's rightful position has been regained. The result is that all the petitions will now be disposed of in terms of this judgment.
Decision	★ The SC held that the IBC, 2016 was constitutionally valid. ★ The SC decide the case in favour of the Respondent (i.e. UOI).

96. SHALINI PUBLICITY CREATIVE PVT. LTD. v. DENA BANK [NCLAT]

Hint: the Financial Creditor alleged default on the part of the Corporate Debtor in repayment of facilities **granted to the Corporate Debtor to the extent of Rs.28,15,26,092.** Financial Creditor **also relied upon the 'statement of accounts' substantiating its claim with regard to the amount in respect whereof default was alleged.** The Financial Creditor filled application under section 7 of the IBC, 2016 before AA for initiation of CIRP against the Corporate Debtor (i.e. Appellant). The AA (AA) taking note of the fact that the Corporate Debtor has made proposal of One Time Settlement (OTS) to the Financial Creditor, but it had been rejected by the Financial Creditor and **that the 'debt' and 'default' was established.** Accordingly, **AA admit the application for initiating CIRP against the Corporate Debtor.** **Question arise "Whether the action of the NCLT in regard to admission of application of financial creditor under section 7 of IBC, 2016 is correct"**

Decision:

- ★ The NCLAT affirmed action of the NCLT in regard to admission of application of financial creditor under section 7 of IBC, 2016 is valid in law.
- ★ The NCLAT decide the case in favour of the Respondent.

Fact of the Case	★ In the given case, the Financial Creditor alleged default on the part of the Corporate Debtor in repayment of facilities granted to the Corporate Debtor to the extent of Rs.28,15,26,092/-. ★ The Financial Creditor relied upon the 'sanction letter' dated 26th December, 2015 in terms whereof facilities comprising of cash credit, term loan and bank guarantee accumulated at Rs.14,69,00,000/- were granted to the Corporate Debtor, repayment whereof was secured by various security documents. ★ Financial Creditor also relied upon the 'statement of accounts' substantiating its claim with regard to the amount in respect whereof default was alleged. ★ The Financial Creditor filled application under section 7 of the IBC, 2016 before AA for initiation of CIRP against the Corporate Debtor (i.e. Appellant). Later on, the AA admit the application of the Financial Creditor. ★ Appellant Corporate Debtor filed appeal before the NCLAT against the impugned order passed by the AA (NCLT), Mumbai Bench by virtue whereof application of Respondent – Financial Creditor has been admitted, moratorium slapped and IRP appointed with certain directions.
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Legal Principles held—	☆ The AA (AA) taking note of the fact that the Corporate Debtor has made proposal of One Time Settlement (OTS) to the Financial Creditor, but it had been rejected by the Financial Creditor and that the 'debt' and 'default' was established. Accordingly, AA admit the application for initiating CIRP against the Corporate Debtor. ☆ Learned counsel for the Appellant tried to make a vain (i.e. pointless) attempt to assail the impugned order raising the issue of limitation. ☆ The NCLAT considered the following in relation to the issue of limitation: ☛ In the first place be it seen that no such plea was raised before the AA. That apart, under Article 137 of the Limitation Act, the right to sue accrues when a default occurs. ☛ Therefore, the period of 3 years would therefore have to be reckoned from the date of default unless there is a continuing cause of action as envisaged under aforesaid Article. ☛ It emanates from record that the Financial Creditor relied upon various security documents connected with the sanction of loan facilities. ☛ In addition thereto reliance was also placed on notice issued under Section 13(2) of SARFAESI Act, 2002 demanding a sum of Rs.16,31,06,448/- as on 17th February, 2016. ☛ Once the debt was acknowledged on 26th February, 2015 and the suit for recovery was filed before the DRT, Mumbai on 19th October, 2016, the claim cannot be held to be barred by limitation. ☆ Even otherwise, the objection in regard to the claim being barred by limitation has to be determined during the CIRP only. Triggering of CIRP on grounds of default of a debt that's payable in law or in fact is different from admission or rejection of a claim of a creditor during such process. ☆ Section 7 of IBC, 2016 providing for initiation of CIRP by Financial Creditor came into force on 1st December, 2016. Remedy by way of triggering of CIRP on the ground of default committed qua the financial debt was admittedly NOT available to a Financial Creditor prior to such date. ☆ It is not disputed by learned counsel for the Appellant that the application under Section 7 of IBC, 2016 came to be filed by the Financial Creditor on 12th October, 2018. ☆ Therefore, the triggering of CIRP` cannot be said to be beyond limitation, more so as there has been acknowledgement of debt on 26th February, 2015 and remedy for initiation of CIRP in terms of Section 7 of IBC, 2016 was not available prior to 1st December, 2016. ☆ That apart, there has been continuing cause of action as OA 1194 of 2016 filed by the Financial Creditor against the Corporate Debtor before the DRT, Mumbai on 19th October, 2016 is still pending adjudication. ☆ Learned counsel for the Appellant made feeble (i.e. weakly) attempt to contend that the debt acknowledgement letter dated 26th February, 2015 was manipulated and fictitious and same could not be made a basis for either reckoning the period of limitation or for entertaining claim. ☆ In absence of such plea having been raised before the AA besides no complaint alleging forgery, fabrication/ fudging of record being lodged, this argument must be rejected with the contempt that it deserves. ☆ On one hand, the Appellant was seeking restructuring of loan in terms of RBI Guidelines seeking more time for OTS but on the other hand alleges fabrication and manipulation.
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	☆ What prompted the Corporate Debtor to seek restructuring of loan OTS is explainable on no hypothesis other than the one that the Corporate Debtor had committed default qua the outstanding amount which was payable.
Decision	☆ The NCLAT affirmed action of the NCLT in regard to admission of application of financial creditor under section 7 of IBC, 2016 is valid in law. ☆ The NCLAT decide the case in favour of the Respondent.

97. COAL INDIA LTD. v. GULF COIL LUBRICANTS INDIA LTD & ANR [NCLAT]

Hint: An application under Section 9 of the IBC, 2016 was filed by Operational Creditor for initiation of the CIRP against corporate debtor. The said application has been admitted by the AA (NCLT). While passing the impugned order, the AA had **overlooked (i.e. fail to notice) the factum that the principal amount has been paid and settled and NO interest was required to be paid.** Corporate Debtor filed appeal before the NCLAT against the order of AA.

Question arise "Whether the action of the NCLT to proceed further even matter is already decided before constitution of Committee"

Decision:

- ☆ The NCLAT decide the case in favour of the Appellant.
- ☆ The NCLAT held that we set aside the impugned order passed by the AA.

Fact of the Case	☆ An application under Section 9 of the IBC, 2016 was filed by Operational Creditor for initiation of the CIRP against corporate debtor. The said application has been admitted by the AA (NCLT). ☆ While passing the impugned order, the AA had overlooked (i.e. fail to notice) the factum that the principal amount has been paid and settled and NO interest was required to be paid. ☆ Corporate Debtor filed appeal before the NCLAT against the order of AA.
Legal Principles held –	☆ Operational Creditor accepts that the principal amount was paid prior to the admission of the application under Section 9 and interest has been paid and matter has been settled by agreement dated 26th January, 2019. ☆ It is submitted that such settlement has already been made prior to the constitution of the 'Committee of Creditors'. ☆ In the case of Swiss Ribbons Pvt. Ltd. & ANR. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018, the Hon'ble SC observed as follows: It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the AA, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the IRP). ☞ We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. ☞ This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case." ☆ In view of the fact that the parties have now settled the matter prior to the constitution of the 'Committee of Creditors' and the AA has failed to notice that the principal amount has already been paid and original plea of the 'Corporate Debtor' was that no interest was payable in terms of the Agreement/Contract. The appeal is allowed with

	aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.
Decision	★ The NCLAT decide the case in favour of the Appellant. ★ The NCLAT held that we set aside the impugned order dated 19th December, 2018 passed by the AA. ★ Further NCLAT passed the following orders: (a) In effect, order (s) passed by the AA appointing 'IRP', declaring moratorium, freezing of account, and all other order (s) passed by the AA pursuant to impugned order and action, if any, taken by the 'IRP', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. (b) The application preferred by Respondent under Section 9 of the 'IBC, 2016' is dismissed. (c) The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its BOD(s) from immediate effect. (d) The AA will fix the fee of 'IRP' and the 'Corporate Debtor' will pay the fees of the 'IRP' for the period he has functioned.

98. AFFINITY FINANCE SERVICES PVT LTD. v. KIEV FINANCE LTD [NCLAT]

Hint: In the given case, The appellant (being operational creditor) filed petition under Section 9 of the IBC, 2016 **seeking initiation of CIRP** against the Respondent (i.e. Corporate Debtor) **for committing default in paying of its debt.** The petition was admitted by the AA and IRP was appointed and Committee of Creditors came to be constituted. Subsequently **appointment of IRP was confirmed as RP.** The COC had as many as six meetings but **did not receive any resolution plan during the period of 180 days.** RP approached the AA **for liquidation of the Corporate Debtor.** The AA **passed the liquidation order** qua the corporate debtor and **the RP was appointed as Liquidator.** However, subsequently **an application appears to have been filed by the Liquidator seeking recall of the liquidation order,** which was **dismissed on the ground that the order of liquidation of corporate debtor passed by it could NOT be subjected to review or revocation.** It was also noticed by the AA that corporate debtor **could be sold as an ongoing concern during the liquidation process.**

The question arises "Whether refusal to recall the liquidation order is tenable in law.

Decision: The NCLAT decide the case in favour of the Respondent (i.e. Corporate Debtor).

Fact of the Case	★ The appellant (being operational creditor) filed petition under Section 9 of the IBC, 2016 seeking initiation of CIRP against the Respondent (i.e. Corporate Debtor) for committing default in paying of its debt. ★ The petition was admitted by the AA and IRP was appointed and Committee of Creditors came to be constituted. Subsequently appointment of IRP was confirmed as RP. ★ The COC had as many as six meetings but did not receive any resolution plan during the period of 180 days. ★ RP approached the AA for liquidation of the Corporate Debtor. ★ The AA passed the liquidation order qua the corporate debtor and the RP was appointed as Liquidator. ★ However, subsequently an application appears to have been filed by the Liquidator seeking recall of the liquidation order, which was dismissed on the ground that the order of liquidation of corporate debtor passed by it could NOT be subjected to review or revocation. ★ It was also noticed by the AA that corporate debtor could be sold as an ongoing concern during the liquidation process. ★ Accordingly, the application seeking review was dismissed. ★ The Appellant filed appeal before the NCLAT against the order of AA.
Legal Principles held –	The NCLAT Consider the following facts before passing the order: (a) No resolution applicant came forward with a resolution plan during the CIRP and the RP was left with no option but to seek an order of liquidation from the AA.

	(b) AA also did not have any option but to pass order for liquidation of the corporate debtor. Even if it is accepted that any resolution applicant did intend to submit a resolution plan before the order of liquidation was passed, same could be evaluated for considering its feasibility, viability and financial matrix only during the period of CIRP. (c) The RP, in terms of Section 30(3) is required to present to the COC for its approval such resolution plans which confirm the conditions referred to in Section 30(2). It is only thereafter that feasibility and viability of such resolution plan is considered by the COC and the resolution plan is subjected to vote. All this has not been done. (d) In fact review was sought on the ground that the proposed resolution applicant intended to file a resolution plan which in fact could not be evaluated and subjected to scrutiny for determining its viability and feasibility by the COC unless the same had been submitted within the prescribed time frame. ★ The AA has rightly pointed out in the impugned order that even during the liquidation process corporate debtor can be sold as an ongoing concern. That should allay the apprehension of the appellant, if any, with regard to fair value of the Assets of the Corporate Debtor.
Decision	★ The NCLAT decide the case in favour of the Respondent (i.e. Corporate Debtor). ★ On consideration of the aforesaid facts, NCLAT held that it is not justify recalling of the order of liquidation at the instance of appellant, operational creditor, who claims to be sole member of COC. The impugned order declining to recall the liquidation order does NOT suffer from any legal infirmity and we do NOT find any justifiable ground to interfere.

99. JK JUTE MILL MAZDOOR MORCHA v. JUGGILAL KAMLAPAT JUTE MILLS LTD & ORS [SC]

Hint: The appellant issued a demand notice on behalf of roughly 3000 workers under Section 8 of the Code for outstanding dues of workers to the Respondent (i.e. Juggilal Kamlapat Jute Milla Ltd.). Respondent reply to the said demand notice that trade union not being covered as an operational creditor. Moreover, NCLAT dismissed the appeal of the appellant on the ground that **each worker may file an individual application before the NCLT.** The two question raised before the SC as mentioned below:

(a) **Whether each worker require to file an individual application before the NCLT.**

(b) **Whether a trade union could be said to be an operational creditor for the purpose of the IBC, 2016.**

Decision:

★ The SC decide the **case in favour of the Appellant (JK Jute).**

★ SC set aside the decision of the NCLAT and held that the **NCLAT is not correct in refusing to go into whether the trade union would come within the definition of "person" under Section 3(23) of the Code.** Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor.

Fact of the Case	★ The facts of the present case reveal a long-drawn saga of a jute mill being closed and reopened several times until finally, it has been closed for good on 07.03.2014. ★ Proceedings were pending under the Sick Industrial Companies (Special Provisions) Act, 1985. ★ On 14.03.2017, the appellant issued a demand notice on behalf of roughly 3000 workers under Section 8 of the Code for outstanding dues of workers. ★ This was replied to by respondent No.1 on 31.03.2017. The NCLAT on 28.04.2017, after describing all the antecedent facts including suits that have been filed by respondent No. 1 and referring to pending writ petitions in the Delhi HC, ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed. ★ By the impugned order dated 12.09.2017, the NCLAT did likewise and dismissed the appeal filed by the appellant before us, stating that each worker may file an individual application before the NCLT.
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	★ The present appeal raises an important question as to whether a trade union could be said to be an operational creditor for the purpose of the IBC, 2016.
Legal Principles held—	★ The SC consider the following facts before passing the order: (a) A trade union is certainly an entity that established under a statute – namely, the Trade Unions Act, and therefore, it would fall within the definition of “person” under Sections 3(23) of the IBC. (b) It is clear that an “operational debt”, meaning a claim in respect of employment, could certainly be made by a person duly authorised to make such claim on behalf of a workman. (c) Rule 6, Form 5 of the Insolvency and Bankruptcy (Application to AA) Rules, 2016 also recognises the fact that claims may be made not only in an individual capacity, but also conjointly. (d) Further, a registered trade union recognised by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. (e) Equally, the general fund of the trade union, which is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen. (f) Even we are of the view that instead of one consolidated petition by a trade union representing a number of workmen, filing individual petitions would be burdensome as each workman would thereafter have to pay insolvency resolution process costs, costs of the IRP, costs of appointing valuers, etc. under the provisions of the Code read with Regulations 31 and 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
Decision	★ The SC decide the case in favour of the Appellant (JK Jute). ★ The SC passed the following decision via order: (a) After considering all the aforesaid facts, there is no doubt that a registered trade union which is formed for the purpose of regulating the relations between workmen and their employer can maintain a petition as an operational creditor on behalf of its members. We must never forget that procedure is the handmaid of justice, and is meant to serve justice (b) SC set aside the decision of the NCLAT and held that the NCLAT is not correct in refusing to go into whether the trade union would come within the definition of “person” under Section 3(23) of the Code. Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor.

100. PRANAMI TRADING PVT LTD. v. KIEON DEVELOPERS PVT. LTD [NCLAT]

Hint: In the given case, Appellant **booked a flat with the Respondent and** paid an amount of Rs. 60 Lakhs and **the allotment letter was issued to the Appellant.** On account of disputes between the parties, **both the parties cancelled the booking in accordance with terms and conditions** as laid down in the MOU. The Respondent agreed to pay the Appellant the amount of Rs. 60 Lakhs within 18 months from the date of receipt of the **booking amount.** In addition, Respondent agreed to pay Rs. 8,10,000/- every six months to the Appellant **till entire booking amount was duly paid.** The Appellant **filed application under Section 7 before the AA, but it was wrongly dismissed on the ground of limitation.** The Impugned Order shows that the AA took into consideration the Application filed under Section 7 and **the Affidavit filed by the Corporate Debtor claiming that the amount concerned was barred by limitation.** The date of default was stated to be 21.07.2017 which was date of the written statement in the Suit. The AA observed that **written statement filed in the Suit did not amount to acknowledgement of the debt and could not reset the limitation.**

- ★ **The Appellant filed appeal before the NCLAT against the rejection of application by the AA on the ground of limitation. This is issue in dispute.**

Decision:

- ★ **NCLAT decide the case in favour of the Appellant.**
- ★ **NCLAT held that** in our view, the Application under Section 7 could not have been rejected as time barred. There was a debt which was due, and the default was of more than Rs.1 Lakh and therefore, it was sufficient to trigger Section 7 proceeding.
- ★ In that view of the matter, the Application filed before NCLT deserves to be admitted.

Fact of the Case	★ The Appellant had booked a flat with the Respondent on 16th May 2012 and paid an amount of Rs. 60 Lakhs and the allotment letter was issued to the Appellant. ★ Subsequently, on 16.07.2012, an MOU was executed between the Appellant and Respondent and both the parties cancelled the booking on terms and conditions as laid down in the MOU. ★ The Respondent agreed to pay the Appellant the amount of Rs. 60 Lakhs within 18 months from the date of receipt of the boking amount, i.e. on or before 15th November 2013. ★ In addition, Respondent agreed to pay Rs. 8,10,000/- every six months to the Appellant till entire booking amount was duly paid. Other conditions were also incorporated. ★ According to the Appellant, in furtherance to the MOU and undertaking, the Respondent paid Rs. 3,24,000/- each on 16.11.2012 and 15.05.2013. Even Respondent had issued some cheques for refund of the amount but on 6th January 2014, wrote letter to the Appellant that the cheques are to be replaced. When the Appellant presented two cheques, the same bounced. ★ The Appellant claimed that NO interest had been paid on the booking amount, i.e. the principal amount of Rs.60 Lakhs after 15th May 2013 and the principal amount had also NOT been repaid. ★ The Appellant wanted to invoke second condition of the MOU with regard to the allotment of the flat, but Respondent did not comply and created third party rights which led to the Appellant filing L.C. Suit No.954 of 2014. ★ In the written statement dated 21st July 2017, Respondent claimed that it was a pure loan transaction and accepted that the Respondent had received the money. ★ The Appellant claims that on 16.07.2018, it filed Section 7 proceeding before the AA, but it was wrongly dismissed on the ground of limitation. ★ The Impugned Order shows that the AA took into consideration the Application filed under Section 7 and the Affidavit filed by the Corporate Debtor claiming that the amount concerned was barred by limitation. The date of default was stated to be 21.07.2017 which was date of the written statement in the Suit. The AA observed that written statement filed in the Suit did not amount to acknowledgement of the debt and could not reset the limitation. ★ The Appellant filed appeal before the NCLAT against the rejection of application by the AA on the ground of limitation.
Legal Principles held—	★ The NCLAT consider the following facts before passing the order: (a) the Appellant had paid Rs.60 Lakhs and allotment letter was issued on 16th May 2012. (b) The MOU (Annexure - D) shows that the parties mutually agreed to cancel the booking on the “terms and conditions arrived at between the two parties” as mentioned in the documents. (c) It appears that the Appellant received some amounts which now Appellant classifies as towards the “interest” component and thereafter, appellant contends that neither the principal nor interest, which was recurring, was paid and the Appellant invoked the third para of the Terms and Conditions. (d) The Appellant -Plaintiff filed Suit seeking Decree of the flat and in the written statement dated 21.07.2017 (Annexure G - Page 73), the Respondent - Defendant accepted that the respondent had received consideration amount from the

	Plaintiff as per the statement and claimed that it was a loan transaction. Thus, the provisions of the Limitation Act shall apply "as far as may be" [Section 238 of IBC, 2016]. (e) Although the AA has observed that admission in the written statement will not amount to acknowledgement, we need not deliberate to settle that issue looking to the Term - 1 of the MOU. (f) In the transaction, <u>the term clearly shows liability of Rs. 8,10,000/- getting created every 6 months for the Respondent to pay the Appellant "till the entire booking amount has not been repaid".</u> <u>When the entire booking amount has not been paid, this component keeps getting attracted and liability invoked and when Section 7 Application was filed, the amount due and outstanding was clearly more than Rs. 1 Lakh. Therefore, the Application filed before NCLT deserves to be admitted</u>
Decision	★ NCLAT decide the case in favour of the Appellant. ★ NCLAT held that in our view, the Application under Section 7 could not have been rejected as time barred. There was a debt which was due, and the default was of more than Rs.1 Lakh and therefore, it was sufficient to trigger Section 7 proceeding. In that view of the matter, the Application filed before NCLT deserves to be admitted.

101. AXIS BANK v. SBS ORGANICS PVT. LTD & ANR [SC]

Hint: In the given case, the first respondent moved the DRAT under Section 18 of the SARFAESI Act. In terms of the proviso under Section 18, the first respondent made a deposit of Rs.50 lakhs before the DRAT. During the pendency of the appeal before the DRAT, Securitisation Application itself came to be finally disposed off before the DRT setting aside the sale. First respondent realising that the appeal did not survive. Therefore, the first respondent sought permission to withdraw the same and request for refund of the deposit of Rs. 50 lakhs. However, the permission was granted making it subject to the disposal of the appeal. Gujarat HC disposed off by order setting aside the said condition and permitting the first respondent herein to withdraw the amount unconditionally.

Question arise: The Appellant challenge the order of Gujarat HC before the SC and contends that Respondent No. 1 is not allowed to withdraw pre-deposit before the DRAT. Whether the Respondent No. 1 is eligible to claim refund of the aforesaid pre-deposit.

Decision:

- ★ The SC decide the case in favour of the Respondent (SBS).
- ★ The SC held that the deposit made by the first respondent is liable to be returned to the first respondent unconditionally.

Fact of the Case	★ The first respondent, being a borrower and aggrieved by the steps taken by the secured creditor, and accordingly, first respondent filed Securitisation Application before the DRT. Though, initially an interim relief was granted, the same was vacated by order. Therefore, the first respondent moved the DRAT under Section 18 of the SARFAESI Act. In terms of the proviso under Section 18, the first respondent made a deposit of Rs.50 lakhs before the DRAT. ★ During the pendency of the appeal before the DRAT, Securitisation Application itself came to be finally disposed off before the DRT setting aside the sale.
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	☆ First respondent realising that the appeal did not survive. Therefore, the first respondent sought permission to withdraw the same and request for refund of the deposit of Rs. 50 lakhs. However, the permission was granted making it subject to the disposal of the appeal. ☆ First respondent file appeal against the DRAT before the Gujarat HC by way of Writ Petition, as aggrieved by the observation that the withdrawal would be subject to the result of the appeal. ☆ The Gujarat HC disposed off by order setting aside the said condition and permitting the first respondent herein to withdraw the amount unconditionally. The Appellant (Axis Bank) filed appeal before the SC against the order of the Gujarat HC. ☆ Question arises for consideration in the case is “what is the fate of such deposit on the disposal of the appeal”.
Applicable law	☆ Any person aggrieved by the order of the DRT under Section 18 of the SARFAESI Act, is entitled to prefer an appeal before the DRAT along with the prescribed fee within the permitted period of 30 days. ☆ An appeal under Section 18 of the ‘SARFAESI Act’ before the DRAT can be entertained only if (a) The borrower deposits 50% of the amount in terms of the order passed by the DRT under Section 17 of the Act or (b) 50% of the amount due from the borrower as claimed by the secured creditor, (whichever is less). The Appellate Tribunal may reduce the amount to 25% of the debt at the discretion of the Tribunal, in appropriate cases, for recorded reasons.
Legal Principles held –	☆ Being a pure legal issue, it may not be necessary for us to refer to the factual position in detail. ☆ The SC consider the following before passing the order: (a) The first respondent had in fact sought withdrawal of the appeal, since the appellant had already proceeded against the secured assets by the time the appeal came up for consideration on merits. (b) There is neither any order of appropriation during the pendency of the appeal nor any attachment on the pre-deposit. Therefore, the deposit made by the first respondent is liable to be returned to the first respondent. (c) We make it clear that the dismissal of the appeal is without prejudice to the liberty available to the appellant to take appropriate steps under Section 13(10) of the SARFAESI Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002.
Decision	☆ The SC decide the case in favour of the Respondent (SBS). ☆ The SC held that the deposit made by the first respondent is liable to be returned to the first respondent unconditionally.

102. UCO BANK & ANR v. DIPAK DEBBARMA & ORS [SC]

Hint: In the given case, The UCO bank by the sale notification dated 26.06.2012 under SARFESI Act, 2002, **sold the land by auction to the purchaser who is not the member of Schedule Tribe**. By the virtue of section 187 of Tripura Land Revenue and Land Reform Act, 1960, **it is mandatory for the bank to sell such property to schedule tribe only**. The Respondent who are members of Scheduled Tribe(s) of the State of Tripura filed writ petition before Gauhati HC against the aforesaid action of the Bank. The Guahati HC **decide the case in favour of the Respondent and passed the impugned order on the ground that the Tripura Act of 1960 being included in the Ninth Schedule to the Constitution. Therefore, they enjoying the protection of Section 31-B of the Constitution, would prevail over the SARFAESI Act of 2002**. Accordingly, Guahati HC invalidate the sale Notification dated 26.06.2012, and declare the same being contrary to the provisions of Section 187 of the Tripura Act of 1960.

Decision:

- ★ The SC held the dominant legislation being the Parliamentary legislation, **the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid.** It is the provisions of the Act of 2002, **which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960.**
- ★ Accordingly, the action of the Appellant (i.e. UCO bank) **sold the land by auction to the purchaser who is not the member of Schedule Tribe by the sale notification dated 26.06.2012 under SARFESI Act, 2002 is valid in law.**
- ★ The SC decide the case in favour of the Appellant (UCO Bank).

Fact of the Case	★ In the given case, The UCO bank by the sale notification dated 26.06.2012 under SARFESI Act, 2002, sold the land by auction to the purchaser who is not the member of Schedule Tribe. By the virtue of section 187 of Tripura Land Revenue and Land Reform Act, 1960, it is mandatory for the bank to sell such property to schedule tribe only. ★ The Respondent who are members of Scheduled Tribe(s) of the State of Tripura filed writ petition before Guahati HC against the aforesaid action of the Bank. They contended that the Sale Notification dated 26.06.2012 issued by the appellant Bank under the provisions of the SARFAESI Act, 2002 was in infraction (i.e. violation) of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 (hereinafter referred to as the "Tripura Act of 1960"). ★ There is a legislative embargo (i.e. negation) on the sale of mortgaged properties by the bank to any person who is not a member of a scheduled tribe. ★ The Guahati HC decide the case in favour of the Respondent and passed the impugned order on the ground that the Tripura Act of 1960 being included in the Ninth Schedule to the Constitution. Therefore, they enjoying the protection of Section 31-B of the Constitution, would prevail over the SARFAESI Act of 2002. Accordingly, Guahati HC invalidate the sale Notification dated 26.06.2012, and declare the same being contrary to the provisions of Section 187 of the Tripura Act of 1960.
Legal Principles held—	★ The SC held that on the very face of the language contained in Article 31-B of the Constitution is self-explanatory and provides protection/immunity to a legislation from challenge on the ground that it violates any of the provisions of Part III of the Constitution. ★ Therefore, inclusion of the Tripura Act of 1960 in the Ninth Schedule by itself would not confer immunity to the said legislation from being overridden by the provisions of a Parliamentary statute. ★ In the present case the conflict between the Central and the State Act is on account of an apparent overstepping by the provisions of the State Act dealing with land reform into an area of banking covered by the Central Act. Therefore, the test would be to find out as to which is the dominant legislation having regard the area of encroachment. (a) The provisions of the Act of 2002 enable the bank to take possession of any property where a security interest has been created in its favour. Specifically, Section 13 of the SARFAESI Act, 2002 enables the bank to take possession of and sell such property to any person to realise its dues. The purchaser of such property acquires a clear title to the property sold subject to compliance with the requirements prescribed. (b) On the other hand, section 187 of the Tripura Act of 1960 prohibits the bank from transferring the property which has been mortgaged by a member of a scheduled tribe to any person other than a member of a scheduled tribe. This is a clear restriction on what is permitted by the Act of 2002 for the realisation of amounts due to the bank. The Act of 2002 is relatable to the Entry of banking which is included in List I of the Seventh Schedule.

	(c) Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. ★ The object of the State Act is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. ★ However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, must give way. ★ The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960. ★ The SC relying on the decision held in Central Bank of India v. State of Kerala & Ors (2009): (1) It was held that the provisions of the Bombay Sales Tax Act, 1959 and the Kerala General Sales Tax Act, 1963 providing for a first charge on the property of the person liable to pay sales tax in favour of the State is not inconsistent with the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions, Act 1993 (for short the "DRT Act") and also the Act of 2002 must be understood by noticing the absence of any specific provision in either of the Central enactments containing a similar/parallel provision of a first charge in favour of the bank. (2) The judgment of this Court holding the State enactments to be valid and the Central enactments not to have any overriding effect, proceeds on the said basis i.e. absence of any provision creating a first charge in favour of the bank in either of the Central enactments.
Decision	★ The SC held the dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960. ★ Accordingly, the action of the Appellant (i.e. UCO bank) sold the land by auction to the purchaser who is not the member of Schedule Tribe by the sale notification dated 26.06.2012 under SARFESI Act, 2002 is valid in law. ★ The SC decide the case in favour of the Appellant (UCO Bank).

103. STATE BANK OF INDIA v. SANTOSH GUPTA & ANR [SC]

Hint: In the given case, two question raised before the SC:

- (a) Whether provisions of SARFAESI Act are applicable to the State of J&K;
 (b) Whether Constitution of India is superior to the Constitution of J&K;

Decision:

- ★ The SC decide the case in favour of the Appellant.
 ★ The SC set aside the judgment of the HC. As a result, **notices issued by banks in terms of Section 13 and other coercive methods taken under the said Section are valid and can be proceeded with further.**

Fact of the Case	★ The Constitution of India is a mosaic drawn from the experience of nations worldwide. The federal structure of this Constitution is largely reflected in Part XI which is largely drawn from the Government of India Act, 1935. ★ The State of Jammu & Kashmir is a part of this federal structure. ★ Due to historical reasons, it is a State which is accorded special treatment within the framework of the Constitution of India. ★ This case is all about the State of Jammu & Kashmir vis`- a-vis` the Union of India, in so far as legislative relations between the two are concerned. ★ The present appeals arise out of a judgment dated 16.7.2015 passed by the J & K HC in which it has been held that various key provisions of the SARFAESI Act, 2002 were outside the legislative competence of Parliament, as they would collide with Section 140 of the Transfer of Property Act of Jammu & Kashmir, 1920. The said Act has been held to be inapplicable to banks such as the State Bank of India which are all India banks. ★ The bone of contention in the present appeals is whether SARFAESI in its application to the State of Jammu & Kashmir would be held to be within the legislative competence of Parliament.
Legal Principles held –	Reply to Issue NO. 1 ★ It is interesting to note that the State of Jammu & Kashmir, though a state within the meaning of Article 1 of the Constitution of India, has been accorded a special status from the very beginning because of certain events that took place at the time that the erstwhile Ruler of Jammu & Kashmir acceded to the Indian Union. ★ Applying the doctrine of pith and substance to SARFAESI, it is clear that in pith and substance the entire Act is preferable to Entry 45 List I read with Entry 95 List I in that it deals with recovery of debts due to banks and financial institutions through facilitating securitization and reconstruction of financial assets of banks and financial institutions, and sets up a machinery in order to enforce the provisions of the Act. In pith and substance, SARFAESI does not deal with “transfer of property”. In fact, in so far as banks and financial institutions are concerned, it deals with recovery of debts owing to such banks and financial institutions and certain measures which can be taken outside of the court process to enforce such recovery. ★ Under Section 13(4) of SARFAESI Act, apart from recourse to taking possession of secured assets of the borrower and assigning or selling them in order to realise their debts, the banks can also take over the management of the business of the borrower, and/or appoint any person as manager to manage secured assets, the possession of which has been taken over by the secured creditor. ★ Banks as secured creditors may also require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom money is due or payable to the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt. Thus, it is clear that the transfer of property, by way of sale or assignment, is only one of several measures of recovery of a secured debt owing to a bank and this being the case, it is clear that SARFAESI Act, as a whole, cannot possibly be said to be in pith and substance, an Act relatable to the subject matter “transfer of property”. ★ At this juncture it is necessary to point out that insofar as the State of Jammu & Kashmir is concerned, Sections 17A and 18B of SARFAESI Act, which apply to the State of Jammu & Kashmir, substituted ‘District Judge’ and the ‘HC’ for the ‘DRT’ and the ‘Appellate Tribunal’ respectively. Thus, it is clear on a reading of these judgments that SARFAESI Act, as a whole would be referable to Entries 45 and 95 of List I. ★ We must remember the admonition (i.e. warning) given by this Court in A.S. Krishna & Ors v. State of Madras, 1957, that it is not correct to first dissect (i.e. cut) an Act into various parts and then refer those parts to different Entries in the legislative Lists. Therefore, it is clear that the entire Act, including Sections 17A and 18B, would in pith and substance be referable to Entries 45 and 95 of List I.

- ☆ SC held that the entire Act as a whole would necessarily operate in the State of Jammu & Kashmir. SC also held that the judgment of the HC is wholly incorrect in referring to Entry 11A of the Concurrent List.

Reply to Issue No. 2

- ☆ The counsel for the respondents contend that Parliament would have no power under the Concurrent List to legislate on the subject matter "Administration of Justice". Under Section 5 of the Jammu & Kashmir Constitution, **we have seen that "Administration of Justice" would come into play only when Entries 45 and 95 of List 1 are not attracted.** Even if this were not so, **we have seen in the two judgments cited hereinabove, the expression "administration of justice" is general and must give way to the special laws that are enacted under Entry 95 List I when coupled with another Entry in the same List - in this case Entry 45 List I.**
- ☆ It is rather disturbing to note that various parts of the judgment speak of the absolute sovereign power of the State of Jammu & Kashmir. **It is necessary to reiterate that Section 3 of the Constitution of Jammu & Kashmir, which was framed by a Constituent Assembly elected on the basis of universal adult franchise, makes a ringing declaration that the State of Jammu & Kashmir is and shall be an integral part of the Union of India.**
- ☆ It is to be noted that the opening paragraph of the Constitution of India, namely "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens..." **has been wholly omitted in the Constitution of Jammu & Kashmir. There is no reference to sovereignty.**
- ☆ Neither is there any use of the expression "citizen" while referring to its people. The **people of Jammu & Kashmir for whom special rights are provided in the Constitution are referred to as "permanent residents" under Part III of the Constitution of Jammu & Kashmir. Above all, the Constitution of Jammu & Kashmir has been made to further define the existing relationship of the State with the Union of India as an integral part thereof.**
- ☆ **Thus, it is clear that the State of Jammu & Kashmir has no vestige of sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India.** Therefore, it is wholly incorrect to describe it as being sovereign in the sense of its residents constituting a separate and distinct class in themselves. **The residents of Jammu & Kashmir, we need to remind the HC, are first and foremost citizens of India.**
- ☆ Again it is wholly incorrect to refer to Entry 11A of List 3 and to state that **since it is NOT extended to the State of Jammu & Kashmir, Parliament would have NO legislative competence to enact Sections 17A and 18B of SARFAESI Act.** There are at least three errors in this conclusion.
 - (a) First and foremost, it is not possible to dissect (i.e. cut) the provisions of SARFAESI Act and attach them to different Entries under different Lists. **As has been held by us, the whole of SARFAESI Act is referable to Entry 45 and 95 of List I.**
 - (b) Secondly, what has been missed by the impugned judgment is that **Entry 95 List I is a source of legislative power for Parliament for conferring power and jurisdiction on the District Court and the HC respectively in respect of matters contained in SARFAESI Act, 2002 and**
 - (c) Thirdly, the subject "Administration of Justice" is **only general and can be referred to only if Entry 95 List I read with Entry 45 List I are not attracted.** Most importantly, even if it is found that Section 140 of the Jammu & Kashmir Transfer of Property Act **entitles only certain persons to purchase properties in the State of**

	Jammu & Kashmir, yet, as has been held hereinabove, Rule 8(5) proviso which recognizes this provision, has been brushed aside. ★ In any case an attempt has first to be made to harmonise Section 140 of the Jammu & Kashmir Transfer of Property Act with SARFAESI Act, and if such harmonization is impossible, it is clear that by virtue of Article 246 read with Section 5 of the Jammu & Kashmir Constitution, Section 140 of the Jammu & Kashmir Transfer of Property Act has to give way to SARFAESI Act, and not the other way around. ★ We fail to understand how Article 35A carries the matter any further. This Article only states that the conferring on permanent residents of Jammu & Kashmir special rights and privileges regarding the acquisition of immovable property in the State cannot be challenged on the ground that it is inconsistent with the fundamental rights chapter of the Indian Constitution. ★ The conferring of such rights and privileges as mentioned in Section 140 of the Jammu & Kashmir Transfer of Property Act is not the subject matter of challenge on the ground that it violates any fundamental right of the Constitution of India. Furthermore, in view of Rule 8(5) proviso, such rights are expressly preserved.
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104. CHUNNU FASHIONS & ORS v. EDELWEISS ASSET RECONSTRUCTION CO LTD [DEL]

Hint: In the given case, Borrower filed appeal against the attachment order of the secured creditor before the DRAT. Accordingly, **DRAT directed the appellant to deposit 25% of the disputed amount before filing the appeal.** DRAT dismissed an appeal against an order of the DRT under Section 17 of the SARFAESI Act, 2002 on the ground of non-compliance of direction issued to the petitioner **for pre-deposit of 25% of the disputed amount under appeal.**

Question: DRAT dismissed the appeal on the ground of appellant failed to pre-deposit 25% of the disputed amount which is the mandatory requirement under SARFAESI Act, 2002. Whether the action is tenable in law.

Decision:

- ★ The SC decide the case in favour of the Respondent (Edelweiss).
- ★ The SC held that the condition of pre-deposit being mandatory, complete waiver of pre-deposit is beyond the provisions of the Act. The **learned DRAT has reduced the required pre-deposit of 25%, which is the minimum amount required to be deposited in view of the third proviso** to Section 18 of the SARFAESI Act.

Fact of the Case	★ In the given case, Borrower filed appeal against the attachment order of the secured creditor before the DRAT. Accordingly, DRAT directed the appellant to deposit 25% of the disputed amount before filing the appeal. ★ DRAT dismissed an appeal against an order of the DRT under Section 17 of the SARFAESI Act, 2002 on the ground of non-compliance of direction issued to the petitioner for pre-deposit of 25% of the disputed amount under appeal. ★ The Appellant filed writ petition before Delhi HC against the DRAT order.
Legal Principles held—	★ Under Section 21 of the 1993 Debt Recovery Act, an appeal is not to be entertained by the Appellate Tribunal, unless the person preferring the appeal has deposited 75% of the amount of the debt due from him as determined by the Tribunal under Section 19. In terms of the proviso, the Appellate Tribunal may for reasons to be recorded in writing waive or reduce the amount to be deposited under the said section. Unlike Section 18 of the 1993 Debt Recovery Act, Section 18 of the SARFAESI Act does NOT permit full waiver. ★ In <i>Narain Chandra Ghose v. UCO Bank & Ors</i> (2011), the SC held that the condition of pre-deposit for entertainment of an appeal being mandatory under Section 18 of the SARFAESI Act, an appeal cannot be entertained, unless the condition precedent of deposit is fulfilled.
Decision	★ The SC decide the case in favour of the Respondent (Edelweiss).

	☆ The SC held that the condition of pre-deposit being mandatory, complete waiver of pre-deposit is beyond the provisions of the Act. The learned DRAT has reduced the required pre-deposit of 25%, which is the minimum amount required to be deposited in view of the third proviso to Section 18 of the SARFAESI Act.
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105. MOBILOX INNOVATIONS PVT LTD. v. KIRUSA SOFTWARE PVT LTD [SC]

Hint: In the given case, both appellant and respondent entered into non-disclosure agreement ("NDA"). Subsequently, the appellant wrote to the respondent that they were withholding payments against invoices raised by the respondent, as the respondent had disclosed on their webpage that they had worked for the "Nach Baliye" program run by Star TV. Thus, it amounts to the NDA. Respondent filed an application with the NCLT under Sections 8 and 9 of the new Code stating that an operational debt of Rs.20,08,202.55 was owed by the Appellant. NCLT dismissed the application on the ground that the appellant had disputed the claim of debt alleged by the respondent.

Question: Define the "Operational Creditor" and "When it called that existence of dispute"?

Decision:

- ☆ The SC held that the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. Therefore, the application made by the Respondent had to be rejected as there existed a valid dispute between the parties.
- ☆ The SC decide the case in favour of the Appellant (Mobilox).

Fact of the Case	☆ The present appeal raises questions as to the triggering of the IBC, 2016 when it comes to operational debts owed to operational creditors. The appellant was engaged by Star TV for conducting tele-voting for the "Nach Baliye" program on Star TV. ☆ The appellant in turn subcontracted the work to the respondent. The respondent provided the requisite services and raised monthly invoices and also followed up with the appellant for payment of pending invoices. ☆ It is also important to note that a non-disclosure agreement ("NDA") was executed between the parties. More than a month after execution of the aforesaid agreement, the appellant wrote to the respondent that they were withholding payments against invoices raised by the respondent, as the respondent had disclosed on their webpage that they had worked for the "Nach Baliye" program run by Star TV. Thus, it amounts to the NDA. ☆ Respondent filed an application with the NCLT under Sections 8 and 9 of the new Code stating that an operational debt of Rs.20,08,202.55 was owed by the Appellant. NCLT dismissed the application on the ground that the appellant had disputed the claim of debt alleged by the respondent. ☆ On appeal NCLT remanded the case back to NCLT. ☆ Appellant filed appeal before the SC against the order of the NCLT.
Legal Principles held—	☆ The AA, when examining an application under Section 9 of the Act will have to determine: (a) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And (c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the application would have to be rejected. ☆ In addition to the above, the AA must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application depending upon the factors mentioned in Section 9(5) of the Act. It is now important to construe Section 8 of the Code.

Definition of Operation Creditor and Financial Creditor:

- ☆ The **operational creditors are those creditors to whom an operational debt is owed**, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a **debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.**
- ☆ This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject matter of the judgment delivered by this Court on 31.8.2017 in *Innovative Industries Ltd. v. ICICI Bank & ANR*. In this judgment, **it was held that the AA under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days.**

The **corporate debtor is entitled to point out to the AA that a default has not occurred.** In the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact.

This Court then went on to state:

- ☛ The scheme of Section 7 stands in contrast with the scheme under Section 8 where an **operational creditor is to first deliver a demand notice of the unpaid debt to the operational debtor on the occurrence of a default** in the manner provided in Section 8(1) of the Code.
- ☛ Within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1) the corporate debtor can bring to the notice of the operational creditor **the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor in pursuance of section 8(2) of the Code.**
- ☛ The moment there is existence of such a dispute, **the operational creditor gets out of the clutches of the Code.**

The aforesaid interpretation in simple words:

Thus, It is clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice **demanding payment of the amount involved must be delivered in the prescribed form.** The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any.

Object of the IBC to protect Corporate Debtor from the Operational Creditor:

- ☛ SC consider that one of the objects of the Code **qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations.**
- ☛ It is for this reason **that it is enough that a dispute exists between the parties. It is settled law that the expression "and" may be read as "or" in order to further the object of the statute and/or to avoid an anomalous situation.**
- ☛ It is important to notice that Section 255 read with the Eleventh Schedule of the Code has amended **Section 271 of the Companies Act, 2013 so that a company being unable to pay its debts is no longer a ground for winding up a company.**

Definition the term "Dispute"

	☛ We have already noticed that in the first Insolvency and Bankruptcy Bill, 2015 that was annexed to the Bankruptcy Law Reforms Committee Report, Section 5(4) defined "dispute" as meaning a "bona fide suit or arbitration proceedings..." ☛ In its present avatar, Section 5(6) excludes the expression "bona fide" which is of significance. Therefore, it is difficult to import the expression "bona fide" into Section 8(2)(a) in order to judge whether a dispute exists or not. ☛ Therefore, it is clear that once the operational creditor has filed an application, which is otherwise complete, the AA must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. ☛ It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the AA is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. ☛ It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. ☛ The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application. ☛ Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious.
Decision	★ The SC held that the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. Therefore, the application made by the Respondent had to be rejected as there existed a valid dispute between the parties. ★ The SC decide the case in favour of the Appellant (Mobilox).

106. SURENDRA TRADING COMPANY v. JUGGILAL KAMLAPAT JUTE MILLS CO LTD [SC]

Hint: The NCLT observed **certain deficiencies in the application and directed the appellant to remove the same within 7 days as provided under section 9.** The **appellant removed the defects but after the expiry of 7 days.** The NCLT dismissed the application. On appeal, the NCLAT held that **the appellant should have cured the defects within 7 days, as the provision was mandatory.** The NCLAT dismissed the appeal and upheld the decision of the NCLT.

Question raised in appeal: The **core issue involved in the appeal was whether the 7 days prescribed in the section is mandatory or directory.**

Decision:

- ★ The SC decide the case in favour of the Appellant (i.e. Surendra).
- ★ The SC held that **period of 14 days within which the AA has to pass the order is not mandatory but directory in nature would equally apply** while interpreting proviso to Section 7(5), Section 9 or Section 10(4) as well.
- ★ Thus, we hold that the aforesaid provision **of removing the defects within 7 days is directory and not mandatory in nature.**

Fact of the Case	★ The NCLT observed certain deficiencies in the application and directed the appellant to remove the same within 7 days as provided under section 9. ★ The appellant removed the defects but after the expiry of 7 days. The NCLT dismissed the application.
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	☆ On appeal, the NCALT held that the appellant should have cured the defects within 7 days, as the provision was mandatory. The NCLAT dismissed the appeal and upheld the decision of the NCLT. ☆ Accordingly, the appellant file the appeal before the SC against the order of the NCLAT.
Issue raised in the case	This is being challenged in the present appeal. The core issue involved in the appeal was whether the 7 days prescribed in the section is mandatory or directory.
Legal Principles held—	Q. Who initiate CIRP and what is difference of procedures of application filed by them? ☆ It is of relevance to mention here that the CIRP can be initiated ☞ by the financial creditor under Section 7 of the IBC, 2016, ☞ by the operational creditor under Section 9 of the IBC, 2016 and ☞ by a corporate applicant under Section 10 of the IBC, 2016. There is a slight difference in these provisions insofar as criteria for admission or rejection of the applications filed under respective provisions is concerned. ☆ However, it is pertinent to note that after the admission of the insolvency resolution process, the procedure to deal with these applications, whether filed by the financial creditor or operational creditor or corporate applicant, is the same. ☆ The aforesaid statutory scheme laying down time limits sends a clear message that time is the essence of the Code and it also rightly held by the NCLAT. Q. Whether 14 days' time is mandatory or not for admitting or rejecting the application? ☆ Notwithstanding this salutary theme and spirit behind the Code, the NCLAT has concluded that as far as 14 days' time provided to the AA for admitting or rejecting the application for initiation of insolvency resolution process is concerned, this period is NOT mandatory. ☆ For arriving at such a conclusion, the NCLAT has discussed the law laid down by this Court in some judgments (i.e. in earlier judgments). ☞ The NCLAT has also held that 14 days period is to be calculated 'from the date of receipt of application'. ☞ The NCLAT has clarified that date of receipt of application cannot be treated to be the date of filing of the application. ☞ Since the Registry is required to find out whether the application is in proper form and accompanied with such fee as may be prescribed, it will take some time in examining the application. ☞ Therefore, 14 days period granted to the AA under the aforesaid provisions would be from the date when such an application is presented before the AA, i.e. the date on which it is listed for admission/order. After analysing the provision of 14 days' time within which the AA is to pass the order, the NCLAT immediately jumped to another conclusion, viz. the period of 7 days mentioned in proviso to Section 9(5) for removing the defect is mandatory. Q. Whether 7 days' time is mandatory as given in proviso to Section 9(5) of the IBC, 2016? ☞ We are not able to decipher any valid reason given while coming to the conclusion that the period mentioned in proviso is mandatory. Thereafter The order of the NCLAT proceeds to take note of the provisions of Section 12 of the Code and points out the time limit for completion of insolvency resolution process is 180 days, which period can be extended by another 90 days. However, that can hardly provide any justification to construe the provisions of proviso to Section 9(5) in the manner in which it is done. ☞ It is to be borne in mind that limit of 180 days mentioned in Section 12 also starts from the date of admission of the application. ☞ Period prior thereto which is consumed, after the filing of the application under Section 9 (or for that matter under Section 7 or Section 10), whether by the

	Registry of the AA in scrutinising the application or by the applicant in removing the defects or by the AA in admitting the application is not to be taken into account. ✎ In fact, till the objections are removed it is not to be treated as application validly filed inasmuch as only after the application is complete in every respect it is required to be entertained. ✎ <u>In this scenario, making the period of seven days contained in the proviso as mandatory does not commend to us. No purpose is going to be served by treating this period as mandatory.</u> ✎ In a given case there may be weighty, valid and justifiable reasons for not able to remove the defects within 7 days. ✎ Notwithstanding the same, the effect would be to reject the application. Let us examine the question from another lens. Q. The moot (i.e. debatable) question would be as to whether such a rejection would be treated as rejecting the application on merits thereby debarring the application from filing fresh application or it is to be treated as an administrative order since the rejection was because of the reason that defects were not removed and application was not examined on merits. ✎ In the former case, it would be travesty (i.e. wrong) of justice that even if the case of the applicant on merits is very strong, the applicant is shown the door without adjudication of his application on merits. ✎ If the latter alternative is accepted, then rejection of the application in the first instance is not going to serve any purpose as the applicant would be permitted to file fresh application, complete in all aspects, which would have to be entertained. ✎ Thus, in either case, no purpose is served by treating the aforesaid provision as mandatory. CRUX ★ Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of 14 days within which the AA has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to Section 7(5), Section 9 or Section 10(4) as well. ★ After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible. ★ Thus, we hold that the aforesaid provision of removing the defects within 7 days is directory and not mandatory in nature. ★ Thus, while interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within 7 days, the applicant while refilling the application after removing the objections, file an application in writing showing sufficient case as to why the applicant could not remove the objections within 7 days. ★ When such an application comes up for admission/order before the AA, it would be for the AA to decide as to whether sufficient cause is shown in not removing the defects beyond the period of 7 days. Once the AA is satisfied that such a case is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application.
Decision	★ The SC decide the case in favour of the Appellant (i.e. Surendra). ★ The SC held that period of 14 days within which the AA has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to Section 7(5), Section 9 or Section 10(4) as well. ★ Thus, we hold that the aforesaid provision of removing the defects within 7 days is directory and not mandatory in nature.

107. INNOVENTIVE INDUSTRIES LTD v. ICICI & ANR [SC]

Hint: In the given case, Appellant (i.e. Corporate debtor) entered into CDR plan with 19 financial creditors. However, one financial creditor (respondent) invoked the provisions the Code and filed Application under section 7 before the NCLT. On receipt of application, NCLT admit the application. The appellant challenge the order of NCLT on the following grounds:

(a) The applicability of the IBC, 2016 qua the Maharashtra Act;

(b) Because the creditors did not disburse the amounts under MRA, the appellant was not able to pay its dues.

Decision:

★ **The SC decide the case in favour of the Respondent.**

★ **The SC held that** we are of the considered view that the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd.

★ After considering the aforesaid finding, the SC **held that the obligation of the corporate debtor was unconditional and did not depend upon infusing of funds by the creditors into the appellant company.**

Fact of the Case	★ The appellant is a multi-product company catering to applications in diverse sectors. It had borrowed from various FI(s) including the respondent herein. ★ A corporate debt restructure (CDR) plan was framed between 19 lenders and the appellant in 2014 and a master restructuring agreement (hereinafter referred to as the MRA), by which funds were to be infused by the creditors, and certain obligations were to be met by the debtors. The aforesaid restructuring plan was implementable over a period of 2 years. ★ Ultimately, an application was made on 07/12/2016 by ICICI Bank Ltd., in which it was stated that the appellant being a defaulter within the meaning of the Code, the insolvency resolution process ought to be set in motion. ★ Appellant file reply against the said application in which the appellant claimed that there was no debt legally due in as much as vide two notifications issued under the Maharashtra Relief Undertakings (Special Provisions Act), 1958 (hereinafter referred to as the Maharashtra Act), all liabilities of the appellant, except certain liabilities with which we are NOT concerned, and remedies for enforcement thereof were temporarily suspended for a period up to 18/07/2017. ★ It may be added that this was the only point raised on behalf of the appellant in order to stave off (i.e. avoid) the admission of the ICICI Bank application made before the NCLT. ★ On 16/01/2017, a second application was filed by the appellant in which a different plea was taken. This time, the appellant pleaded that owing to non-release of funds under the MRA, the appellant was unable to pay back its debts as envisaged. ★ Further, it repaid only some amounts to five lenders, who, according to the appellant, complied with their obligations under the MRA. ★ In the aforesaid circumstances, it was pleaded that no default was committed by it. ★ The NCLT admit the application of the Financial Creditor under section 7 of the NBC, 2016 on the ground that the Code would prevail against the Maharashtra Act and held that the Parliamentary statute would prevail over the State statute and Moreover it is obvious that the corporate debtor had defaulted in making payments, as per the evidence placed by the financial creditors. Hence, the application was admitted and a moratorium was declared. ★ Appellant filed appeal made to the NCALT against the NCLT order. However, the NCLAT dismissed the appeal. ★ The appellant filed appeal before the SC against the order of the NCLAT.
Legal Principles held—	The SC find the following facts in the present appeal: (a) We find substance in the plea taken by Shri Salve that the present appeal at the behest (i.e. order) of the erstwhile directors of the appellant is NOT maintainable. According to us, once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company.

	(b) In the present case, the company is the sole appellant. This being the case, the present appeal is obviously not maintainable. (c) Entrenched managements are no longer allowed to continue in management if they cannot pay their debts. (d) Both the Tribunal and the Appellate Tribunal refused to go into the other contentions of the Appellant viz. that under the MRA, it was because the creditors did not disburse the amounts thereunder that the appellant was not able to pay its dues. We are of the view that the Tribunal and the Appellate Tribunal were right in not going into this contention for the very good reason that the period of 14 days within which the application is to be decided was long over by the time the second application was made before the Tribunal. (e) Also, the second application clearly appears to be that the corporate debtor was fully aware of the fact that the MRA had failed.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that we are of the considered view that the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd. ★ After considering the aforesaid finding, the SC held that the obligation of the corporate debtor was unconditional and did not depend upon infusing of funds by the creditors into the appellant company. Also, the argument taken for the first time before us that no debt was in fact due under the MRA as it has not fallen due (owing to the default of the secured creditor) is not something that can be countenanced at this stage of the proceedings.

108. M.D. FROZEN FOODS EXPORTS PVT. LTD. v. HERO FINCORP LTD [SC]

(V.V. Imp.)

Hint: In the given, the following three cases come before the SC:

- (1) Whether the arbitration proceedings initiated by the respondent can be carried on along with the SARFAESI proceedings simultaneously?
- (2) Whether resort can be had to Section 13 of the SARFAESI Act in respect of debts which have arisen out of a loan agreement/mortgage created prior to the application of the SARFAESI Act to the respondent?
- (3) A linked question to question (2), whether the lender can invoke the SARFAESI Act provision where its notification as financial institution under Section 2(1)(m) has been issued after the account became an NPA under Section 2(1)(o) of the said Act?

Decision:

- ★ The SC held that the Respondent could maintain a proceeding under the SARFAESI Act, 2002 as well as the Arbitration Act, 1996.
- ★ The SC decide the case in favour of the Respondent (i.e. Hero).

Fact of the Case	★ The appellants borrowed monies for their business against security of immovable properties by the creation of an equitable mortgage by deposit of title documents (seven such properties). ★ The financial discipline was not adhered to, apparently almost from the inception, and the account of the appellants became a 'Non-Performing Asset' ('NPA'). ★ The lender referred the dispute of non-payment to arbitration on 16/11/2016. ★ Before this referral, on 05/08/2016 the SARFESI act was amended and the lender was considered to be a financial institution and thus became eligible to invoke the provisions of SARFESI Act. ★ Accordingly, the lender issued demand notices under section 13 of the SARFESI Act, though the arbitration proceedings were going on. ★ Further, in the arbitration proceedings lender got interim stay and the appellant was refrained from dealing with the mortgaged properties. ★ The appellant challenged the notices issued under the SAEFESI Act before the HC. HC dismissed the petition. ★ Finally, the appellant filed appeal before the SC.
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Legal Principles held –	A perusal of the impugned order and the submissions made by learned counsel for the parties have thrown up the following legal issues for determination:	
	Issue No. 1	1. Whether the arbitration proceedings initiated by the respondent can be carried on along with the SARFAESI proceedings simultaneously?
	Reply	☛ The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. ☛ It is trite (i.e. overused) to say that arbitration is an alternative to the civil proceedings. ☛ In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the DRT under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act. ☛ The discussion in the impugned order refers to a judgment of the Full Bench of the Delhi HC opining that an arbitration is an alternative to the RDDB Act. In that context, the learned Single Judge has rightly held that this Full Bench judgment does not help the appellants in any manner but, in fact, it supports the case of the respondent. ☛ Thus, we are unequivocally (i.e. clear) of the view that SARFAESI proceedings and arbitration proceedings can go hand in hand.
	Issue No. 2 & 3	2. Whether resort can be had to Section 13 of the SARFAESI Act in respect of debts which have arisen out of a loan agreement/mortgage created prior to the application of the SARFAESI Act to the respondent? 3. A linked question to question (2), whether the lender can invoke the SARFAESI Act provision where its notification as financial institution under Section 2(1)(m) has been issued after the account became an NPA under Section 2(1)(o) of the said Act?
	Reply	☛ The SARFAESI Act certainly did NOT apply retrospectively from the date when it came into force. ☛ The question is whether, the Act being applicable to the respondent at a subsequent date and thereby allowing the respondent to utilize its provisions with regards to a past debt, would make any difference to this principle. We are of the view that the answer to the same is in the negative. ☛ The Act applies to all the claims which would be alive at the time when it was brought into force. Thus, qua the respondent or other NBFCs, it would be applicable similarly from the date when it was so made applicable to them. Similarly, the date on which a debt is declared as an NPA would again have no impact. ☛ Thus, we are of the view that the provisions of the SARFAESI Act would become applicable qua all debts owing and live when the Act became applicable to the respondent. ☛ Thus, we are of the view that the appeal is completely devoid of merit, and is only an endeavour to prolong the ultimate “date of judgment” for the appellants to meet their obligations.
Decision	★ The SC held that the Respondent could maintain a proceeding under the SARFAESI Act, 2002 as well as the Arbitration Act, 1996. ★ The SC decide the case in favour of the Respondent (i.e. Hero).	

109. INTERNATIONAL ASSET RECONSTRUCTION CO OF INDIA LTD. v. OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD [SC]

Hint: In the present case Tribunal issued a recovery certificate to recovery officer under Section 19(22) of the RDB Act. Accordingly, **the Recovery officer passed necessary orders under Section 28 of the Act.** An appeal was

preferred by the aggrieved against the same before the Tribunal, **beyond the prescribed period of 30 days. It was held that Section 5 of the Limitation Act not being applicable to proceedings under Section 30 of the Act, the delay beyond the prescribed period could not be condoned.**

Question: A common question of law arising for consideration in both appeals is **whether Section 5 of the Limitation Act, 1963, can be invoked to condone the prescribed period of 30 days, under Section 30(1) of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Tribunal, against an order of the Recovery officer.**

Decision:

- ★ The SC decide the case in favour of the Respondent (i.e. Official Liquidator).
- ★ The SC held that **the prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer cannot be condoned by application of Section 5 of the Limitation Act.**
- ★ SC also held that **Tribunal did not have any powers to condone the delay made in preferring an appeal against the orders of the Recovery Officer.**

Fact of the Case	★ In the present case Tribunal issued a recovery certificate to recovery officer under Section 19(22) of the RDB Act. Accordingly, the Recovery officer passed necessary orders under Section 28 of the Act. ★ An appeal was preferred by the aggrieved against the same before the Tribunal, beyond the prescribed period of 30 days. It was held that Section 5 of the Limitation Act not being applicable to proceedings under Section 30 of the Act, the delay beyond the prescribed period could not be condoned. ★ Appeal filed by the Appellant before the SC against the aforesaid order.
Legal Principles held—	★ Section 5 of the Limitation Act provides that the appeal or application, with the exception of Order XXI, CPC may be admitted after the prescribed period, if the applicant satisfies the court that he has sufficient cause for not preferring the application within time. Therefore, the pre-requisite is the pendency of a proceeding before a court. ★ The proceedings under the Act being before a statutory Tribunal, it cannot be placed at par with proceedings before a court. Therefore, the Tribunal shall have no powers to condone delay, unless expressly conferred by the Statute creating it. ★ In <i>Sakuru vs. Tanaji</i>, (1985) 3 SCC 590, it was observed that: “3...that the provisions of the Limitation Act, 1963 apply only to proceedings in ‘courts’ and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact the such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal...” ★ An “application” is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV, deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20, before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act.

	☆ The Tribunal issues a recovery certificate under Section 19(22) to the Recovery officer who then proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. ☆ Rule 2(c) defines an “application” to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the appellate tribunal, within 30 days. Therefore, Section 24 of the RDB Act manifestly makes the provisions of the Limitation Act applicable only to such an original “application” made under Section 19 only. The definition of an “application” under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. ☆ Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the Legislature from providing so specifically. ☆ The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. ☆ The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. ☆ The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. Therefore, the application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 does not arise.
Decision	☆ The SC decide the case in favour of the Respondent (i.e. Official Liquidator). ☆ The SC held that the prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer cannot be condoned by application of Section 5 of the Limitation Act. ☆ SC also held that Tribunal did not have any powers to condone the delay made in preferring an appeal against the orders of the Recovery Officer.

110. MACHHAR POLYMER PVT LTD v. SABRE HELMETS PVT LTD [NCLAT]

Hint: This appeal has been preferred by the Appellant ‘Operational Creditor’ against the order passed by the AA whereby and where under the application preferred by the Appellant under Section 9 of the IBC, 2016 has been rejected on the ground that the application is barred by limitation.

Question arise in the case “whether action of AA to reject the application under section 9 on the ground of barred by limitation is valid in law”

Decision:

- ☆ The NCLAT decide the case in favour of the Appellant.
- ☆ The NCLAT directed the AA, Mumbai Bench to consider the application under Section 9 of the ‘IBC, 2016’ preferred by the Appellant after notice to the ‘Corporate Debtor’. If the application is complete, the AA will admit it. On the other hand, if there is any defect, the Appellant may be allowed time to remove the defects.

Fact of the Case	This appeal has been preferred by the Appellant ‘Operational Creditor’ against the order passed by the AA whereby and where under the application preferred by the Appellant under
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	Section 9 of the IBC, 2016 has been rejected on the ground that the application is barred by limitation.
Legal Principles held –	★ Learned counsel for the Appellant rightly pointed out that the impugned order is against the decision of this Appellate Tribunal in M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd. (2017). In the said case, this Appellate Tribunal observed and held as follows: “68. In view of the settled principle, while we hold that the Limitation Act, 1963 is not applicable for initiation of ‘CIRP’, we further hold that the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim. 69. If there is a delay of more than 3 years from the date of cause of action and no laches on the part of the Applicant, the Applicant can explain the delay. Where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise. 70. Therefore, if it comes to the notice of the AA that the application for initiation of ‘CIRP’ under section 7 or Section 9 has been filed after long delay, the AA may give opportunity to the Applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the Applicant.”
Decision	★ The NCLAT decide the case in favour of the Appellant. ★ The NCLAT directed the AA, Mumbai Bench to consider the application under Section 9 of the ‘IBC, 2016’ preferred by the Appellant after notice to the ‘Corporate Debtor’. If the application is complete, the AA will admit it. On the other hand, if there is any defect, the Appellant may be allowed time to remove the defects.

111. NEETA CHEMICALS (I) PVT. LTD. v. STATE BANK OF INDIA [NCLAT]

Hint: In the given case, M/s Neeta Chemicals (I) Private Limited (Corporate Applicant) filed an application under section 10 of the IBC, 2016. On notice and hearing the ‘Financial Creditor’ (SBI), **the AA by passing impugned order dismissed the application filed under section 10 on the ground of suppression of facts.** Question arises “whether the ground of suppression of facts is tenable in law for rejecting the application under section 10 of the IBC”

Decision:

- ★ The NCLAT decide the case in favour of the Appellant.
- ★ The NCLAT remanded back to the NCLT for fresh adjudication.

Fact of the Case	★ M/s Neeta Chemicals (I) Private Limited (Corporate Applicant) filed an application under section 10 of the IBC, 2016. ★ On notice and hearing the ‘Financial Creditor’ (State Bank of India), the AA by passing impugned order dismissed the application filed under section 10. ★ It was submitted that the Appellant has grossly understated the outstanding amount owed to the Respondent in the Form 6, while the Appellant has admitted an amount of Rs. 324 crores as on 15th June, 2017. ★ In fact, the Appellant owed more than the admitted amount as far back as 31st October, 2016 when the demand notice was issued by the Respondent. It was submitted that the outstanding liability amount had increased to Rs. 329,71,74,696/- as evidenced from the notice issued on 3rd August, 2017 under Section 13(2) of the SARFAESI Act, 2002.
Legal Principles held –	★ The Appellant has highlighted the facts relating to SARFAESI proceedings and action taken thereunder.

	☛ It is also stated that the Appellant has already filed a suit under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) challenging the securitization proceedings initiated by the Respondent ('Financial Creditor'). ★ The NCLAT consider the following facts before passing the order: (a) NCLAT relying on the decision held in M/s. Unigreen Global Private Limited Vs. Punjab National Bank & Ors, wherein Appellate Tribunal held and observed the principle as to when the application could be rejected by the AA after taking into consideration the provisions of Section 10 of the 'IBC, 2016' and other relevant provisions. (b) It is not the case of the 'Financial Creditor' (State Bank of India) that a winding up proceeding under the Companies Act or liquidation proceeding under the 'IBC, 2016' has been initiated against the 'Corporate Debtor'. (c) Further, as we find that the AA has noticed the extraneous factors unrelated to the Resolution Process not required to be disclosed in terms of Section 10 or Form 6, we hold that the AA erred in rejecting the application on the ground of suppression of facts. (d) The AA has also not held that the application has been filed by the Corporate Applicant "fraudulently" or "with malicious intent" for any purpose other than for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In the absence of any such grounds recorded by the AA, the impugned order cannot be upheld. (e) There is nothing on record to suggest that the 'Corporate Applicant' has suppressed any fact or has not come with the clean hands. <u>Therefore, the 'Corporate Applicant' is eligible to file application under Section 10 of the 'IBC, 2016', if there is a debt and default.</u>
Decision	★ The NCLAT decide the case in favour of the Appellant. ★ The NCLAT remanded back to the NCLT for fresh adjudication.

112. ITC LTD. v. BLUE COAST HOTELS LTD.[SC]

Hint: Respondent is the debtor (borrower) **who availed loan of Rs. 150 Crores from secured creditor IFCI and mortgaged its hotel property as security interest.** As the **borrower failed to repay the loan, the secured creditor enforced the security interest of the borrower.** After issuing a demand notice under section 13(4) of the SARFESI Act, **the secured creditor took symbolic possession of the hotel property.** Thereafter **the secured creditor initiated recovery proceedings in DRT and sold the hotel property in public auction.** The luxury hotel of the borrower was purchased by the Petitioner (auction purchaser). The **borrower challenged the recovery proceedings before the HC, which held the entire proceedings for recovery and sale of the Goa Hotel to be illegal being in violation of the Act.** Appellant (i.e. ITC) filed appeal before the SC against the impugned order of the HC.

Question arises "Whether the property sold in auction is valid even the secured creditor took the symbolic possession of the hotel property?"

Decision:

- ★ The SC decide the case in favour of the Appellant/Petitioner.
- ★ Accordingly, the SC **set aside the impugned judgment of the HC and direct the debtor and its agents to handover possession of the mortgaged properties to the auction purchaser within a period of 6 months** from the date of this judgment along with the relevant accounts.

Fact of the Case	★ Respondent is the debtor (borrower) who availed loan of Rs. 150 Crores from secured creditor IFCI and mortgaged its hotel property as security interest. As the borrower
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	failed to repay the loan, the secured creditor enforced the security interest of the borrower. ★ After issuing a demand notice under section 13(4) of the SARFESI Act, the secured creditor took symbolic possession of the hotel property. ★ Thereafter the secured creditor initiated recovery proceedings in DRT and sold the hotel property in public auction. ★ The luxury hotel of the borrower was purchased by the Petitioner (auction purchaser). The borrower challenged the recovery proceedings before the HC, which held the entire proceedings for recovery and sale of the Goa Hotel to be illegal being in violation of the Act. ★ Appellant filed appeal before the SC against the impugned order of the HC.
Legal Principles held—	★ In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. Therefore, the transfer of the secured asset by the creditor cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. ★ The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. ★ Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act. ★ The HC in its judgment renders the following finding: (a) There was in fact fraud and collusion between the creditor and the auction purchaser. (b) According to the HC, since the measures were taken in breach of all laws, the inference of manipulation and collusion cannot be ruled out. We fail to see how such a finding of manipulation and collusion is sustainable on account of breach of law in the present case. (c) A risk of this kind taken up by an intending purchaser cannot lead to an inference of collusion. (d) Mainly, the finding is based on the fact that the sale is a collusion because the auction purchaser was aware that a dispute between the parties was pending and still went ahead and made a bid for the property. It is not unusual in the sale of immovable properties to come across difficulties in finding suitable buyers for the property. (e) We find that the property was eventually sold on the fourth auction, and all the auctions were duly advertised. (f) An inference of collusion is that the property was sold and the sale was confirmed in favour of ITC Ltd. though a statement was made in the morning of 23.02.2015 before the DRT that the sale would not be confirmed till the order is passed. This seems to be recorded in the order of the DRT. (g) However, what is overlooked (i.e. failed to notice) is the fact that in the statement on behalf of the creditor, the creditor only agreed to not confirm the sale till 3 pm. ★ The SC consider the following facts before passing the order: (a) There is no dispute that the property was actually purchased by ITC Ltd in pursuance of a public auction and that the entire amount of sale consideration has been deposited by it. (b) We have anxiously considered the undisputed facts of the case are that a loan was taken by the debtor which was not paid, the debtor did not respond to a notice of demand and made a representation which was not replied to in writing by the creditor. (c) However, the creditor considered the proposals for repayment of the loan as contained in the representation in the course of negotiations which continued for a

	considerable amount of time. Several opportunities were in fact availed of by the debtor for the repayment of the loan after the proceedings were initiated by the secured creditor. (d) The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take realize the secured assets. (e) In the absence of any finding as to what actually transpired (i.e. occurred), it is not possible for us to infer manipulation and collusion on this account.
Decision	★ The SC decide the case in favour of the Appellant/Petitioner. ★ Accordingly, the SC set aside the impugned judgment of the HC and direct the debtor and its agents to handover possession of the mortgaged properties to the auction purchaser within a period of 6 months from the date of this judgment along with the relevant accounts. ★ We are of the view that non-compliance of Section 13(3A) from the lenders cannot give benefit to the debtor whose conduct has been merely to seek time and not repay the loan as promised on several occasions. Therefore, the debtor is not entitled for the discretionary equitable relief under Articles 226 and 136 of the Constitution of India in the present case.

113. J.P. ENGINEERS PVT. LTD v. MURTI UDYOG LTD [NCLAT]

Hint: In the given case, appellant issued the demand notice under Section 8(1) of the IBC, 2016 on 13th June, 2017. Thereafter, the amount having not paid, the application under Section 9 of the 'IBC, 2016' was filed on 13th September, 2017. Thereafter, **respondent filed civil suit** on 12th December, 2017 i.e. much after filing of the application under Section 9 of the 'IBC, 2016'. The AA dismissed the application holding that there is an 'existence of dispute'.

Question arises "Whether the AA dismissed the application holding that there is an 'existence of dispute' on the ground of civil suit filed by Respondent (i.e. Corporate Debtor).

Decision

- ★ The NCLAT decide the case in favour of the respondent.
- ★ Based on the consideration of the and judicial decision, NCLAT held that we find no ground to interfere with the finding of the AA.

Fact of the Case	★ In the given case, appellant issued the demand notice under Section 8(1) of the IBC, 2016 on 13th June, 2017. Thereafter, the amount having not paid, the application under Section 9 of the 'IBC, 2016' was filed on 13th September, 2017. Thereafter, respondent filed civil suit on 12th December, 2017 i.e. much after filing of the application under Section 9 of the 'IBC, 2016'. ★ The adjudication authority dismissed the application holding that there is an 'existence of dispute'. ★ This appeal has been preferred by the Appellant before the NCLAT against the order passed by the AA (NCLT), whereby and where under the application preferred by the Appellant under Section 9 of the IBC, 2016 has been rejected on the ground that the Respondent has raised dispute with sufficient particulars.
Judicial Decision	★ The scheme of the 'IBC, 2016' fell for consideration before the Hon'ble SC in Innovative Industries Ltd v. ICICI Bank & Anr, (2018), wherein the Hon'ble SC taking into consideration the provisions of the Code held that the 'Corporate Debtor' is entitled to point out that default has not occurred in a sense that the 'debt', which also may include a disputed claim, is not due.
Legal Principles held—	★ The Respondents have filed reply and further affidavit and taken plea that the amount as was due was already paid to the Appellant by cheques, the details of which were brought to the notice of the AA. However, such submission has been disputed by the Appellant. ★ According to the Appellant, the Chartered Accountant has certified that the amount has not been paid. Admittedly, there is no 'existence of dispute' relating to supply of goods or its quality as were supplied by the Appellant. Therefore, it cannot be stated that there is an 'existence of dispute'.

	☆ However, what we find that the Respondent has disputed the debt as has been claimed by the Appellant. According to them, they have already paid and satisfied the claim amount by making payment through cheques.
Decision	☆ In the present case, the AA having noticed that the Respondent has satisfied with the evidence that there is no default on the part of the Respondent and the 'debt' is not due. ☆ Based on the consideration of the aforementioned facts and judicial decision, NCLAT held that we find no ground to interfere with the finding of the AA. ☆ The NCLAT decide the case in favour of the respondent.

114. PROWESS INTERNATIONAL PVT. LTD. v. ACTION ISPAT & POWER PVT. LTD [NCLAT]

(V. Imp.) Hint: In the given case, this appeal has been preferred by the appellant against the judgment dated 15th March, 2017 passed by the AA rejecting the application filed under section 9 of the IBC, 2016. The defective appeal after delay of more than 6 months on 22nd September, 2017 without any application for condonation of delay.

Question arises "Whether the application for condonation of delay is tenable in law?"

Decision:

☆ The NCLAT decide the case in favour of the Respondent (i.e. Action Ispat).

☆ The NCLAT held that the ground as taken in the application for condonation of delay being not satisfactory.

Fact of the Case	☆ This appeal has been preferred by the appellant against the judgment dated 15th March, 2017 passed by the AA rejecting the application filed under section 9 of the IBC, 2016. ☆ The defective appeal after delay of more than 6 months on 22nd September, 2017 without any application for condonation of delay. ☆ When it was pointed out, the Appellant preferred an application for condonation of delay and taken plea that there is a delay of only two days.
Legal Principles held—	☆ The NCLAT consider the following provisions of the Companies Act, 2013 and IBC, 2016: (a) It is desirable to refer the relevant provisions under which appeals can be preferred before this Appellate Tribunal. (b) An appeal is maintainable under Section 421 of the Companies Act, 2013 against an order passed by the Tribunal under Companies Act. (c) If an appeal is preferred under Section 421 of the Companies Act, 2013, the Appellate Tribunal counts the period of limitation from the date on which a copy of the order is made available by the Tribunal in terms of Section 421(3) of the Companies Act, 2013. (d) However, for preferring appeal under Section 61 of the 'IBC, 2016' against an order passed by the 'AA' provision for counting the period of limitation is different. ☆ The NCLAT consider the following facts before passing the order: (a) From the record, we find that the Appellant has not explained as to what action the Appellant had taken between 15th March, 2017 and 18th August, 2017 i.e. between the Day of Judgment and the day the application for certified copy was filed. (b) Respondent pointed out that the judgment was delivered by the Adjudicating Authority on 15th March, 2017 in open court in presence of learned counsel for the Appellant and in spite of the same, the Appellant did not choose to apply for certified copy, and application for certified copy was filed for the first time on 18th August, 2017 i.e. after five months, which was prepared immediately on 21st August, 2017 and handed over to the Appellant. Thereafter, the defective appeal was preferred on 22nd September, 2017. (c) Appellant contends that the copy of the impugned order was not forwarded to the Appellant. However, it is accepted that the impugned order was passed on 15th March, 2017 in presence of the counsel for the Appellant.

	☆ As per the aforesaid provision, the appeal is required to be filed within 30 days, means within 30 days from the date of knowledge of the order against which appeal is preferred. In the present case, as Appellant had knowledge of the impugned order as on the date of pronouncement of the said order i.e. 15th March, 2017. It is not the case of the Appellant that its Lawyer has not informed of the order passed by the AA.
Decision	☆ The NCLAT decide the case in favour of the Respondent (i.e. Action Ispat). ☆ The NCLAT held that the ground as taken in the application for condonation of delay being not satisfactory.

115. INDIAN BANK v. K. PAPPIREDDIYAR [SC]

Hint: The Division Bench of Madras HC held that the proceedings initiated by the appellant under the SARFAESI Act, 2002 are a nullity. **The basis of this conclusion is that the provisions of SARFAESI Act, 2002 does not apply to agricultural land.** In consequence, the HC has held that a security interest in agricultural land cannot be enforced.

Question arises “Whether the agricultural land is exempt from the provisions of the SARFAESI Act, 2002?”

Decision:

- ☆ The SC **decide the case in favour of the Appellant (Indian Bank).**
- ☆ In the absence of a specific finding, the SC **reversed the HC decision** and held that property in question is not considered as the “agricultural land”. Therefore, the provisions of **SARFAESI Act, 2002** shall apply accordingly.

Fact of the Case	☆ The Division Bench of Madras HC held that the proceedings initiated by the appellant under the SARFAESI Act, 2002 are a nullity. The basis of this conclusion is that the provisions of SARFAESI Act, 2002 does not apply to agricultural land. ☆ In consequence, the HC has held that a security interest in agricultural land cannot be enforced. ☆ The Appellant filed appeal before the SC against the order of the HC.
Legal Principles held –	☆ The statutory dictionary in Section 2 does not contain a definition of the expression “agricultural land”. Whether a particular piece of land is agricultural in nature is a question of fact. ☆ The Division Bench of the Madras HC has failed to adjudicate on the basic issue as to whether the land in respect of which the security interest was created, was agricultural in nature. ☆ The DRT rejected the objection of the debtor that the land was agricultural. In appeal, the DRAT reversed that finding. ☆ Apart from referring to the position in law, the impugned judgment of the HC contains no discussion of the material which was relied upon by the parties in support of their respective cases; ☆ The Bank urging that the land was not agricultural while the debtor urged that it was. ☆ SC relying on the decision in Blue Coast Hotels Limited and as explained above, the question as to whether the land is agricultural has to be determined on the basis of ☛ The totality of facts and circumstances including the nature and character of the land, ☛ The use to which it was put and the purpose and intent of the parties on the date on which the security interest was created. ☆ The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. ☆ Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.
Decision	☆ The SC decide the case in favour of the Appellant (Indian Bank). ☆ In the absence of a specific finding, the SC reversed the HC decision.

116. K. KISHAN v. VIJAY NIRMAL COMPANY PVT. LTD [SC]

(V. Imp.) Hint: Vijay Nirman Company Pvt. Ltd. (the Respondent) entered into a sub-Contract Agreement with one M/s Ksheerabad Constructions Pvt. Ltd. (‘KCPL’) to **undertake road construction work**. During the course of the

project, disputes and differences arose between the parties and the same were referred to an Arbitral Tribunal, which delivered its Award in favour of the respondent. In an appeal, KCPL challenged the award under section 34 of the Arbitration and Conciliation Act, 1996. Meanwhile, Respondent sent a demand notice under the IBC, 2016 and also initiated insolvency proceedings against KCPL. In reply to the notice, KCPL claimed that there is a dispute and the award has been challenged, adjudication of which is pending. NCLT as well as NCLAT admitted the insolvency petition stating that challenge of award could not be considered to be 'existence of dispute' under the IBC, 2016.

Question arises "Corporate Debtors contends that that challenge of arbitral award could not be considered to be 'existence of dispute' under the IBC, 2016?

Decision:

- ★ The SC decide **the case in favour of the Respondent.**
- ★ The SC held that insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist. **We have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute.**

Fact of the Case	★ Vijay Nirman Company Pvt. Ltd. (the Respondent) entered into a sub-Contract Agreement with one M/s Ksheerabad Constructions Pvt. Ltd. ('KCPL') to undertake road construction work. ★ During the course of the project, disputes and differences arose between the parties and the same were referred to an Arbitral Tribunal, which delivered its Award in favour of the respondent. ★ In an appeal, KCPL challenged the award under section 34 of the Arbitration and Conciliation Act, 1996. ★ Meanwhile, Respondent sent a demand notice under the IBC, 2016 and also initiated insolvency proceedings against KCPL. ★ In reply to the notice, KCPL claimed that there is a dispute and the award has been challenged, adjudication of which is pending. ★ NCLT as well as NCLAT admitted the insolvency petition stating that challenge of award could not be considered to be 'existence of dispute' under the IBC, 2016. ★ The Appellant file appeal before the SC against the order of the NCLT and NCLAT.
Issue in dispute	The present appeals raise an important question as to whether the IBC, 2016 can be invoked in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, which has not yet been finally adjudicated upon.
Legal Principles held—	★ A reading of Section 9(5)(ii)(d) would show that an application under Section 8 must be rejected if notice of a dispute has been received by the operational creditor. ★ The SC consider the following facts in the present case, before passing the order: 1. It is clear that the entire basis for the sending demand notice under Section 8 of the IBC is the Arbitral Award that was passed against the Appellant. It clear appears from the gist of the case that it was filed along with the insolvency petition. 2. It should be noted that The fact that the reply of 16.02.2017 to the notice given under Section 8 was within 10 days, and raised the existence of a dispute, also cannot be doubted. 3. Our recent judgment in Mobilox Innovations (supra) throws considerable light on the issue at hand. While following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. 4. The alarming result of an operational debt contained in an arbitral award for a small amount of say, Rs. 2 Lakhs, cannot possibly jeopardize an otherwise solvent company worth several Crores of rupees. 5. Accordingly, such company would be well within its rights state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties.

	6. The Code cannot be used in terrorem to extract this sum of money of Rs. 2 lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. ★ The SC interpret the provision of Arbitration and Conciliation Act, 1996 in the context of the IBC, 2016 in the following manner: (a) We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Sections 34 & 37 has taken place. (b) We may hasten to add that there may be cases where a Section 34 petition challenging an Arbitral Award may clearly and unequivocally be barred by limitation, in that cases it can be demonstrated to the Court that the period of 90 days plus the discretionary period of 30 days has clearly expired and after which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed. It is only in such clear cases that the insolvency process may then be put into operation. (c) We may hasten to add that there may also be other cases where a Section 34 petition may have been instituted in the wrong court, as a result of which the petitioner may claim the application of Section 14 of the Limitation Act to get over the bar of limitation laid down in Section 34(3) of the Arbitration Act. In such cases also, it is obvious that the insolvency process cannot be put into operation without an adjudication on the applicability of Section 14 of the Limitation Act.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist. We have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute.

117. TRANSMISSION CORPORATION OF ANDHRA PRADESH LTD. v. EQUIPMENT CONDUCTORS & CABLES [SC]

(V. Imp.)

Hint: In the given case, respondent filed application to arbitral council for claiming the due as per invoice 1-53. But, **same was specifically rejected by the Arbitral Council on the ground that it had become time barred**. After failing to recover the amount in the aforesaid manner, **the respondent issued notice to the appellant under Section 8 of the IBC treating itself as the operational creditor and appellant as the corporate debtor**. The appellant specifically refuted (i.e. disprove) this claim. In spite thereof, application under Section 9 was filed before the NCLT **which was dismissed**. Respondent file appeal before the NCLAT against the order of the NCLT. **NCLAT passed the impugned order**. Appellant filed appeal before the SC against the order of the NCLAT. **Question arise "Whether the appeal allowed by NCLAT is sustainable"?**

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC set aside the NCLAT order on the basis of the aforesaid facts and judicial decision.

Fact of the Case	★ Respondent took two set of claims before the Arbitral Council viz (a) Claims w.r.t. invoices 1-53 and (b) Claims w.r.t. invoices 54-82. ★ Insofar as claim under Invoice Nos. 1-53 is concerned, the same was specifically rejected by the Arbitral Council on the ground that it had become time barred. The respondent challenged the said part of the award of the Arbitral Council, but was not successful.
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	Hyderabad HC categorically held that since that particular amount was not payable under the award, execution was not maintainable. ★ After failing to recover the amount in the aforesaid manner, the respondent issued notice to the appellant under Section 8 of the IBC treating itself as the operational creditor and appellant as the corporate debtor. ★ The appellant specifically refuted (i.e. disprove) this claim. ★ In spite thereof, application under Section 9 was filed before the NCLT, Hyderabad which was dismissed. ★ Respondent file appeal before the NCLAT against the order of the NCLT. NCLAT passed the impugned order. ★ Appellant filed appeal before the SC against the order of the NCLAT.
Legal Principles held –	★ The SC consider the following facts before passing the order: (a) In the first brush, though it appears that matter is still at the stage of admission and the aforesaid order is an interim order, a careful reading thereof would clearly bring out that the NCLAT perceives that the appellant herein owes money to the respondent and for this reason a chance is given to the appellant to settle the claim of the respondent, otherwise order would be passed initiating CIRP. (b) According to the appellant, no amount is payable and the order in question is causing serious prejudice to the appellant which is asked to settle the purported claim. In case of failing to comply with the order, appellant face insolvency proceedings. (c) It may also be recorded at this stage itself that the appeal pending before NCLAT is filed by the respondent herein which is against the Orders passed by the NCLT. By the said order, the NCLT has dismissed the petition filed by the respondent herein under Section 9 of the IBC, 2016. (d) To put it briefly at this stage, the NCLT has come to the conclusion that the Company Petition filed by the respondent was not maintainable as the claims which were preferred by the respondent against the appellant and on the basis of which respondent asserts that it has to receive monies from the appellant are not tenable and in any case these are not disputed claims. This assertion is based on the fact that these very claims of the respondent were subject matter of arbitration and the award was passed rejecting these claims as time barred. Moreover, the company petition itself suffers various fundamental defects. (e) The NCLAT has not discussed the merits of the case and also not stated how the amount is payable to the respondent in spite of the aforesaid events which were noted by the NCLT as well. Notwithstanding, it has given wielded threat to the appellant by giving a one chance, 'to settle the claim with the appellant (respondent herein), failing which this Appellate Tribunal may pass appropriate orders on merit'. There is a clear message in the aforesaid order directing the appellant to pay the amount to the respondent, failing which CIRP shall be initiated against the appellant. (f) As of today, there is no award of the Arbitral Council w.r.t. invoices at Sl. Nos. 1-57. There is no order of any other court as well qua these invoices. In fact, Arbitral Council specifically rejected the claim of the respondent as time barred. It is pertinent to mention that respondent had moved an application before the Arbitral Council for determination of amount to be paid by the appellant. However, this application was specifically dismissed by the Arbitral Council as NOT maintainable. ★ The SC relying the decision held in Mobilox Innovations Pvt Ltd v. Kirusa Software Private Limited (2018): ☛ The Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. ☛ It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked.

	★ The SC held that the aforesaid principle squarely applied to the present case. As a result, we set aside the impugned order passed by the NCLAT.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC set aside the NCLAT order on the basis of the aforesaid facts and judicial decision.

118. RAJESH ARORA v. SANJAY KUMAR JAISWAL [NCLAT]

Hint: In the present case, Respondent (Ex-employee of the Corporate Debtor) file application before the AA under **Section 9 of IBC, 2016 without any notice to the 'Corporate Debtor'**. Surprisingly, the AA admit the **application and passed the impugned order against the corporate debtor without giving any notice to the Corporate Debtor**. (It amounts to **violation of rules of Principle of Natural Justice**).

Decision:

- ★ The NCLAT decide the case in favour of the Appellant.
- ★ The NCLAT set aside the impugned order was passed by the AA without notice to the 'Corporate Debtor' in violation of rules of principle of natural Justice.

Fact of the Case	★ In the present case, Respondent (Ex-employee of the Corporate Debtor) file application before the AA under Section 9 of IBC, 2016 without any notice to the 'Corporate Debtor'. ★ Surprisingly, the AA admit the application and passed the impugned order against the corporate debtor without giving any notice to the Corporate Debtor. ★ Accordingly, shareholder of M/s Amira Pure Foods Pt. Ltd ('Corporate Debtor') filed appeal before the NCLAT against the order of the NCLT.
Legal Principles held—	★ The Appellant submits before the NCLAT that the application under Section 9 of IBC, 2016 was admitted without any notice to the 'Corporate Debtor'. ★ The NCLAT consider the following facts before passing the order: (1) The appellant contends that AA had not given any notice before admitting the case and the impugned order had been passed in violation of rules of Principle of Natural Justice. (2) The appellant also stated that the parties have settled the matter and a draft, amounting to Rs. 2,88,000/- has been handed over to the 'Operational Creditor' towards rest of the amount in terms of settlement. (3) It was not disputed fact that the impugned order was passed by the AA without any notice to the 'Corporate Debtor'.
Decision	★ The NCLAT decide the case in favour of the Appellant. ★ The NCLAT set aside the impugned order was passed by the AA without notice to the 'Corporate Debtor' in violation of rules of principle of natural Justice.
Consequences of the NCLAT Decision	★ In effect, order(s) passed by the AA appointing 'RP', declaring moratorium, freezing account, and all other order(s) passed by the AA pursuant to impugned order and action, taken by the 'RP', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. ★ The 'Corporate Debtor (Company)' is released from all the rigour of law and is allowed to function independently through its BOD(s) from immediate effect.

119. NEVADA PROPERTIES PVT LTD v. THE STATE OF MAHARASHTRA [SC]

New Case Laws: **Section 102 does not give power to Police to seize any immovable Property except it can only attach and sealed/locked the immoveable property.**

Fact of the Case	★ Section 102 of the Cr. Procedures Code, 1973 provides for power of police officer to seize certain property. ★ The question arise before the SC is whether the term "any property" includes immovable property also.
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Applicable Law	Section 102 in The Code of Criminal Procedure, 1973 deals with the Power of police officer to seize certain property: (1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer. (3) Every police officer acting under sub- section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.
Legal Principles held –	★ That Section 102 postulates seizure of the property. ★ Immovable property cannot be seized in its strict sense. ★ Although documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. ★ It could be argued that the word ‘seize’ would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. However, the Language of Section 102 of the Code does NOT support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. ★ Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. ★ The expression ‘circumstances which create suspicion of the commission of any offence’ in Section 102 does NOT refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not ‘any property’ is required to be seized. ★ The word ‘suspicion’ is a weaker and a broader expression than ‘reasonable belief’ or ‘satisfaction’. The police officer is an investigator and NOT an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. ★ In case and if we allow the police officer to ‘seize’ immovable property on a mere ‘suspicion of the commission of any offence’. ★ Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side. Thus, it will NOT be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties.
Decision	★ As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. ★ Section 102 of the Code is NOT a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. However, this would NOT bar or prohibit the police officer from seizing documents/ papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. ★ The SC held that the Police does not have powers to seize immovable property under the said section.

120. INTERTEK INDIA PVT LTD v. PRIYANKA MOHAN [DEL]

New Case Law: Petition filed by Petitioner under Order 7 Rule 11 (d) of the CPC, 1908 contending that the contract of services being a terminable contract, no suit would lie for re-instatement of services. So, Delhi HC held that Petition filed by the Petitioner could not stand in the eye of law because respondent has not sought any re-instatement and respondent claim damaged etc. for wrongful termination.

Fact of the Case	☆ The Respondent (Priyanka) was an ex-employee of the Petitioner (Intertek). Her services were terminated by the Petitioner. ☆ Aggrieved, the Respondent filed a suit claiming a declaration that termination of her services was null and void and further sought a decree of damages on account of mental harassment, loss of reputation, etc. ☆ The Petitioner filed application under Order 7 Rule 11 (d) of the CPC, 1908 contending that the contract of services being a terminable contract, no suit would lie for re-instatement of services.
Legal Principles held—	☆ Respondent had filed the subject Suit claiming that termination is illegal. ☆ In paragraph 1 of the plaint, Respondent had described herself as an ex-employee which indicates that respondent had accepted that she is NO longer in services. ☆ A meaningful reading of the Plaint shows that the respondent has NOT sought any re-instatement in service but had claimed that the termination is illegal and hence null and void. ☆ Respondent before the trial court categorically stated that the respondent did NOT seek any re- instatement.
Decision	☆ The Delhi HC decide the case in favour of the Respondent (Priyanka).

121. RAVINDER KAUR GREWAL v. MANJIT KAUR [SC]

New Case Law: that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest

Fact of the Case	The sole question of law involved in the instant appeal was— ☆ <i>"Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person"</i> ☆ <i>In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case?</i> ☆ <i>In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?</i>
Legal Principles held—	☆ Section 27 of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. ☆ The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in presenti to obtain it, not in futuro. ☆ Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property. ☆ The SC holds that person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. ☆ That that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant under Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession.

	☆ By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case, he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. ☆ Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession.
Decision	☆ The SC decide the case in favour of Plaintiff. ☆ The SC decide the case and settled the question of law.

122. ANIL KHADKIWALA v. THE STATE GOVT. OF NCT OF DELHI [SC]

New Case Laws: The SC held that Mr. Anil (Appellant) who is director of the ETI Projects Ltd. shall not be held liable for the cheques issued by the company after his resignation and theses cheque were dishonoured.

Fact of the Case	☆ The Respondent filed a complaint against the Appellant (Anil) who was the Director of M/s. ETI Projects Ltd., the Company in question. It was alleged that the accused person had issued cheques dated 15.02.2001 and 28.02.2001 which were dishonoured upon presentation. ☆ The Appellant had preferred an application for quashing the same by taking the defence that he had already resigned from the Company without any proof, which was accepted by the BOD(s) before issuing the cheques. ☆ The High Court noticing the reliance on Form 32 issued by the ROC under the Companies Act, 1956, in proof of resignation by the appellant prior to the issuance of the cheques, issued notice. ☆ The appellant then preferred a fresh application under section 482 of the Companies Act, 1956 giving rise to the present proceedings.
Legal Principles held –	☆ The Appellant contends that there was NO bar to the maintainability of a second application under Section 482, Cr. P.C. in the peculiar facts and circumstances of the case relying on Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Ors. (SC). ☆ The Respondent contends that such application was not maintainable on relying the judgement Atul Shukla vs. The State of Madhya Pradesh and another. The cheques being post-dated, the appellant cannot escape its answerability. ☆ The complaint filed by Respondent alleges issuance of the cheques by the appellant as Director on 15.02.2001 and 28.02.2001. The following facts is not specify in the complaint: (a) The appellant in his reply (dated 31.08.2001) to the statutory notice had denied answerability in view of his resignation on 20.01.2001. (b) There is NO allegation in the complaint that the cheques were post-dated. ☆ From the tenor of the order of the HC on the earlier occasion, it does NOT appear that Form 32 issued to the ROC was brought on record in support of the resignation. ☆ The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques. ☆ Naturally, there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did NOT fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties.
Decision	☆ The SC held that the Company, of which the appellant was a Director, is a party respondent in the complaint. Therefore, the interests of the complainant are adequately protected. ☆ In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application. ☆ The SC held that the Appellant had resigned before the issuance of the cheque and hence, could not be held liable. ☆ The SC decide the case in favour of the Appellant (Anil).

123. THOMAS CHACKO v. THE CHIEF MANAGER, BANK OF INDIA & ORS [KER]

Hint: Now the question arise before the Kerala HC, **whether the Kerala HC assume supervisory jurisdiction over the DRAT in Chennai, Tamil Nadu?** A question of territorial jurisdiction must be resolved.

Decision:

- ★ The Kerala HC hold the **HC exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State, then the HC in the State where the first court is located should be the proper forum.** Indeed, here the first or the primary forum is the DRT, Ernakulum.
- ★ Therefore, **this Court (i.e. Kerala HC) can eminently exercise its supervisory jurisdiction over the DRAT, Chennai.**

Fact of the Case	★ A wary purchaser of a secured asset is caught in the litigious cross fire between the borrowers and the banker. Spent his money, burnt his fingers (as he claims), and now wants to salvage the situation. ★ The purchaser wants to withdraw from the sale and get his money back. However, he faces uncertainty. ★ After suffering an adverse order before the DRT, the Bank has filed an appeal before the DRAT, Chennai and its disposal assumes importance for the purchaser to press his claim for refund. He wants the AT to dispose of the appeal early. ★ Now the question arise before the Kerala HC, whether the Kerala HC assume supervisory jurisdiction over the DRAT in Chennai, Tamil Nadu? ★ A question of territorial jurisdiction must be resolved.
Legal Principles held—	★ Plainly read, Article 227 confers on every HC superintendence over all courts and tribunals throughout the “territories” over which the HC exercises its jurisdiction. Then, we should reckon “territories” in the literal, geographical sense or in the figurative, legal sense as fiction. ★ Ambica Industries v. Commissioner of Central Exercise (2007): ☛ The appellant carried on business at Lucknow. However, a dispute involving the appellant arose before the CESTAT, New Delhi. ☛ The Tribunal exercises its jurisdiction over the cases from the State of UP, NCT of Delhi, and the State of Maharashtra. ☛ Against the Tribunal’s order, the appellant filed an appeal under Section 35G of the Central Excise Act before the Delhi HC. A Delhi HC held that it had no territorial jurisdiction; it dismissed the appeal. So, the matter reached the SC. ☛ In the above factual backdrop, it was held that as for Article 227 of the Constitution of India, as also Article 226(2), the HC exercises its discretionary jurisdiction over the orders passed by the Subordinate Courts within its territorial jurisdiction and even if any part of the cause of action has arisen within its territory that will suffice. ★ However, in the present case, the aforesaid principle laid down in Ambica Industries case cannot be applied, when the HC exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State. ★ Then, “the HC situated in the State where the first court is located” should be the proper forum.
Decision	★ The Kerala HC hold the HC exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State, then the HC in the State where the first court is located should be the proper forum. Indeed, here the first or the primary forum is the DRT, Ernakulum. ★ Therefore, this Court (i.e. Kerala HC) can eminently exercise its supervisory jurisdiction over the DRAT, Chennai.

124. CEMENT WORKERS MANDAL v. GLOBAL CEMENTS LTD (HMP CEMENTS LTD) & ORS [SC]

Hints: In the present case, a Kolkata based company had a cement unit in Porbandar in Gujarat. Later on, the unit became sick and wages were not paid. On application filed by Appellant Union before the Labour Court, Labour court

passed award in favour of workers. Simultaneously, Lender in Kolkata attached company's properties and sold in public auction. As a result, Appellant Union filed writ petition before Gujarat HC seeking deposit of 50% of their dues by the lender from the sale proceeds of the company property. However, the Respondent contends that **the Gujarat HC has NO territorial jurisdiction inasmuch as NO part of the cause of action in relation to the subject matter of the Special Civil Application (referred to as "SCA") has arisen in the State of Gujarat.** Single judge overruled the jurisdiction issue in favour of Appellant Union while division bench allowed the objection. The question arises before the SC

"whether the Division Bench was justified in holding that the SCA filed by the appellant was not maintainable for want of territorial jurisdiction of the Gujarat HC".

Decision:

- ★ In the light of the foregoing discussion, **we are of the view that the appellant's petition (SCA) was maintainable in the Gujarat HC inasmuch as the part of the cause of action to file such petition did accrue to the appellant herein (petitioner) within the territorial jurisdiction of the Gujarat HC.**
- ★ The SC decide the case in favour of the Appellant Union.

Fact of the Case	★ Respondent Company having its RO at Calcutta have a cement factory at Porbandar in the State of Gujarat. The appellant is a Union of workers. ★ At all relevant time, these workers (as many as 500) were working in the cement factory of respondent at Porbandar. ★ However, Respondent closed the cement factory somewhere in the year 1998 for myriad reasons without paying the wages to its workers. ★ Therefore, a dispute arose between the appellant Union and Respondent Company (employer) regarding the non-payment of outstanding wages payable to the workers. ★ The Labour Court directed Respondent Company to pay a sum of Rs.81, 50,744/ with a cost of Rs. 50,000/ to the workers. ★ This was followed by issuance of recovery certificate dated 04.09.2000 for Rs. 60,35,379/ by the Collector, Junagadh as arrears of land revenue. However, the said certificate has remained unexecuted. ★ Meanwhile, Respondent Bank had initiated recovery proceedings against Respondent Company for the recovery of loan before the DRT at Calcutta, which was allowed. ★ The DRT also appointed one Receiver to take appropriate steps in this regard. The Receiver informed the appellant Union accordingly. ★ The appellant Union filed a petition before the Gujarat HC praying therein to direct the respondent Bank to deposit the 50% amount of the sale proceeds of the Porbandar H.M.P. Cement with the District Collector, Porbandar, and the District Collector be directed to pay by account payee cheque to each of the workmen proportionately towards the part payment of the legal dues to the individual workman concerned. ★ The Respondents raised an objection that the Gujarat HC has NO territorial jurisdiction inasmuch as NO part of the cause of action in relation to the subject matter of the Special Civil Application (referred to as "SCA") has arisen in the State of Gujarat. ★ The Single Judge overruled the preliminary objection and held that the Gujarat HC has the territorial jurisdiction to entertain the SCA. ★ On appeal by the Respondent Company, the Division Bench set aside the order of the Single Judge and dismissed the SCA. ★ The Division Bench held that the Gujarat HC has NO territorial jurisdiction to entertain the SCA in question because no part of the cause of action has accrued to file such petition (SCA) in the Gujarat HC. ★ The appellant Union filed special leave petition before the SC against this order of the Division Bench of Gujarat HC.
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Legal Principles held—	★ The short question, which arises for consideration before the SC is “whether the Division Bench was justified in holding that the SCA filed by the appellant was not maintainable for want of territorial jurisdiction of the Gujarat HC”. ★ SC held that in our opinion, the Division Bench erred in not noticing Article 226(2) of the Constitution of India while deciding the question arising in this case. ★ In other words, the question as to whether the Gujarat HC has territorial jurisdiction to entertain the appellant’s petition (SCA) or not, should have been decided keeping in view the provisions of Article 226(2) of the Constitution read with Section 20 of the Code of Civil Procedure, 1908 (for short, “CPC”). ★ In clear terms, Article 226(2) of the Constitution empowers the HC (let us say “A” HC) to entertain the writ petition if the cause of action to file such writ petition against the respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of “A” HC. ★ Clause (2) further empowers a HC to issue any order, directions or writ as provided in Article 226(1) of the Constitution in such writ petition notwithstanding that seat of such Government or the Authority or the residence of such person against whom the writ petition is filed does not fall within the territories of the “A” HC but falls in the territories of the “B” HC. ★ Coming to the facts of this case, The SC finds from the averments of the petition (SCA) that (a) Respondent Company has its factory at Porbandar, which is a part of State of Gujarat; (b) The Labour Court, Junagadh, which is also a part of State of Gujarat, entertained the dispute between the appellant Union and respondent Company and passed a recovery order; and (c) One of the reliefs claimed in the petition (SCA) pertains to non-payment of outstanding wages payable to the workers by respondent Company. ★ In the light of these three reasons, we are of the view that the part of the cause of action as contemplated in Article 226 (2) of the Constitution has arisen within the territorial jurisdiction of the Gujarat HC for filing the petition (SCA) to claim appropriate reliefs in relation to such dispute against Respondent Company. ★ In our considered opinion, the expression “the cause of action, wholly or in part, arises” occurring in Article 226(2) of the Constitution has to be read in the context of Section 20(c) of CPC which deals with filing of the suit within the local limits of the jurisdiction of the Civil Courts.
Decision	★ The SC setting aside the impugned order of the Division Bench restore the order of the Single Judge. ★ In the light of the foregoing discussion, we are of the view that the appellant’s petition (SCA) was maintainable in the Gujarat HC inasmuch as the part of the cause of action to file such petition did accrue to the appellant herein (petitioner) within the territorial jurisdiction of the Gujarat HC. ★ The SC decide the case in favour of the Appellant Union.

125. M/S SCIEMED OVERSEAS INC v. BOC INDIA LIMITED & ORS [SC]

Hint: In the given case, the Appellant was the successful bidder in a work contract which was challenged by the Respondent. In the proceedings, **the Appellant filed an affidavit to the effect that nearly 85% of the work had been completed.** However, **the HC found the statement made in the affidavit to be false after causing an inspection by an advocate.** Then, **the HC imposed a cost of Rs.10 lacs on the appellant for filing a false affidavit.**

Decision:

- ★ The SC held that based on the material considered by the HC, **we are satisfied that the imposition of costs by the HC was justified.**
- ★ The SC decide the case in favour of the Respondent.

Fact of the Case	★ In the given case, the Appellant was the successful bidder in a work contract which was challenged by the Respondent. ★ In the proceedings, the Appellant filed an affidavit to the effect that nearly 85% of the work had been completed. ★ However, the HC found the statement made in the affidavit to be false after causing an inspection by an advocate. ★ Then, the HC imposed a cost of Rs.10 lacs on the appellant for filing a false affidavit. ★ The appellant file appeal before the SC against the impugned order of the HC.
Legal Principles held—	★ The question arises before the SC for consideration is “Whether the HC was correct in imposing costs of Rs. 10 lakhs on the petitioner for filing a false or misleading affidavit in this Court”. ★ The SC consider the following facts and earlier judicial decision before passing the final order: (a) The Contract in favour of the petitioner was awarded improperly and was of a commercial nature. (b) A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last 15 years as compared to the number of such cases prior to that. This is illustrative of the malaise (i.e. illness) that is slowly but surely creeping in. This “trend” is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair. (c) While impugning the order passed by the HC, it was submitted by Sciemed that in fact the statement made in the affidavit filed in this Court was not a false statement but was bona fide and not a deliberate attempt to mislead this Court. (d) It was found that a considerable amount of work had still to be completed by Sciemed and it was not as if the work was nearing completion as represented to this Court. Additionally, the Report independently given by the learned advocate appointed to make an assessment, also clearly indicated that a considerable amount of work had still to be performed by Sciemed. The Report was not ex parte but was carefully prepared after an inspection of the site and discussing the matter with Shailendra Prasad Singh the proprietor of Sciemed and an engineer of Sciemed as well as officers from the RIMS. (e) The fact of the matter is that a false or misleading statement was made before this Court and that by itself is enough to invite an adverse reaction. (f) In <i>Muthu Karuppan v. Parithi Ilamvazhuthi</i> (2001), this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said: “Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.”
Decision	★ The SC held that based on the material considered by the HC, we are satisfied that the imposition of costs by the HC was justified. ★ The SC decide the case in favour of the Respondent.

126. VILLAYATI RAM MITTAL (P) LTD v. SHAMBHAVI CONTRACTORS PVT LTD [DEL]

Hint: This is an application under Section 10 of CPC filed by the defendant in the suit for stay of the present suit on the ground that between the parties a suit involving the same issues is pending in the Shimla HC. The suit filed in Shimla is a **suit for recovery of moneys by the present defendant against the present plaintiff for work done**. In the suit filed at Shimla HC, the reliefs which are prayed by the present defendant are recovery of Rs.45,54,924/-, damages and injunction. A reference to the present suit shows that the suit is for a recovery of Rs. 3.25 Crores on account of the sub contract, pertaining to enhanced costs and escalation claimed by the plaintiff from the defendant on account of defendant failing to perform its contractual obligations.

Decision

- ☆ The Delhi HC held that the most claims of the plaintiff in the present suit for recovery of Rs. 3.25 Crores **pertains to enhanced costs and escalation claimed by the plaintiff from the defendant on account of defendant failing to perform its contractual obligations**, and that is not an issue in the previously instituted suit at Shimla. Therefore, the decision in the previously instituted suit at Shimla will not operate as res judicata w.r.t. issues in the present suit pertaining to the claim of the plaintiff for recovery of moneys of the damages on account of higher costs and escalation.
- ☆ In view of the above, since **the major part of the present suit claim falls outside the subject matter of the scope of the previously instituted suit at Shimla**, and **consequently there is NO identity of the main claim and the issues of the present suit with the previously instituted suit at Shimla**.
- ☆ The Delhi HC decide the case in favour of the Respondent.

Fact of the Case	☆ This is an application under Section 10 of CPC filed by the defendant in the suit for stay of the present suit on the ground that between the parties a suit involving the same issues is pending in the Shimla HC. ☆ The suit filed in Shimla is a suit for recovery of moneys by the present defendant against the present plaintiff for work done. ☆ In the suit filed at Shimla HC, the reliefs which are prayed by the present defendant are recovery of Rs.45,54,924/-, damages and injunction. ☆ A reference to the present suit shows that the suit is for a recovery of Rs. 3.25 Crores on account of the sub contract, pertaining to enhanced costs and escalation claimed by the plaintiff from the defendant on account of defendant failing to perform its contractual obligations.
Applicable Laws	☆ The law with respect to Section 10 CPC is well settled and which is that a later suit between the same parties cannot proceed to trial if issues involved in the later suit are already a subject matter of issues in the previously instituted litigation. ☆ Of course, it is not necessary that each and every issue arising in the earlier litigation and the later litigation must be identical, and what is really required is that the main issues or the substantial issues which arise and would be decided in the earlier suit would be the same as the issues in the later suit. ☆ Putting it in another words, one of the principles which has been laid down for applicability of Section 10 CPC is that the decision in the first suit will operate as res judicata for the issues in the later suit. Also if parties to the earlier suit are different then the later suit cannot be stayed under Section 10 CPC, though this aspect is not relevant in this case as the parties to the present suit are not different than the parties to the earlier suit i.e. there are no parties to this suit who are not parties to the earlier suit.
Legal Principles held –	The Delhi HC consider the following facts before passing the final order: (a) On the basis of aforesaid principles, let us examine as to whether the present suit can be stayed and which is filed after around two months of the suit which is filed by the defendant in the Shimla HC. (b) The suit filed in Shimla HC is a suit for recovery of moneys by the present defendant against the present plaintiff for work done. Between the parties in the present suit there was a sub-contract with the defendant as a sub-contractee on account of the plaintiff

	having been granted a contract for construction of a military hospital in Shimla by the Union of India. (c) Disputes and difference have arisen between the parties w.r.t. this sub-contract. In the earlier suit, the present defendant as the plaintiff has also sought reliefs effectively for specific performance for continuing with the contract. (d) A reading of the relief clauses and the cause of action of the earlier suit filed by the defendant at Shimla shows that the defendant is claiming recovery of moneys for the work done and that in the earlier suit injunctions are sought which are in the nature of seeking specific performance of the sub-contract. (e) In the suit at Shimla, this Court is informed, that the pleadings are complete and suit has been set down for trial. (f) A reference to the present suit shows that the suit is for a recovery of Rs. 3.25 Crores no doubt on account of the sub-contract. However, the aspect which differentiates the present suit from the suit filed at Shimla is that the present suit basically seeks recovery of amounts from the defendant under a different head that the defendant is pleaded to have failed to perform its obligations under the contract which resulted in the plaintiff having been caused escalation in costs and expenditure for completion of the project of the hospital in Shimla whereas the suit in Shimla is based on the cause of action of value of work done by the present defendant for the plaintiff and amounts for which work done is claimed in the Shimla suit.
Decision	★ The Delhi HC held that the most claims of the plaintiff in the present suit for recovery of Rs. 3.25 Crores pertains to enhanced costs and escalation claimed by the plaintiff from the defendant on account of defendant failing to perform its contractual obligations, and that is not an issue in the previously instituted suit at Shimla. Therefore, the decision in the previously instituted suit at Shimla will not operate as res judicata w.r.t. issues in the present suit pertaining to the claim of the plaintiff for recovery of moneys of the damages on account of higher costs and escalation. ★ In view of the above, since the major part of the present suit claim falls outside the subject matter of the scope of the previously instituted suit at Shimla, and consequently there is NO identity of the main claim and the issues of the present suit with the previously instituted suit at Shimla. ★ The Delhi HC decide the case in favour of the Respondent.

127. SVELIFE FOUNDATION & ANR v. UNION OF INDIA & ANR [SC]

Hint: Right to live – Victims of road accident – Good Samaritan law – SC approves the guidelines and makes it law

Fact of the Case	★ The petition has been filed under Article 32 of the Constitution of India in public interest for the development of supportive legal framework to protect Samaritans i.e. bystanders and passers-by who render the help to the victims of road accidents. ★ These individuals can play a significant role in order to save lives of the victims by either immediately rushing them to the hospital or providing immediate lifesaving first aid. ★ Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. ★ Bystanders' clear support is essential to enhance the chances of survival of victim in the 'Golden Hour' i.e. the first hour of the injury. ★ As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the 'Golden Hour'. ★ Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans.
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	☆ The people have the notion that touching the body could lend them liable for police interrogation. Passer-by plays safe and chose to wait for the police to arrive whereas injured gradually bleeds to death. ☆ People are reluctant to come forward for help despite, desperate attempts to get help from passer-by, by and large they turn blind eyes to the person in distress. ☆ Sometimes, those who help are rebuked due to ignorance by the others on touching the scene. In the case of a convoy even when there are several vehicles in the convoy, people wait for the ambulance to arrive and also for the concerned police help. ☆ There are several desisting factors which are required to be taken care of such as ☛ fear of legal consequences if once action is ineffective or harmful to victim, ☛ fear of involvement in subsequent prolonged investigation and ☛ visit to the police station. ☆ There is need to evolve the system by promptly providing effective care system with certain ethical and legal principles. It is absolutely necessary that Good Samaritans feel empowered to act without fear of adverse consequence. There is need to provide certain incentives to Good Samaritans. ☆ There is also dire (i.e. terrible) need to enact a Good Samaritan Law in the country since there is a felt need of legislation for affording protection to Good Samaritans. ☆ The Ministry of Road Transport and Highways has issued a notification containing guidelines on 12.5.2015 for protection of good Samaritans and a further Notification has been issued on 21.1.2016 framing standard operating procedures (SOP). ☆ It has been mentioned in the affidavit filed by Ministry of Road Transport and Highways, GOI that in the absence of any statutory backing, it is felt that it will be difficult to enforce these guidelines issued on 12.5.2015 and SOPs as notified on 21.1.2016. ☆ Prayer has been made on the part of the Ministry of Road Transport and Highways of GOI that the guidelines notified on 12.5.2015 and the SOP notified on 21.1.2016 may be declared to be enforceable by this Court so that it is binding on all the States and Union Territories until the Union Government enacts a law to this effect.
Legal Principles held –	After considering various judgements and elaborately discussing on the power of the judiciary to lay down laws the SC held as under: (a) In view of the aforesaid discussion, it is apparent that guidelines and directions can be issued by this Court including a command for compliance of guidelines and SOP issued by GOI, Ministry of Road Transport and Highways, till such time as the legislature steps in to substitute them by proper legislation. (b) This Court can issue such directions under Article 32 read with Article 142 to implement and enforce the guidelines which are necessary for protection of rights under Article 21 read with Article 14 of the Constitution of India so as to provide immediate help to the victims of the accident and at the same time to provide protection to Good Samaritans. The guidelines will have the force of law under Article 141. (c) By virtue of Article 144, it is the duty of all authorities – judicial and civil – in the territory of India to act in aid of this Court by implementing them. We have carefully gone through the notification dated 12.5.2015. (d) However, as per the guidelines contained in para 13, the ‘acknowledgement’ if so desired by Good Samaritans, has to be issued as may be prescribed in a standard format by the SG. In our opinion, till such time the format is prescribed, there should be no vacuum hence we direct that acknowledgement be issued on official letter-pad etc. and in the interregnum period, if so desired by Good Samaritan, mentioning the name of Samaritan, address, time, date, place of occurrence and confirming that the injured person was brought by the said Samaritan.

	We have also gone through the notification dated 21.1.2016 w.r.t. the examination of Good Samaritan by the Police as contained in para 2(vii) which we modify and be read in the following manner: “The affidavit of Good Samaritan if filed, shall be treated as complete statement by the Police official while conducting the investigation. In case statement is to be recorded, complete statement shall be recorded in a single examination.” Remaining guidelines in the notifications dated 12.5.2015 and 21.1.2016 are approved and it is ordered that guidelines with aforesaid modifications made by us be complied with by the Union Territories and all the functionaries of the SGs as law laid down by this Court under Article 32 read with Article 142 of the Constitution of India and the same be treated as binding as per the mandate of Article 141. We also direct that the court should NOT normally insist on appearance of Good Samaritans as that causes delay, expenses and inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 suo-motu or on an application moved for that purpose, unless for the reasons to be recorded personal presence of Good Samaritan in court is considered necessary.
Decision	★ The SC decide the case in favour of the Respondent.

128. RAMESH RAJAGOPAL v. DEVI POLYMERS PVT. LTD [SC]

Hint: The appellant is a **Director in Devi Polymers Private Limited [“DPPL”]**. DPPL has three Units - A, B and C. Unit ‘C’ is being headed by the appellant. It is not disputed that the Unit ‘C’ primarily renders consultancy services. Appellant decided for development of separate website for consultancy business of the company. As a consequence of this, prosecution was initiated against the director under IPC and IT Act.

Decision

- ★ The SC decide the case in favour of the Appellant.
- ★ We have already observed that **the acts of the appellant did NOT have any dishonest intention while considering the allegations in respect of the other offences. In the circumstances, NO case is made out under Sections 65 and 66 of the I.T. Act, 2000.**

Fact of the Case	★ The appellant is a Director in Devi Polymers Private Limited [“DPPL”]. DPPL has three Units - A, B and C. Unit ‘C’ is being headed by the appellant. ★ It is not disputed that the Unit ‘C’ primarily renders consultancy services. However, all the three Units are units of one entity i.e. DPPL. ★ In the course of business, the appellant thought of improving the consultancy services and apparently contacted consultants, who apparently advised the creation of a separate entity known as Devi Consultancy Services and accordingly, in the web page that was created by the consultant, this name occurred. ★ The invoices raised by the consultants were paid from the funds of DPPL, as advised by the appellant. ★ It is significant that NO amount has been paid or received by Unit C separately, independently of DDPL. ★ The relationship being strained (i.e. artificial) between the respondent and the appellant, who are relatives, several proceedings seem to have been initiated in the Company Law Board (CLB). ★ However, in the course of disputes and the pending proceedings, the respondent initiated the instant criminal complaint against the appellant. ★ The appellant was prosecuted by the respondent under Sections 409, 468 and 471 of the IPC read with Sections 65 and 66 of the Information Technology Act, 2000 read with Section 120(b) of the IPC.
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Legal Principles held—	☆ The SC consider the following facts before passing the final order: (a) As far as the website is concerned, though undoubtedly, Devi Consultancy Services (DCS) is mentioned, it is made clear in the website itself that DCS is a part of DPPL which is apparent from a link, in the website itself, where they are shown as DPPL as the main Company and DCS as a sister Company. (b) Similarly, in the website of DPPL, which was moved by the consultant, there is a link which shows that DCS is a sister concern and it is stated that viewers may visit that site. (c) The address of DCS is shown to be the same address as that of DDPL. (d) We are satisfied that there is NO attempt whatsoever to project the DCS as a concern or a Company which is independent and separate from DDPL, to which both the parties belong. In any case, it is not possible to view the act as an act of forgery. (e) It might have been possible to attribute some criminal intent to the projection of the Unit-C as DCS in the website, if as a result of such projection, the appellant had received any amounts separate from the DDPL, but a perusal of the complaint shows that this is NOT so. Not a single rupee has been received by the appellant in his own name or even separately in the name of Unit-C, which he is heading. All amounts have been received by DDPL. (f) It is NOT possible to view the contents of the website showing the DCS as a concern which is separate from DDPL in view of the contents of the website described above. (g) Moreover, it is not possible to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website. (h) The appellant has NOT committed any act which fits the above description. Admittedly, he has NOT received a single rupee nor has he entered into any contract in his own name on the basis of the above website. ☆ In the absence of any act in pursuance of the website by which he has deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person, we find that it is NOT possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468. ☆ We find that the allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is not sufficient ground of proceedings against the accused. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge. ☆ As regards the commission of offences under the Information Technology Act, 2000 the allegations are that the appellant had with fraudulent and dishonest intention on the website of DCS i.e. www.devidcs.com that the former is a sister concern of Devi Polymers. Further, that this amounts to creating false electronic record. In view of the finding above, we find that NO offence is made out under Section 66 of the I.T. Act, read with Section 43. ☆ The appellant was a Director of DDPL and nothing is brought on record to show that he did not have any authority to access the computer system or the computer network of the company. That apart there is nothing on record to show the commission of offence under Section 65 of the I.T. Act, since the allegation is not that any computer source code has been concealed, destroyed or altered.
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	☆ We have already observed that the acts of the appellant did NOT have any dishonest intention while considering the allegations in respect of the other offences. In the circumstances, NO case is made out under Sections 65 and 66 of the I.T. Act, 2000.
Decision	☆ The SC decide the case in favour of the Appellant.

129. RESERVE BANK OF INDIA v. ONICRA CREDIT INFORMATION CO LTD [DEL]

Hint: Whether Determination of number of credit information agencies is mandatory before granting certificate of registration in pursuance of Section 5(3) of Credit Information Companies (Regulations) Act, 2005: Held → No.

Decision:

- ☆ The Delhi HC decide the case partly in favour of the Respondent and partially in favour of the Appellant.
- ☆ The Delhi HC held that it clear **no bar on the RBI in simultaneously considering the application of Credit Information Companies and also determining the total number of Credit Information Companies which may be granted a certificate under Section 5(3) when an application by a prospective Credit Information Company is moved under Section 4(1) of the said Act.**

Fact of the Case	☆ The appellant (RBI) under Section 5(2) of the Credit Information Companies (Regulations) Act, 2005 (hereinafter referred to as 'the said Act') rejected the application of the respondent for a Certificate of Registration as a Credit Information Company. ☆ The appellate authority also rejected the appeal of the respondent. ☆ The Respondent filed the writ petition before the Single Judge of the HC. ☆ Learned Single Judge of the HC decide the case in favour of the Respondent and directing the respondent to file a fresh application and the appellant to determine the number of credit information companies under section 5(3) of the Act. ☆ RBI challenged this direction before the Division Bench of the HC.
Legal Principles held—	The Delhi HC consider the following facts before passing the final order: (a) Appellant contends that the impugned judgment is contrary to the statutory provisions of the said Act. (b) In particular, the grievance is that the direction given to the appellant to consider the application of the respondent without there being any determination under Section 5(3) of the said Act and without using the same as a ground for rejecting the said application, is contrary to the scheme of the Act. (c) Appellant contends before consideration of the application of the respondent, the appellant is required to first determine the total number of Credit Information Companies which may be granted Certificates of Registration under Section 5(3) of the said Act. This argument was rejected by the learned single judge of the HC on the ground that there is no mandate under Section 5(3) requiring the RBI to prescribe the total number of Credit Information Companies. (d) That is a discretion which has been given to the RBI and the same is evidenced by the use of the word "may". The use of the word "may" is not always determinative of whether a provision is mandatory or discretionary. (e) But, in the present context, we read Section 5(3) as a discretion which has been vested in the RBI.
Decision	☆ The Delhi HC decide the case partly in favour of the Respondent and partially in favour of the Appellant. ☆ The Delhi HC held that it clear no bar on the RBI in simultaneously considering the application of Credit Information Companies and also determining the total number of Credit Information Companies which may be granted a certificate under Section 5(3) when an application by a prospective Credit Information Company is moved under Section 4(1) of the said Act.

130. JET AIRWAYS (INDIA) LTD. v. DHANUKA LABORATORIES LTD [DEL]

Hint: In the given case, the appellant is a carrier of goods. **Respondent received an order from a buyer in Bangladesh, which was executed by the respondent by shipping the goods by air** through the appellant. **The goods on being handed over to the appellant for transportation.** Later on, the appellant fails to deliver the consignment and goods appeared to have been stolen. Moreover, the appellant (i.e. carrier) fails to lead evidence. Question arise **“whether Appellant (i.e. carrier) is liable for the loss?”**

Decision:

Carriage By air Act, 1972 – Liability thereunder – Carrier fails to deliver the consignment – Goods appeared to have been stolen – Carrier fails to lead evidence -- Held, Yes.

- ★ The Delhi HC decide the case in favour of the Respondent.
- ★ The Delhi HC held that the present case falling as a case of wilful misconduct or equivalent to wilful misconduct i.e. misappropriation of goods, **the case will have to be decided as per Rule 25 and not Rule 22 as argued on behalf of the appellant.**
- ★ Moreover, a carrier cannot say that it has discharged its onus of proof **because onus of proof is discharged by leading positive evidence, with the aspect that positive evidence also ordinarily does not absolve a carrier** because liability of a carrier is a strict liability equal to that of an insurer.

Fact of the Case	★ In the given case, the appellant is a carrier of goods. ★ Respondent received an order from a buyer in Bangladesh, which was executed by the respondent by shipping the goods by air through the appellant. ★ The goods on being handed over to the appellant for transportation were thereafter further transferred by the appellant to its agent for carriage/transportation viz. M/s Biman Bangladesh Airlines. ★ The goods did not reach the consignee of the Airway bill and M/s Biman Bangladesh Airlines issued a short landing letter. ★ Thereafter, the respondent filed the subject suit. The respondent led evidence in support of its case by proving the value of the goods transported as also the wilful misconduct/ misappropriation of goods by the appellant through its agent carrier, but the appellant has led NO evidence whatsoever in the trial court. ★ Therefore the suit had to be and was decided only as per the evidence which was led by the respondent. ★ The Appellant file appeal before the Delhi HC against the order of the Trial Court. ★ The question before the Delhi HC: ✎ Whether the liability of the appellant is limited as per Rule 22 of the Rules under the Carriage by Air Act, 1972 or ✎ Whether the appellant cannot get benefit of this Rule 22 of limited liability because the appellant is guilty of wilful misconduct as provided in Rule 25 of the said Rules and which provision overrides the provision of Rule 22.
Legal Principles held—	The Delhi HC consider the following facts before passing the final order: 1. It is settled law that benefit of the provision of the limited liability of a carrier such as the appellant under Rule 22 is subject to Rule 25 and which states that the benefit of limited liability cannot be given to a carrier in case the carrier is found guilty of wilful misconduct or conduct equivalent to wilful misconduct. 2. Respondent contends that goods have been misappropriated is NOT only a case of wilful misconduct but such act is even more than the case of wilful misconduct. 3. Respondent proved that on account of the goods NOT having been traced and thus in fact the goods have been misappropriated. 4. Obviously, misappropriation cannot be by a legal entity such as the appellant/defendant or its agent airline company, but by its employees or agents who have been dealing with the goods. 5. There are judgments of various courts which hold that once goods are NOT traced and there is an averment of the same being misappropriated, the case then

	falls under Rule 25 that there is wilful misconduct or conduct equivalent to wilful misconduct. (a) <u>Vij Sales Corporation v. Lufthansa, German Airlines:</u> ✎ Whether or not there is wilful misconduct would depend on facts of each case with of course the onus being really on the carrier such as the appellant who is in control and possession of the goods to show <u>that there is NO wilful misconduct because a consignor such as the respondent can only step into the witness box and state so in the examination-in-chief.</u> ✎ It is also required to be noted that similar principle w.r.t. strict liability of a carrier exists under the Carriers Act, 1865 and therefore onus is really upon the appellant/defendant/carrier to show that there is no wilful misconduct. (b) The SC relying on the judgment held in the case of <u>Nath Bros. Exim International Ltd. v. BEST Roadways Ltd. (2000)</u> which specifies the strict liability of a carrier under the Carrier Act and how a carrier cannot take benefit of a clause of limited liability. 6. In my opinion, <u>once the appellant has admittedly led NO evidence whatsoever, and the respondent has led evidence proving the value of the goods and the case as set up in the plaint, the appellant cannot be said to have discharged the onus upon it that there was no wilful misconduct or misappropriation as was the case of the respondent/plaintiff.</u>
Decision	★ The Delhi HC decide the case in favour of the Respondent. ★ The Delhi HC held that the present case falling as a case of wilful misconduct or equivalent to wilful misconduct i.e. misappropriation of goods, <u>the case will have to be decided as per Rule 25 and not Rule 22 as argued on behalf of the appellant.</u> ★ Moreover, a carrier cannot say that it has discharged its onus of proof <u>because onus of proof is discharged by leading positive evidence, with the aspect that positive evidence also ordinarily does not absolve a carrier</u> because liability of a carrier is a strict liability equal to that of an insurer.

131. BHUPINDER SINGH BAWA v. ASHA DEVI [SC]

Hint: The Appellant/tenant was inducted as tenant in the suit scheduled premises by the erstwhile owner of the premises. Subsequently, the Respondent/landlady acquired the premises under a registered sale deed. The Respondent sought eviction of the appellant from the suit premises on the ground of bona fide requirement that her son required the premises for running his separate business of sanitary and hardware products as the suit premises has a prime location for the said business.

Question: Whether the eviction of tenant can be denied on the ground of that there is no bonafide requirement and the landlord has several properties?

Decision:

- ★ In light of the above, Additional Rent Controller and the HC rightly concluded that NO alternative premise was lying vacant for running business of respondent's son.
- ★ The SC decide the case in favour of the Respondent.

Fact of the Case	★ In the present case, <u>suit scheduled premises</u> comprises of two big rooms and one small room. ★ The Appellant/tenant was inducted as tenant in the <u>suit scheduled premises</u> by the erstwhile owner of the premises. Subsequently, <u>the Respondent/landlady acquired the premises under a registered sale deed.</u> ★ The Respondent <u>sought eviction of the appellant from the suit premises on the ground of bona fide requirement that her son required the premises for running</u>
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	his separate business of sanitary and hardware products as the suit premises has a prime location for the said business. ☆ The Appellant controverted (i.e. deny the truth of) the claim of bona fide requirement set up by the respondent on various grounds including that there are several other properties available for the respondent landlord to give to her son for his business. ☆ On a proper appreciation of facts and evidences available on record, the Additional Rent Controller passed an eviction (i.e. dispossession) order in favour of the respondent which was upheld by the HC. ☆ The appellant tenant filed appeal before the SC against the order of the HC.
Legal Principles held –	The SC consider the following facts before passing the final order: - Both the courts below have allowed the eviction petition filed by the respondent against the appellant on the ground of bonafide requirement under Section 14(1)(e) of Delhi Rent Control Act, 1958 by recording concurrent findings. - First and foremost, the landlord and tenant relationship between the parties is NOT in dispute. - The only dispute relates to bona fide requirement of the respondent for business of her son and availability/ non-availability of alternative suitable accommodation. - The concurrent findings recorded by the courts below are as follows: - Respondent's son is engaged as Director in the family company M/s. Jaishree Granites Pvt. Ltd. and earns a salary of Rs. 50,000/- cannot be an impediment to his running a separate business of sanitary and hardware. Law does NOT provide that if a landlord/landlady requires the premises for running business of his/her young son who is an MBA, and is already engaged in some other business, he is acting malafidely and thus, NO relief should be granted to him/her. The courts below considered the suitability of every alternative accommodation suggested by the appellant which can preferably be occupied by the respondent's son for running his business. The appellant had suggested alternative premises. The courts found that the properties in the name of family company, M/s. Jaishree Granites Pvt. Ltd. viz. Property nos. 43, 44, 45 and 46 situated at Block-A-1, W.H.S. Kirti Nagar, New Delhi and Property No. D- 12, Rajouri Garden, Ring Road, New Delhi were NOT located in a market area and thus, they were unsuitable for occupation especially when other suitable premises was available in the market area. The property No. 285-B which was owned by the husband of the respondent was found already in occupation as a retail outlet for marble and granite run by the husband of the respondent. The courts considered the allegation of the appellant that property No. 285-B is owned by the respondent and not by her husband. The appellant had produced a copy of Income Tax Returns of the respondent for establishing his claim. Moreover, the HC found that the appellant had himself stated in his pleadings that property no. 285-B belonged to the husband of the respondent and not to the respondent. Also, with regard to property No. A-2/53 at Kirti Nagar which is also owned by the husband of the respondent, the courts found that it is being used by M/s. Jaishree Granites Pvt. Ltd. as godown for the stock of the marble and granite.

	(c) So far as property bearing No. D-201, Mansarovar Garden, New Delhi is concerned, the appellant made a case that the entire property including the ground floor of property No. D-201 was available to the respondent which could have been suitably used for running her son's business as it was located on the main road and in a market area also. The courts noted that the appellant has admitted in his cross examination that the first floor and second floor of the property No. D-201 is in occupation of brother-in-law (Devar) of the respondent who is carrying on his business in the said premises. The court also noted that in his cross examination, the appellant has suggested that if not on the first or second floor, respondent's son can occupy the basement of property No. D-201. The HC has observed that the appellant impliedly admitting that the husband of the respondent is NOT the owner of the ground floor of property No. D-201. In such facts and circumstances, the courts recorded concurrent finding of fact that ground floor of property No. D-201 does not belong to husband of the respondent. Thus, the question of its suitability as an alternate accommodation does not arise in the present case. 5. The HC rightly relied on the decision held in Anil Bajaj & Anr v. Vinod Ahuja 2014 to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to from which shop her son should start the business from.
Decision	★ In light of the above, Additional Rent Controller and the HC rightly concluded that NO alternative premise was lying vacant for running business of respondent's son. ★ The SC decide the case in favour of the Respondent.

132. INNOVATIVE TECH PACK LTD. v. SPECIAL DIRECTOR OF ENFORCEMENT [DEL]

Hint: In the present case, prosecution was initiated against the directors under FERA, 1973 for non-filing of exchange control copy of the bill of entry to substantiate the outward remittances against import of materials. However, the proceedings initiated after lapse of 6 years. Whether the action of the Adjudicating Authority is tenable in law?

Decision:

★ Delhi HC decide the case in favour of the Appellant.

★ **In view of the belated show cause notice being served on the appellant, the defence of the appellant that it was not in possession of the copies of Bill of Entry for the two transactions is plausible (i.e. appreciable).**

Fact of the Case	★ Show cause notice was issued to the appellant under FERA alleging that though foreign exchange was remitted in four imports. ★ However, the appellant failed to submit exchange control copy of Bill of Entry for confirmation of having imported the material for which the amount was remitted. ★ Thus, it would amount to violation of Section 8 (3) and Section 8(4) of the FERA read with Chapter 7A 20 (i) of the Exchange Control Manual, 1995. ★ Out of the nine imports alleged, the Adjudicating Authority (AA) was satisfied with six and as no bill of entry was by the appellant for three remittances, a penalty of Rs.15 Lakhs was levied on the appellant. ★ Aggrieved by the order of the AA, the appellant preferred an appeal before the AT wherein though pre- deposit penalty was dispensed with. ★ However, the appeal was dismissed. ★ As a result, the appellant file appeal before the Delhi HC against the order of the AT.
Legal Principles held—	The Delhi HC consider the following facts before passing the final order: (a) The Courts have repeatedly held that in quasi criminal proceedings the penalty should NOT be imposed merely because it is lawful to impose the penalty.

	(b) Whether penalty should be imposed or not is a matter of discretion to be exercised judicially and on consideration of all the relevant circumstances. (c) Further simpliciter from the non-compliance of placing on record, NO inference can be drawn that the foreign remittance was not used for the purpose of import. (d) It is trite law that to impose a penal liability compliance should be sought within a reasonable time and a person cannot be penalised for NOT retaining the documents for a period of 13 years. During the course of the present appeal, exchange copy of Bill of Entry qua transaction at Sr. No. 2 has already been placed. (e) However, despite best efforts the appellant could NOT locate the exchange copies of Bills of Entry qua other two transactions. (f) In view of the belated show cause notice being served on the appellant, the defence of the appellant that it was not in possession of the copies of Bill of Entry for the two transactions is plausible (i.e. appreciable). (g) It cannot be held that the respondent has proved its allegation beyond reasonable doubt and the copies of the Bills of Lading probablise that the remittances were utilised for import.
Decision	★ Delhi HC decide the case in favour of the Appellant.

133. MGR INDUSTRIES ASSOCIATION & ANR v. STATE OF U P & ORS [SC]

Hint: In the present case, industrial township (or area) is not notified within the meaning of Proviso to Article 243-Q(1) of the Constitution. Therefore, the Zila Panchayat/Nagar Panchayat is entitled to realise tax and appellants cannot claim exemption from taxation by local authority.

Decision:

- ★ The SC decide the case in favour of the Respondent.
- ★ The SC held that **industrial township (or area) is NOT notified within the meaning of Proviso to Article 243-Q(1) of the Constitution.**
- ★ In view of the foregoing discussion, **we are of the view that it was rightly held by the HC that exemption under Section 12-A of the 1976 Act was NOT available in the facts of the above case.**
- ★ The appellants were NOT entitled for the reliefs claimed in the writ petition.

Fact of the Case	★ Appellant No. 1 is an Industries Association whose members are running small industries in Hapur. ★ Zila Panchayat, Hapur initiated proceedings for realisation of tax for members of the appellant Association which was objected to by way of a representation, before the SG, on the ground that it is an industrial area under the U.P. Industrial Area Development Act, 1976. Therefore, NO panchayat tax could be recovered from them. ★ On the contrary, the SG held that although the area has been declared as industrial area under the said Act, but NO notification having been issued as industrial township within the meaning of Proviso to Article 243-Q (1) of the Constitution. Therefore, the Zila Panchayat/Nagar Panchayat is entitled to realise tax and appellants cannot claim exemption from taxation by local authority. ★ Appellants file writ petition before the HC against the above order of the SG, which was dismissed by upholding the decision of the SG. ★ Aggrieved by the judgment of the HC, the appellants have filed appeal before the SC.
Legal Principles held—	★ The SC relying on the judgment given in Saij Gram Panchayat v. State of Gujarat and others, 1999: (a) This Court had consider the proviso to Article 243-Q(1) in the context of Gujarat Industrial Development Act, 1962. (b) After insertion of Part IX-A in the Constitution, the Gujarat Municipalities Act, 1962 was also amended by adding Section 264-A.

	(c) It was provided under Section 264-A that notified area means an urban area or part thereof specified to be an industrial township area under the proviso to Article 243-Q(1) of the Constitution of India. (d) Paragraphs 10 and 11 of the judgment are extracted below: Paragraph 10 ☞ The Gujarat Municipalities Act, 1962 was amended on 20-8-1993 in view of the insertion of Part IX-A in the Constitution. Section 264-A was substantially amended. ☞ It now provided: "264-A. For the purpose of this chapter, notified area means an urban area or part thereof specified to be an industrial township area under the proviso to Article 243-Q(1) of the Constitution of India." ☞ Thus, as a result of this amendment in the Gujarat Municipalities Act, as industrial area under the Gujarat Industrial Development Act, which is notified under Section 16 of the Gujarat Industrial Development Act, would become a notified area under the new Section 264-A of the Gujarat Municipalities Act and would mean an industrial township area under the proviso to Article 243-Q(1) of the Constitution of India. Paragraph 11 ☞ On 7-9-1993, the Government of Gujarat issued a notification under Section 16 of the Gujarat Industrial Development Act declaring Kalol Industrial Area as a notified area under Section 264-A of the Gujarat Municipalities Act. ☞ By another notification of the same date 7-9-1993, the Government of Gujarat excluded the notified area from Saij Gram Panchayat under Section 9(2) of the Gujarat Panchayats Act, 1961." ★ Thus, for treating industrial area as Industrial Township notification under proviso to Article 243-Q (1) was contemplated which the statutory scheme under the 1976 Act is also.
Decision	★ The SC decide the case in favour of the Respondent. ★ In view of the foregoing discussion, we are of the view that it was rightly held by the HC that exemption under Section 12-A of the 1976 Act was NOT available in the facts of the above case. ★ The appellants were NOT entitled for the reliefs claimed in the writ petition.

134. D.M.ORIENTAL INSURANCE CO. LTD. v. SWAPNA NAYAK & ORS [SC]

Hint: Tribunal allowed handsome compensation for victims of Motor Vehicle accident. However, in further appeal to HC, HC reduced the same compensation for victims of Motor Vehicle. Both Petitioner and Respondent aggrieved by the order of HC and file appeal before SC. In view of this, Insurer sought further reduction in compensation while complainant asked for enhancement compensation.

Decision:

In the light of foregoing discussion, **we find no merit in the appeals**, i.e., the appeal filed by the Insurance Company seeking further reduction in the compensation and the appeals filed by the claimants seeking enhancement in the compensation and **accordingly both the appeals is dismissed.**

Fact of the Case	★ Mathurananda Nayak, a resident of U.S.A., and his mother Jita Nayak along with two others while coming from Cuttack collided with a truck. ★ As a result of the said accident, Mathurananda Nayak, Jita Nayak along with driver of the car sustained injuries and later succumbed (i.e. die) to the injuries on the same day. ★ The legal heirs of Mathurananda Nayak and Jita Nayak filed two separate claim applications before the Tribunal.
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	☆ By a common Award, the Tribunal allowed the applications. ☆ For the death of Mathurananda Nayak, the Tribunal awarded a total sum of Rs. 4,36,95,740/- to the claimants and for the death of Jita Nayak awarded a sum of Rs. 1,29,500/- with interest at the rate of 7.5% p.a. ☆ The Insurance Company challenged the award before the HC and the claimants also challenged the award before the HC for enhancement of compensation amount awarded to them by the Tribunal. By impugned common judgment, the HC reduced the compensation to Rs. 3,75,00,000/-. ☆ The Insurance Company (i.e. Appellant) has filed appeal before SC against the aforesaid judgment of HC and seeking further reduction in the award of compensation whereas the claimants seeking enhancement in the compensation.
Legal Principles held –	The SC consider the following facts before passing the order: (a) On perusal of the decisions cited at the bar and further having regard to the totality of the facts and circumstances of the case and the concurrent findings of two courts and on material issues such as the determination of annual income of the deceased, his age, the number of dependents etc., we do not find any good ground to interfere in the impugned order. (b) In our view, apart from being concurrent, such findings cannot be said to be arbitrary in any way and nor they result in awarding a bonanza or a windfall to the claimants so as to call for further reduction in the compensation awarded by the HC. (c) In other words, in our view, what has been eventually awarded to the claimants by the HC appears to be just and reasonable compensation within the meaning of Section 166 of the Act and there does NOT appear any good ground for further enhancement under any of the heads including under the head of future prospects as claimed by the claimants in their appeal and NOR any case is made out for further reduction by applying the lesser multiplier or to make further deduction in the salary component of the deceased as claimed by the Insurance Company. (d) We notice that eventual figure of the award of compensation payable to the claimants appears to be just and reasonable then in such eventuality, we do not consider it proper to interfere in such award in our appellate jurisdiction under Article 136 of the Constitution.
Decision	☆ In the light of foregoing discussion, we find no merit in the appeals, i.e., the appeal filed by the Insurance Company seeking further reduction in the compensation and the appeals filed by the claimants seeking enhancement in the compensation and accordingly both the appeals is dismissed.

135. FARIDABAD COMPLEX ADMINISTRATION v. IRON MASTER INDIA (P) LTD [SC]

Hint: The respondent is a **Limited Company** having their place of business in Faridabad. The appellant is a **Municipal Corporation, Faridabad** as defined under the **Haryana Municipal Act, 1973**. The respondent **filed a civil suit seeking permanent injunction against the appellant restraining them from recovering the House Tax for the years 1991-92, 1992-93 and 1993-94 from the respondent on their properties.** The appellant also **sought a declaration that demand raised by the appellant calling upon the respondent to pay the House Tax on their properties is ILLEGAL.** The appellant filed second appeal before the HC **wherein the appellant had proposed several substantial questions of law arising in the case.** However, the HC dismissed the second appeal in limine (i.e. beginning) by **impugned judgment/order holding that the second appeal does NOT involve any substantial question of law.** The appellant (defendant) **has filed appeal before the SC against the order of the HC.**

Question: Whether second appeal is dismissed in liminie (i.e. beginning) on the ground that no substantial question of law is involved is tenable in law.

Decision:

- ☆ The SC decide the case in favour of the Appellant.
- ☆ In our considered view, **the appeal did involve the substantial question of law.** Therefore, the HC should have admitted the appeal **by first framing proper substantial questions of law arising in the case, issued notice to the respondent for its final hearing as provided under Section 100 of the Code of Civil Procedure, 1908** and disposed it of on merits.

Fact of the Case	☆ The respondent is a Limited Company having their place of business in Faridabad. The appellant is a Municipal Corporation, Faridabad as defined under the Haryana Municipal Act, 1973. ☆ The respondent filed a civil suit seeking permanent injunction against the appellant restraining them from recovering the House Tax for the years 1991-92, 1992-93 and 1993-94 from the respondent on their properties. ☆ The appellant also sought a declaration that demand raised by the appellant calling upon the respondent to pay the House Tax on their properties is ILLEGAL. ☆ The appellant filed second appeal before the HC wherein the appellant had proposed several substantial questions of law arising in the case. ☆ However, the HC dismissed the second appeal in limine (i.e. beginning) by impugned judgment/order holding that the second appeal does NOT involve any substantial question of law. ☆ The appellant (defendant) has filed appeal before the SC against the order of the HC.
Legal Principles held—	The SC consider the following facts before passing the final order: (a) Indeed, in our considered view, the questions, viz., ✎ WHETHER the suit seeking a declaration that the demand of House Tax raised under the Act is maintainable, ✎ WHETHER such suit is barred and, if so, by virtue of which provision of the Act, ✎ WHETHER plaintiff has any alternative statutory remedy available under the Act for adjudication of his grievance and, if so, which is that remedy, and lastly, ✎ WHETHER the plaintiff has properly valued the suit and, if so, whether they have paid the proper Court fees on the reliefs claimed in the suit were legal questions arising in the appeal and involved jurisdictional issues requiring adjudication on merits in accordance with law. (b) The HC unfortunately did NOT examine any of these issues much less in its proper perspective in the light of relevant provisions of the Act governing the controversy.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ In our considered view, the appeal did involve the substantial question of law. Therefore, the HC should have admitted the appeal by first framing proper substantial questions of law arising in the case, issued notice to the respondent for its final hearing as provided under Section 100 of the Code of Civil Procedure, 1908 and disposed it of on merits.

136. JSW INFRASTRUCTURE LIMITED & ANR v. KAKINADA SEAPORTS LIMITED & ORS [SC]

Hint: Out of the four who participated in the bid process by submitting RFQ, **only two parties, i.e., the first consortium and the second consortium submitted the RFP to Paradip Port Trust.** The bid quoted by the first consortium of the appellants JSW Infrastructure Limited and South West Port Limited was 31.70% as against 28.70% bid quoted by the second consortium comprising of M/s Kakinada Seaports Limited, M/s Bothra Shipping Service Pvt. Ltd., M/s MBG Commodities Pvt. Ltd. Since the first consortium were the highest bidders **their proposal was recommended for acceptance by the tender committee of the Paradip Port Trust on 26.02.2016.** At this stage, on 27.02.16 the second consortium submitted objections to the consideration of application of the first consortium on the ground that in terms of the Policy Clause against creation of monopoly the appellants were **not entitled to take part in this entire bidding process since they were already operating one berth for dry cargo.**

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that the clause will apply only when there is single private operator operating a single berth. **Once there are more than one private operators then the Clause will not apply.** The decision taken by Paradip Port Trust could not be termed to be arbitrary, perverse or mala fide.

Fact of the Case	★ Out of the four who participated in the bid process by submitting RFQ, only two parties, i.e., the first consortium and the second consortium submitted the RFP to Paradip Port Trust. ★ The bid quoted by the first consortium of the appellants JSW Infrastructure Limited and South West Port Limited was 31.70% as against 28.70% bid quoted by the second consortium comprising of M/s Kakinada Seaports Limited, M/s Bothra Shipping Service Pvt. Ltd., M/s MBG Commodities Pvt. Ltd. ★ Since the first consortium were the highest bidders their proposal was recommended for acceptance by the tender committee of the Paradip Port Trust on 26.02.2016. ★ At this stage, on 27.02.16 the second consortium submitted objections to the consideration of the application of the first consortium on the ground that in terms of the Policy Clause against creation of monopoly the appellants were <u>not entitled to take part in this entire bidding process since they were already operating one berth for dry cargo.</u> ★ Aggrieved by this action, the second consortium filed a writ petition before the Orissa HC. ★ The submission of unsuccessful bidders was that since the first consortium was already operating a berth for dry cargo it could not have submitted its application to bid for the berth in question which is also admittedly meant for dry cargo. ★ It was contended that as per the policy quoted above, if a private operator is operating a berth he cannot be allowed to bid for the next berth for handling the same cargo in the same port. ★ The Orissa HC accepted the contention of the original writ petitioners by interpreted the Policy clause by holding that the word “next” in the Clause indicated that a private operator cannot take part or bid for next successive berth for the same cargo. Therefore, the HC held that the application for the first consortium JSW Infrastructure Limited was wrongly considered. Consequently, set aside the award of Letter of Award in favour of the first consortium. ★ Further HC directed the Paradip Port Trust may either (a) Accept the single remaining bid of the second consortium of Respondent Nos. 1-3 after negotiating the price which should not be less than the price offered by the consortium of JSW Infrastructure, or (b) It may invite fresh bids for the berth in question. ★ Appellant filed appeal before the SC against the order of HC.
Legal Principles held—	The SC consider the following facts before passing the final order: (a) On a bare reading of the Policy Clause some weightage and meaning has to be given not only to the word “next” as done by the HC but also to the words “only one private operator” appearing in the opening part of the Clause. The words “only one private operator” cannot be treated as surplusage. (b) The entire clause has to be read as a whole in the context of the purpose of the policy which is to avoid and restrict monopoly. (c) In our opinion, <u>this Clause will apply only when there is one single private operator in a port. If this single private operator is operating a berth, dealing with one specific cargo then alone will he not be allowed to bid for next berth for handling the same specific cargo.</u> (d) The HC erred in interpreting the clause only in the context of the word “next” and ignored the opening part of the Clause which clearly indicates that the Clause is

	only applicable when there is only one private berth operator. However, once there are more than one private operators operating in the port then any one of them can be permitted to bid even for successive berths. (e) It appears to us that the intention is that when a port is started, if the first berth for a specific cargo is awarded in favour of one private operator then he cannot be permitted to bid for the next berth for the same type of cargo. (f) In the present case, as pointed out above there already 5 private operators other than the first consortium.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that the clause will apply only when there is single private operator operating a single berth. Once there are more than one private operators then the Clause will not apply. The decision taken by Paradip Port Trust could not be termed to be arbitrary, perverse or mala fide.

137. THE MAHARASHTRA STATE COOPERATIVE HOUSING FINANCE CORPORATION LTD v. PRABHAKAR SITARAM BHADANGE [SC]

Hint: Question: The issue that needs to be decided is as to whether the Cooperative Court established under the Act has the requisite jurisdiction to decide 'service dispute' between a cooperative society established under the Act and its employees.

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ **On the basis of the facts and judicial pronouncement, it clear that the dispute raised by the respondent is not covered within the meaning of Section 91 of the Act. Therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed by the respondent.**

Fact of the Case	★ The appellant, Maharashtra State Cooperative Housing Finance Corporation Limited (hereinafter referred to as the 'Corporation'), is a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the 'Act'). ★ The respondent had joined the services in the appellant Corporation in the year 1975 as an Inspector. He was promoted to the post of Branch Manager (Class-I) in the year 2000. ★ For certain acts of misconduct allegedly committed by the respondent, he was put under suspension vide orders dated July 11, 2003. ★ Thereafter, a charge-sheet was served upon him and the departmental inquiry conducted, which resulted in dismissal order dated April 28, 2006 passed by the Corporation. ★ As a result, the respondent dismissed from the service. ★ The respondent approached the Cooperative Court at Aurangabad, which is set up under the Act, on April 19, 2007 challenging the orders of dismissal from service. ★ On receiving the notice of the said dispute petition, the Corporation filed an application for rejection the petition of the respondent on the ground that the Cooperative Court set up under the Act and the said Co-operative court did not have the jurisdiction to entertain and decide the service dispute between the employer and the employee. Insofar as the dispute in question did not touch upon the business of the society and was not covered by the provisions of Section 91 of the Act. ★ The Cooperative Court dismissed the said application holding that it had the requisite jurisdiction to decide the dispute. ★ Appellant challenged the order of the Cooperative Court before the Cooperative Appellate Court in the form of an appeal. This appeal was dismissed confirming the orders of the Cooperative Court. ★ Further Appellant filed appeal before the Bombay HC via writ petition challenged the order of Cooperative Appellate Court. This writ petition has also been dismissed.
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	☆ Appellant filed appeal before the SC against the order of HC.
Legal Principles held—	The SC consider the following facts before passing the final order: 1. While reading the provisions of Section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Cooperative Court which need to be satisfied: (a) The first requirement is that disputes should be 'disputes touching' the constitution of the society or elections or committee or its officers or conduct of general meetings or management of society, or business of the society; and (b) The second requirement is that such a dispute is to be referred to the Cooperative Court by 'enumerated persons' as specified under Section 91(1). 2. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are NOT covered by the aforesaid provision. 3. The context in which the word 'officers' is used is altogether different, namely, election of the committee or its officers. Thus, the word 'officers' has reference to elections. It is in the same hue expression 'officer' occurs second time as well. 4. However, it was argued by the learned counsel for the respondent that disputes touching the 'management or business of a society' would include the dispute between the management of the society and its employees. 5. There are plethora of judgments of this Court holding that the expression 'business of the society' would not cover the service matters of employer and employee. In <i>Coop. Central Bank Ltd. v. Addl. Industrial Tribunal</i> (1969) 2 SCC 43, this Court held that the expression 'touching the business of the society' would not cover the disputes pertaining to alteration of conditions of service of workman.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ On the basis of the facts and judicial pronouncement, it clear that the dispute raised by the respondent is not covered within the meaning of Section 91 of the Act. Therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed by the respondent.

138. M.C. MEHTA v. UNION OF INDIA & ORS [SC]

Hint: The controversy relates to **the sale and registration (on and after 1st April, 2017) of such vehicles lying in stock with the manufacturers and dealers that meet the Bharat Stage III emission standards (for short BS-III standards) but do not meet the BS-IV emission standards.**

Whether the commercial interests of manufacturers and dealers of such vehicles that do not meet the Bharat Stage-IV (for short 'BS-IV') emission standards as on 1st April, 2017 takes primacy over the health hazard due to increased air pollution of millions of our country men and women.

Decision: SC give direction in this context. Kindly go through Decision section.

Fact of the Case	☆ The controversy relates to the sale and registration (on and after 1st April, 2017) of such vehicles lying in stock with the manufacturers and dealers that meet the Bharat Stage III emission standards (for short BS-III standards) but do not meet the BS-IV emission standards. ☆ Whether the commercial interests of manufacturers and dealers of such vehicles that do not meet the Bharat Stage-IV (for short 'BS-IV') emission standards as on 1st April, 2017 takes primacy over the health hazard due to increased air pollution of millions of our country men and women.
Legal Principles held—	The SC consider the following facts before passing the final order:

	1. According to the manufacturers, they are entitled to manufacture such vehicles till 31st March, 2017 and they have done so. In so doing, they contend that they have not violated any prohibition or any law. Hence, the sale and registration of such vehicles on and from 1st April, 2017 ought not to be prohibited. 2. They contends that they will not be manufacturing any vehicle that does not comply with the BS-IV emission standards from and after 1st April, 2017. Therefore, the only issue is the sale and registration of the existing stock of such vehicles that comply with BS-III emission standards. They say that they may be given reasonable time to dispose of the existing stock of such vehicles. 3. On the other hand, according to the learned Amicus (i.e. impartial advisor), permitting such vehicles to be sold or registered on or after 1st April, 2017 would constitute a health hazard to millions of our country men and women by adding to the air pollution levels in the country (which are already quite alarming). 4. On the basis of submission, it was found that the manufacturers of such vehicles were fully aware, way back in 2010, that all vehicles would have to convert to BS-IV fuel on and from 1st April, 2017. Therefore, they had more than enough time to stop the production of BS-III compliant vehicles and switch over to the manufacture of BS-IV compliant vehicles. 5. In fact, the major manufacturer of 4 wheeler vehicles, Maruti Suzuki had completely switched over to the manufacture of BS-IV compliant vehicles a few years ago. 6. However, for reasons best known to manufacturers of such vehicles and entirely at their peril, they did not make a complete switch (though a partial switch has been made) even though they had the technology and technical know-how to do so. 7. Refineries of the Government of India had incurred an expenditure of about Rs. 30,000 Crores for producing requisite fuel for BS-IV compliant vehicles. 8. The number of such vehicles may be small compared to the overall number of vehicles in the country but the health of the people is far, far more important than the commercial interests of the manufacturers or the loss that they are likely to suffer in respect of the so-called small number of such vehicles. 9. Therefore, keeping the larger public interest in mind and the potential health hazard to millions of our country men and women due to increased air pollution, there is no justification for any of the manufacturers not shifting to the manufacture of BS-IV compliant vehicles well before 1st April, 2017.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC give the direction in the following manner: (a) On and from 1st April, 2017 such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 1st April, 2017. (b) All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1st April, 2017 that do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.

139. CONSORTIUM OF TITAGARH FIREMA ADLER S.P.A. TITAGARH WAGONS LTD. v. NAGPUR METRO RAIL CORPORATION LTD [SC]

(V. Imp.) Hint: In the given case, the question arise before the SC, whether Holding Company can claim the experience of its subsidiaries while quoting the bid and Whether consideration of the bid by the owner is correct. **Decision:**

- ★ The SC **decide the case in favour of the Respondent.**
- ★ The SC held **that decision taken by the Respondent No. 1, as is perceptible, is keeping in view the commercial wisdom and the expertise and it is no way against the public interest.**

- ☆ On the basis of material on record, it that the respondent No. 2, a Government company is the owner of the subsidiaries companies and subsidiaries companies have experience. Respondent No. 2 can claim the experience of the subsidiaries company, while quoting the bid.

Fact of the Case	☆ Nagpur Metro Rail Corporation Ltd. (referred to as Respondent No. 1) issued a Notice Inviting Tender (NIT) on 25.01.2016 for the work of design, manufacture, supply, testing, commissioning of 69 passenger rolling stock (Electrical Multiple Units) and training of personnel at Nagpur Metro Rail Project. ☆ The said project is being funded by KFW Development Bank, Germany. ☆ As per the clause ITS 35.8 at all stages of bid evaluation and contract, award would have to be subject to no-objection from KFW Development Bank. ☆ In response to the said NIT, three bidders submitted their bids. ☆ One was found technically disqualified and thus, only the appellant and the Respondent No. 2 remained in contest. Appellant quoted Rs. 852 Crores while Respondent No. 2 quoted Rs. 851 Crores. ☆ Accordingly, Contract was awarded to Respondent No. 2. ☆ Appellant challenged this award of contract before the HC via Writ Petition, and eventually HC dismissed the Writ Petition. ☆ Appellant filed appeal before the SC against the order of HC.
Legal Principles held—	The SC consider the following facts before passing the final order: 1. It is not in dispute that the project in question has been funded by KFW Development Bank, Germany and as per Clause ITB 35.8, it is necessary at all stages of bid evaluation and contract award has to be subject to no-objection from KFW Development Bank. 2. Emphasis has been laid on the approach of the HC that the Respondent No. 2 had been awarded the tender by the Delhi Metro Rail Corporation. It has also been highlighted that the papers relating to the financial bid along with report were forwarded to KFW which gave its no objection. 3. Be it noted, the appellants have been quite critical about the acceptance of the offer and the Respondent No. 1 has given a number of reasons to justify the same. 4. As indicated earlier, we are only concerned with the eligibility criteria and not with the fiscal aspect. As evident that Respondent No. 2 is a company owned by the People's Republic of China and, therefore, it comes within the ambit of Clause 4.1 of the bid document as a Government owned entity. 5. The argument raised before this Court is that the respondent No. 2 could not have been regarded as a single entity and, in any case, it could not have claimed the experience of its subsidiaries because no consortium or joint venture with its subsidiaries was formed. 6. As perceived by the Respondent No. 1, a single entity can bid for itself and it can consist of its constituents which are wholly owned subsidiaries and they may have experience in relation to the project. The respondent also contends that where the singular or unified entity claims that as a consequence of merger, all the subsidiaries form a homogenous pool under its immediate control in respect of rights, liabilities, assets and obligations, the integrity of the singular entity as owning such rights, assets and liabilities cannot be ignored and must be given effect. 7. While judging the eligibility criteria of the Respondent No. 2, the Respondent No. 1 has scanned Article 164 of the Articles of Association of the respondent No. 2 which are submitted along with the bid from which it is evincible that the BOD(s) of the respondent No. 2 has been entrusted with the authority and responsibility to

	discharge all necessary and essential decisions and functions for the subsidiaries as well. 8. According to the Respondent No. 1, the term "Government owned entity" would include a government owned entity and its subsidiaries and there can be no matter of doubt that the identity of the entities as belonging to the Government when established can be treated as a Government owned entity and the experience claimed by the parent of the subsidiaries can be taken into consideration. 9. With regard to the satisfaction of the Respondent No. 1, it has been highlighted before us: (a) The said respondent had thoroughly examined the bid documents and satisfied itself about of the capability, experience and expertise of the respondent No. 2. (b) Independent General Consultant has done thorough analysis of the technical qualification of the respondent No. 2 and (c) The reports of the Appraisal and Tender Committee of the Respondent No. 1 and also the no-objection KFW Development Bank, Germany which is funding the entire project has been received.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that decision taken by the Respondent No. 1, as is perceptible, is keeping in view the commercial wisdom and the expertise and it is no way against the public interest. ★ On the basis of material on record, it that the respondent No. 2, a Government company is the owner of the subsidiaries companies and subsidiaries companies have experience. Respondent No. 2 can claim the experience of the subsidiaries company, while quoting the bid. ★ We are disposed to think that the concept of "Government owned entity" cannot be conferred a narrow construction. It would include its subsidiaries subject to the satisfaction of the owner. There need not be a formation of a joint venture or a consortium.

140. MAHARISHI MARKANDESHWAR MEDICAL COLLEGE & HOSPITAL v. STATE OF HIMACHAL PRADESH & ORS [SC]

Hint: In the given case, Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 read with Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010. Whether a medical college affiliated to a private university under the 2010 Act is required to obtain affiliation with Government university under the 2006 Act?

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that we strike down Section 3(6a) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, being irrational, unreasonable, ultra vires and unconstitutional.
- ★ The SC also held that Appellant No. 1 is not required to seek affiliation with Himachal Pradesh University at Shimla.

Fact of the Case	★ In the present case, Appellant No. 1 is an unaided private medical college established by the Appellant No. 3 - University Trust as a constituent of the Appellant No. 2 - University. ★ The Appellant No. 2 - University has been established under the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 (for short "2010 Act"). ★ Before enactment of the said Act, on the basis of the Essentiality Certificate issued under Section 4(2) of the 2006 Act, the Appellant No. 3 - University Trust established the medical college as a constituent unit of the proposed private University and made necessary investments in that regard.
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	☆ In 2012 the Appellant No. 2 - University requested the Principal Secretary (Health) to the Government of Himachal Pradesh for grant of an "Essentiality Certificate" to establish a new medical college at Kumarhatti, Solan "under" the Appellant No. 2 - University. ☆ The SG, in exercise of its powers under Section 3(3) of the 2006 Act, issued a notification on 14.08.2013, regarding admission procedure and fee structure for admission to MBBS Course in the Appellant No. 1 - College. ☆ The new law required the appellant No. 1 College to seek affiliation with Himachal Pradesh University at Shimla. ☆ The Appellant file appeal before the SC challenging the validity of Sections 3(6), 3(6a) and 3(6b) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (for short "2006 Act") as amended vide amendment Act No.24 of 2015.
Legal Principles held –	The SC consider the following facts before passing the final order: (a) After considering the rival submissions, we are in agreement with the Appellants that the HC has not touched upon the core issue relating to the autonomy of the Appellant No. 2 - University including its authority to start a constituent medical college, as prescribed by the 2010 Act. Admittedly, the Appellant No. 2 - University has been established under the 2010 Act. (b) In the present case, it has been asserted that the Appellant No. 1 - College is a constituent of the Appellant No. 2 - University. (c) In such a situation, it is unfathomable that the requirement of taking affiliation from another University (Himachal Pradesh University) established under a separate State Legislation, can and ought to be insisted upon. (d) If insisted, it would, inevitably, entail in making an inroad (i.e. attack) into the autonomy of the Appellant No. 2 - University. (e) It is true that Section 7 of the 2010 Act does not empower the Appellant No. 2 - University to affiliate or otherwise admit to its privileges any other institution. The Appellant No. 1 - College is none other than a constituent college of Appellant No. 2 - University itself. (f) Therefore, the Medical Council of India as well as the Union Government have justly stated that it was not necessary for the Appellant No. 1 - College to take affiliation from the Himachal Pradesh University. (g) We have no hesitation in taking the view that the amended provisions, in particular Section 3(6a), would impinge (i.e. hurt) upon the autonomy of an independent University established under a separate State Legislation. (h) Further, the field of affiliation is governed by the State legislation under which the respective Universities have been established. The power of granting affiliation to colleges under the control of the concerned University, must vest with the respective University to which the college will be affiliated. (i) Therefore, the power of granting affiliation by the University concerned cannot be whittled down by the 2006 Act or amendments made thereto. (j) Thus, we understood that the amended provisions of Section 3(6a) of the 2006 Act, cannot be sustained as the same are unreasonable, irrational and in conflict with the special State Legislation under which the Appellant No. 2 - University has been established, namely the 2010 Act. (k) We shall now examine the possibility of reading down the impugned provision in Section 3(6a) of the Act so as to save it from being unconstitutional. (l) The expression "Private Medical Educational Institution" includes a Private Medical Educational Institution established by or affiliated to a private University. (m) We find force in the argument of the Appellants that the definition of Private Medical Educational Institution, as amended, can be extended to the Appellants in relation to other matters governed by the 2006 Act, except the mandate of requiring the Appellant No.1 - College (a constituent college of the Appellant No.2 - University) to take

	affiliation from the Himachal Pradesh University. That requirement springs from Section 3 (6a). (n) Indisputably, there is no other private medical University in the State except the Appellant No.2 - University. Therefore, we explored the possibility of omitting the words "Himachal Pradesh" from the amended Section 3 (6a) to save the whole of that provision from being invalid, as was contended. (o) However, we find that if the words "Himachal Pradesh" alone were to be struck down, the remaining Section 3 (6a) may create some confusion. It would then mean that Private Medical Institutions in the State must take affiliation from the "concerned" University. (p) In other words, the concerned University can exercise power to affiliate a private medical institution set up in the State. However, the Appellant No. 2 is not authorised to affiliate a private medical college (not its constituent) by virtue of Section 7 of the 2010 Act, which prohibits the Appellant No. 2 - University from affiliating or otherwise extending to its privileges any other institution. (q) Therefore, the appropriate course to avoid any confusion is to strike down Section 3(6a) of the 2006 Act, as amended. As noted earlier, since the Appellant No.1 - College is a constituent of the Appellant No. 2 - University, the question of compelling it to take affiliation from another University (Himachal Pradesh University) cannot be countenanced.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that we strike down Section 3(6a) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, being irrational, unreasonable, ultra vires and unconstitutional. ★ The SC also held that Appellant No. 1 is not required to seek affiliation with Himachal Pradesh University at Shimla.

141. GLAXO SMITHKLINE PHARMACEUTICAL LTD v. UNION OF INDIA [SC]

Hint: In the given case, the appellant manufacturer claimed exemption as provided under paragraph 28 of the Drugs (Prices Control) Order, 1987, read with exemption notification dated 28th February, 1992. The respondent UOI refused to grant exemption on the ground that the sale price of the drug manufactured by the appellant was higher than the controlled price.

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that the action of UOI to refused the grant exemption on the ground that the sale price of the drug manufactured by the appellant was higher than the controlled price is not valid on the ground that on plain reading of Paragraph 28, exemption order and guidelines of 1989 make it clear that exemption only relate to manufacture and has no reference to sale.

Fact of the Case	★ In the given case, the appellant manufacturer claimed exemption as provided under paragraph 28 of the Drugs (Prices Control) Order, 1987, read with exemption notification dated 28th February, 1992. ★ The respondent UOI refused to grant exemption on the ground that the sale price of the drug manufactured by the appellant was higher than the controlled price. ★ The said issue is pending before the SC.
Legal Principles held—	The SC consider the following facts before passing the final order: (a) The appellant, has placed great emphasis on the fact that both paragraph 28 as well as the exemption order, read with the CG Guidelines of 14th February, 1989, lead to only one conclusion that it is "manufacture" and not sale that is relevant. (b) The Delhi HC relying on the judgment held in Union of India v. Ranbaxy Laboratories Ltd & Ors, (2008), wherein the Court held that all manufacturers of exempted goods upto

	the last date of exemption would be entitled, at any subsequent point of time, to charge a price which is not controlled by the DPCO. (c) The Union of India has tried to support the aforesaid judgment and has referred us to Guideline No. (viii) of the CG Guidelines, and paragraph 16(3) of the DPCO of 1987. (d) According to UOI, a subsequent judgment held in Glaxosmithkline Pharmaceuticals Ltd v. Union of India & Ors (2014) has correctly distinguished the earlier judgment in Ranbaxy's case. Therefore, it would squarely cover the present facts. (e) Paragraph 28 which set out hereinabove, it make clear that the exemption relates to drug manufacturing units or classes of such units. (f) The very exemption order which has also been set out by us again refers only to bulk drugs and formulations based thereupon which are "manufactured" by the company. (g) Further, a reading of the guidelines of 1989 also makes it clear that the exemption only relates to manufacture and has no reference to sale whatsoever. We are of the view that the matter is no longer res-integra. In Ranbaxy's case, the relevant exemption provision under the DPCO of 1995 referred to in paragraph 19 of the judgment is almost a verbatim reproduction of the earlier exemption provision i.e. paragraph No.28 of the DPCO of 1987, with which we are directly concerned. Even the exemption notification mentioned in paragraph 20 of the aforesaid judgment like the exemption notification in the present case, refers only to bulk drugs and formulations "manufactured" by the company. It can be seen that the issue that arose in the Glaxosmithkline case was completely different from the issue that arose in Ranbaxy's case and the present case. Ranbaxy's case and the present case are directly concerned only with an exemption notification, and not a notification for fixation of price. Also, what is relevant for an exemption notification is the manufacture of drugs, whereas what is relevant for a price fixation notification relates to sale and not manufacture. Therefore, obviously, the Glaxo-smithkline decision would have no relevance to the facts of the present case.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that the action of UOI to refused the grant exemption on the ground that the sale price of the drug manufactured by the appellant was higher than the controlled price is not valid on the ground that on plain reading of Paragraph 28, exemption order and guidelines of 1989 make it clear that exemption only relate to manufacture and has no reference to sale.

142. APOLLO TYRES LTD. v. PIONEER TRADING CORPORATION & ANR [DEL]

Hint: Designs Act - Tread pattern of truck tyre - Whether entitled to copyright protection: Held, Yes

Decision: The Delhi HC decide the case in favour of the Petitioner and held that Tread pattern of the tyre is entitled to copyright protection.

Fact of the Case	★ The Plaintiff manufactures truck tyre Endurance LD 10.00 R20, with a peculiar tread patters over which it had claimed proprietary rights. ★ The defendant also manufactures truck tyre HI FLY with similar tread pattern of the Plaintiff. ★ Plaintiff filed a suit against the Defendant for infringement of its proprietary rights and an interim injunction was granted in favour of the Plaintiff. ★ Defendant moved an application before the Delhi HC to vacate the stay.
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Legal Principles held –	The Delhi HC consider the following facts before passing the final order: (a) As described the manner in which the tyres of the plaintiff and the other manufacturers are displayed in the course of marketing, advertisement etc. They clearly show that the tread patterns are utilized by the manufacturers including by the plaintiff, in respect of its tyre in question, as a source identifier, i.e. as a trademark. (b) No doubt, the tread pattern adopted by the plaintiff in respect of its tyre also serves the purpose which the treads on any tyre serve. However, if the same function can be achieved through numerous different forms of tread patterns, then the defence of functionality must fail. (c) It was essential for the defendant to, at least, prima facie, establish that the tread pattern of the plaintiff was the only mode/ option, or one of the only few options, which was possible to achieve the functional requirements of the tyre. (d) The position which emerges on a perusal of the documents placed on record by the plaintiff is that there are innumerable different and unique tread patterns in existence, adopted by different manufacturers of tyres, which achieve the same objective. It cannot be said that the unique tread pattern adopted by the plaintiff is attributable only to the technical result, namely, of providing grip and stability to the vehicle on which the tyre of the plaintiff is used. (e) The same function can be performed by any other tyre with a different tread pattern. The manner in which the tyres of different manufacturers are advertised and marketed leaves no manner of doubt that the tread pattern on the tyre of the manufacturer is prominently displayed, apart from the brand name of the manufacturer. (f) It is also not uncommon to see the customer - interested in buying a tyre, being shown the tyres by the vendor with the tread pattern in a vertical position i.e. by showing the "face" of the tyre, such that the tread pattern is the first thing that strikes and appeals to the eye of the customer. (g) It is also not uncommon to see that even when tyres are wrapped in covering, the vendor removes the covering while displaying his tyres to the customers. (h) Pertinently, the defendant does not display its tyres in question under the brand "HI FLY" in a wrapped condition in its advertisements. (i) The defendant is displaying its tyre in question under the brand "HI FLY" in an unwrapped condition, and prominently showing the tread pattern on the tyre. This itself shows that the wrapping of the tyre does not inhibit the display and marketing of the tyre, by prominently displaying the tread pattern on the tyres. (j) Thus the submission that the tread pattern adopted by the plaintiff is functional and, therefore, not capable of protection, cannot be accepted. This submission is rejected. (k) In my view, the tread pattern on a tyre is such a prominent feature - and is so prominently displayed and advertised, that the added matter, namely the brand name on the sides of the tyre, is not sufficient to distinguish the goods of the defendant from those of the plaintiff. Similarly, the inclusion of the tyre-tube and flap in the plaintiffs tyre, and only the flap along with the tyre in the defendants tyre - minus the tube, is not sufficient to distinguish the plaintiff's tyre from that of the defendants. (l) It is not in dispute that both tyres of the plaintiff and the defendant in question are tyres meant for trucks. Therefore, some change of specifications between the two is of no consequence, when it comes to the aspect of confusion in the mind of the customer. (m) I may also observe that the customers of the truck tyres, by and large, are semi-literate middle class truck owners, operators and drivers, from whom it is difficult
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	to expect a detailed examination, threadbare, of all the differences in the tyres of the plaintiff and that of the defendant before the purchase of the tyre is made.
Decision	★ The Delhi HC decide the case in favour of the Appellant (i.e. Petitioner). ★ The Delhi HC further noted that tread pattern was so prominently advertised and displayed that it served as the “face” of the tyre, aiding in identification of tyres manufactured by a particular manufacturer, essentially serving as a source identifier in the relevant market. ★ In doing so, the court placed reliance on the Madras High Court decision in MRF Limited v. Metro Tyres Limited, [1990 (10) PTC 101 (Mad)] stating that tread patterns have trade mark significance, and similarity of tread pattern may raise a presumption of common origin or close business association between the two manufacturers.

143. METERS AND INSTRUMENTS PVT. LTD & ANR v. KANCHAN MEHTA [SC]

SC laid down the principles and guidelines for compounding of offence in case of dishonour of cheque under section 138 of the NI Act.

Fact of the Case	★ The Appeal is pending before the SC and ★ SC laid down the principles and guidelines for compounding of offence in case of dishonour of cheque under section 138 of the NI Act.
Legal Principles held—	The SC elaborately examined the scheme of the Act and held as under: (a) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under the Cr. P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr. P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect. (b) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court. (c) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused. (d) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases. (e) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank’s slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr. P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may

	have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances. (f) In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr. P.C. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant . If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage.
Decision	★ SC explain the principles and guidelines for compounding of offence in case of dishonour of cheque under section 138 of the NI Act.

144. ATMA RAM PROPERTIES PVT LTD. v. THE ORIENTAL INSURANCE CO. LTD [SC]

Hint: This appeal involves an important **question of law as to whether property tax recoverable from the tenant under Section 67(3) of the New Delhi Municipal Council Act, 1994 (for short 'NDMC Act') as arrears of rent by the landlord/owner can be considered to be forming part of the rent for the purpose of seeking eviction or ejectment of such tenant who defaults in payment of such recoverable tax as rent and when the rent including recoverable tax in respect of the tenanted premises exceeds Rs. 3500/- per month, thereby losing protection of the Delhi Rent Control Act, 1958 (for short 'Rent Act').**

Decision:

- ★ The SC **decide the case in favour of the Respondent.**
- ★ The SC held that in our opinion, **the tax recoverable from the tenant under Section 67(3) of the NDMC Act as arrears of rent by the appellant cannot be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the respondent who defaults in payment of such recoverable tax as rent.**

Fact of the Case	This appeal involves an important question of law as to whether property tax recoverable from the tenant under Section 67(3) of the New Delhi Municipal Council Act, 1994 (for short 'NDMC Act') as arrears of rent by the landlord/owner can be considered to be forming part of the rent for the purpose of seeking eviction or ejectment of such tenant who defaults in payment of such recoverable tax as rent and when the rent including recoverable tax in respect of the tenanted premises exceeds Rs. 3500/- per month, thereby losing protection of the Delhi Rent Control Act, 1958 (for short 'Rent Act').
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Legal Principles held—	The SC consider the following facts before passing the final order: (a) The issue which arises for consideration in the present matter is regarding the interplay of Section 67(3) of the NDMC Act vis-à-vis Section 7(2) of the Rent Act. (b) Under Section 67(3), the landlord has been given the right to recover the house tax from the tenant as if the same were rent whereas under Section 7(2) of the Rent Act, there is a specific bar to recover any tax as rent from the tenant. (c) The object of the Rent Act is to provide protection to tenants who under common law, including Transfer of Property Act could be evicted from the premises let out to them at any time by the landlord on the termination of their tenancy. (d) It restricts the right of the landlord to evict the tenant at their will. It is a special law in relation to landlord and tenant issue. (e) Therefore, the Rent Act has to prevail insofar as landlord and tenant issue is concerned. Therefore, we are of the view that though the Rent Act is an earlier Act when compared to the NDMC Act, it is a special enactment with regard to the matter in issue and has a non-obstante clause. (f) The NDMC Act is not a special enactment insofar as landlord-tenant issue is concerned and it contains 411 sections which provides that other laws not to be disregarded. (g) Section 67(3) of the NDMC Act merely gives a right to recover the tax in respect of the premises as rent. It does not override the Rent Act insofar as obviating the effect of Section 7(2) of the Rent Act.
Decision	★ The SC decide the case in favour of the Respondent. ★ The SC held that in our opinion, the tax recoverable from the tenant under Section 67(3) of the NDMC Act as arrears of rent by the appellant cannot be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the respondent who defaults in payment of such recoverable tax as rent.

145. CANARA BANK & ANR v. LALIT POPLI (THROUGH LRs) [SC]

Hint: In the present case, Bank clerk fraudulently withdrew money from customer's account and he was dismissed from the service by the Bank. Accordingly, Retirement benefits of the bank clerks withheld by bank and adjusted against the loss caused to the bank. Finally, net amount paid to the bank clerk. **Whether the action of the Appellant Bank is tenable in law? YES.**

Decision

- ★ **The SC decide the case in favour of the Appellant.**
- ★ **Based on then aforesaid rules and facts, the SC held that actions of bank to withheld that retirement benefits to adjust the loss caused to the Bank on account of fraudulent withdrawal of money by the Respondent employee.**

Fact of the Case	★ The respondent who was a clerk, and two other persons i.e. manager and special assistant, all are bank employees, were found guilty of fraudulently withdrawing an amount of Rs.1,07,000/- from the saving account of a customer. ★ The manager and special assistant were censured (i.e. criticized) for their negligence and some recovery were made from them while the respondent was dismissed from service. ★ The respondent's file appeal before the single Bench of HC challenging the order of dismissal. Later on, the HC set-aside the order of dismissal. ★ The Appellant Bank filed an appeal against the single bench of the HC before the divisional bench of the HC. ★ During the pendency of the appeal, bank withheld an amount of Rs.74,180.09, payable to the respondent, which included the gratuity and provident fund (employer's contribution) and to keep the same in a fixed deposit with a view to adjust the said amount towards any loss caused to the bank by the respondent.
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	☆ Appeal was allowed by the Division Bench of the HC and the order of dismissal was restored. ☆ Thereafter, the bank adjusted Rs. 1,07,000/- out of Rs. 1,08,923/- (the maturity value of Rs.74,180.09), towards loss caused to the bank by the respondent and remaining amount of Rs.1,923/- was released in favour of the respondent. ☆ Being aggrieved by such action of the bank, the respondent approached the HC via writ petition, which allowed the writ. The HC passed order in favour of the respondent. ☆ Aggrieved by the aforesaid impugned order, the appellant file appeal before the SC against the order of HC.
Legal Principles held –	The SC consider the following facts before passing the final order: (a) The respondent who committed forgery which ultimately led to the loss caused to the bank. Thus, his case stood on a different footing from the other three employees. (b) Since the amount recovered from the other three employees, who were imposed penalty of 'censure', is refunded to them, the bank had to recover the amount of loss caused to it from the person who was the author of the forgery. (c) Based on the material on record, we find that the other three officials were held to be negligent in their duty and as held by this Court in its judgment dated 18.02.2003, that it was the respondent, who committed forgery of the signature of the account holder, consequent upon which the bank had suffered loss to the tune of Rs. 1,07,000/-. (d) Therefore, the bank has taken an equitable decision to recover the entire amount from the respondent and to refund the amount already recovered from the other three officials, because they were only found to be negligent in their duty. (e) Rule 12 of the Canara Bank Employees' Gratuity Fund Rules (for short, 'Gratuity Rules'), Clause 19 of the Canara Bank Staff Provident Fund Regulations, 1994 (for short, Provident Fund Regulations) and Rule 3(4) of Chapter VIII of the General Conduct Rules, governing the services of the employees fully support the action taken by the bank against the respondent in withholding the amount of gratuity and employer's contribution towards provident fund. (f) Special Rules relating to gratuity, mentioned supra, makes it amply clear that the employee who has been dismissed for his misconduct and if such misconduct has caused financial loss to the bank, he shall not be eligible to receive the gratuity to the extent of financial loss caused to the bank. (g) So, Clause 19 of the Provident Fund Regulations permits the bank to deduct the payment of provident fund to the extent of financial loss caused to the bank from the bank's contribution. (h) Both the aforementioned Clauses are plain and simple. They are unambiguous. (i) Since Rule 12 of the Gratuity Rules and Clause 19 of the Provident Fund Regulations permit the bank to withhold gratuity and deduct the bank's contribution towards provident fund, the bank was justified in recovering the amount of financial loss sustained by it, which was caused by the respondent, from out of the gratuity and employer's contribution towards provident fund payable to the respondent/employee.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ Based on then aforesaid rules and facts, the SC held that actions of bank to withheld that retirement benefits to adjust the loss caused to the Bank on account of fraudulent withdrawal of money by the Respondent employee.

Hint: In the present case, advocate obtaining blank fee cheque from client. **Later fills up the cheque and presented into the bank.** Cheque was dishonoured on the account of insufficient balance. Accordingly, Advocate files complaint before the HC. Accused sought quashing of proceeding on the ground that there **was no enforceable debt**, but HC declined to quash the proceeding. Whether order of the HC is tenable in law? No.

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that the claim of the respondent advocate being against public policy and being **an act of professional misconduct, proceedings in the complaint** filed by him have to **be held to be abuse of the process of law and have to be quashed.**
- ★ The SC set-aside the order of the HC.

Fact of the Case	★ In this Respondent is an advocate who initiate proceeding against the appellant under section 138 of the Negotiable Instrument Act, 1881 before the Hyderabad HC. ★ In the present case, the Appellant issued cheque in favour of the respondent towards his fees. The same was dishonoured. ★ The Appellant contends that Section 138 of the NI Act is not attracted as there was no legally enforceable debt. The appellant having already paid a sum of Rs.10 lakhs towards fee, the cheque was taken from the appellant by way of abuse of position and the transaction was VOID under Section 23 of the Indian Contract Act, 1872. ★ The Appellant also contends that fees charged by the advocate based on percentage of the decretal amount was unethical. It was submitted that the appellant, as a client, being in fiduciary relationship, burden to prove that the fee was reasonable and had been voluntarily agreed to be paid was on the Advocate. ★ By using his professional position, the Advocate could not be allowed to exploit a client by taking signatures on a cheque and no presumption of enforceable debt arises, especially when no account maintained in regular course of business was furnished. ★ The Hyderabad HC pass impugned order against the appellant and declined to quash the proceedings initiated against the appellant under Section 138 of the Negotiable Instruments Act, 1881. ★ Hence, Appellant file appeal before the SC against the impugned order of the HC.
Legal Principles held –	The SC consider the following facts before passing the final order: (a) The main contention of the appellant is that charging percentage of decretal amount by an advocate is hit by Section 23 of the Contract Act being against professional ethics and public policy. (b) The cheque issued by the appellant could not be treated as being in discharge of any liability by the appellant. (c) No presumption arose in favour of the respondent that the cheque represented legally enforceable debt. (d) In any case, such presumption stood rebutted by settled law that claim towards Advocate's fee based on percentage of result of litigation was illegal. (e) Signing of the cheque was by way of exploitation of fiduciary relationship of Advocate and the client. Thus, mere issuance of cheque by the client may not debar him from contesting the liability. (f) If liability is disputed, the advocate has to independently prove the contract. Claim based on percentage of subject matter in litigation cannot be the basis of a complaint under Section 138 of the Act.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that the claim of the respondent advocate being against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.

147. ASIAN RESURFACING OF ROAD AGENCY PVT. LTD & ANR v. CENTRAL BUREAU OF INVESTIGATION [SC]

Hint: Principles of granting stay of lower court proceedings should not exceed a period of 6 months. However, extension of stay should be by way of a speaking order. For this purpose, **SC lays down new guidelines.**

Fact of the Case	★ Whenever charges are framed, the same is challenged before the HC and stay used to be granted and the proceedings in the trial court used to remain stayed for quite a long period. ★ In this case, the Hon'ble SC examined the law extensively and laid down the rule as to the grant of stay and its operation both in criminal as well as in civil proceedings.
Legal Principles held—	★ The question is in issue whether order framing charges is an interlocutory order. ★ Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr. P.C., order framing charge may not be held to be purely a interlocutory order and can in a given situation be interfered with under Section 397(2) Cr. P.C. or 482 Cr. P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the HC to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation. Thus, we have no hesitation in concluding that the HC has jurisdiction in appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further. ★ It is well accepted that delay in a criminal trial, particularly in the Prevention of Corruption Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases, it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. ★ The power to grant stay is coupled with accountability. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned and concluded within two-three months. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. ★ Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. ★ At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. ★ In cases where stay is granted in future, <u>the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized.</u> ★ The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond 6 months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced. Thus,

	we declare the law to be that order framing charge is NOT purely an interlocutory order nor a final order. ★ Jurisdiction of the HC is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr. P.C. or Article 227 of the Constitution. ★ However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. ★ Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. ★ Though NO mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated.
Decision	★ SC laid down the guidelines for stay of demand.

148. SHIV SINGH v. STATE OF HIMACHAL PRADESH & ORS [SC]

Hint: In the given, Respondent sought to be acquire the land belonging to the appellants in pursuance of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act"). By notification dated 08.12.2015 issued under Section 11 of the Act, the State of Himachal Pradesh sought to acquire the appellants' land measuring around 1-00-49 Hectares along with the lands of other landowners. The Respondent sought to acquire the land for public purpose, namely, "construction of road from Bus Stand Ruhil to Upper Ruhil via Kuper". The appellants filed objections before the Collectors to the proposed acquisition of land is in question. However, collector proceed further without considering the objection.

Question: Whether the land acquired under section 11(2) of the Act without considering the objection in accordance with section 15(1) i.e. non-compliance of Section 15(2) is tenable in law?

Decision

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Land acquisition – Objections not considered-whether the award is tenable – Held, No.

- ★ The SC **decide the case in favour of the Appellant.**
- ★ The SC set-aside the order HC on the ground of non-compliance of Section 15(2) i.e. **Collector neither consider the objection nor submit his report to the appropriate government to make effective decision with respect to acquisition of land is in question.**
- ★ The SC held that **we hereby direct the respondent No.2 herein (Collector) to decide the objections filed by the appellants on 05.01.2016 keeping in view the requirements of Section 15(2) of the Act and pass appropriate orders.**

Fact of the Case	★ In the given, Respondent sought to be acquire the land belonging to the appellants in pursuance of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act"). ★ By notification dated 08.12.2015 issued under Section 11 of the Act, the State of Himachal Pradesh sought to acquire the appellants' land measuring around 1-00-49 Hectares along with the lands of other landowners. ★ The Respondent sought to acquire the land for public purpose, namely, "construction of road from Bus Stand Ruhil to Upper Ruhil via Kuper". ★ The appellants filed objections before the Collectors to the proposed acquisition of land is in question. However, collector proceed further without considering the objection.
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	★ The appellants had filed writ petition before the HC along with their objections to the proposed acquisition on 05.01.2016 within the time prescribed under Section 15 of the Act. ★ Without considering the objections, the HC passed the impugned order against the Appellant. ★ Hence, Appellant file appeal before the SC against the impugned order of the HC.
Legal Principles held—	The SC consider the following facts before passing the final order: ★ Under the scheme of the Act, once the objections are filed by the affected landowners in writing to the collector within 60 days from the date of publication, then the collector shall give an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question [Section 15(2) of the Act]. ★ In this case, we find that the Collector neither gave any opportunity to the appellants as contemplated under Section 15(2) of the Act and nor submitted any report as provided under Section 15(2) of the Act to the Government so as to enable the Government to take appropriate decision. In other words, we find that there is non-compliance of Section 15(2) of the Act by the Collector. ★ In our view, it is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC set-aside the order HC on the ground of non-compliance of Section 15(2) i.e. Collector neither consider the objection nor submit his report to the appropriate government to make effective decision with respect to acquisition of land is in question. ★ The SC held that we hereby direct the respondent No.2 herein (Collector) to decide the objections filed by the appellants on 05.01.2016 keeping in view the requirements of Section 15(2) of the Act and pass appropriate orders.

149. STATE OF MAHARASHTRA v. SAYYED HASSAN SAYYED SUBHAN [SC]

Hint: First Information Reports (FIRs) were registered for transportation and sale of Gutka/Pan Masala for offences punishable under Sections 26 and 30 of the Food and Safety Standards Act, 2006 (i.e. 'FSS Act') and Sections 188, 272, 273 and 328 of the IPC, 1860. The Respondents filed Criminal Writ Petitions and Criminal Applications before the Bombay HC for quashing the FIRs. The HC quashed the criminal proceedings initiated against the Respondents under the IPC and declared that the Food Safety Officers can proceed against the Respondents under the provisions of Chapter X of the FSS Act.

Question: Offences under Food and Safety Standard Act, 2006. Whether prosecution under IPC could be initiated. Yes.

Decision:

- ★ The SC decide the case in favour of the Appellant.
- ★ The SC held that a perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties.

Fact of the Case	★ First Information Reports (FIRs) were registered for transportation and sale of Gutka/Pan Masala for offences punishable under Sections 26 and 30 of the Food and Safety Standards Act, 2006 (i.e. 'FSS Act') and Sections 188, 272, 273 and 328 of the IPC, 1860. ★ The Respondents filed Criminal Writ Petitions and Criminal Applications before the Bombay HC for quashing the FIRs.
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	☆ The HC quashed the criminal proceedings initiated against the Respondents under the IPC and declared that the Food Safety Officers can proceed against the Respondents under the provisions of Chapter X of the FSS Act. ☆ Hence, Appellant (i.e. State of Maharashtra) file appeal before the SC against the impugned order of the HC.
Legal Principles held –	The SC consider the following facts before passing the final order: (a) There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. (b) The SC relying on decision held in T.S. Baliah v. T.S.Rengachari- (1969), wherein it was held that where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. (c) The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. [State of Bihar v. Murad Ali Khan – (1988)]. (d) In State of Rajasthan v. Hat Singh (2003), the SC discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. (e) While considering a dispute about the prosecution of the Respondent for offences under the Mines and Minerals (Development and Regulation) Act 1957 and IPC, this Court in State (NCT of Delhi) v. Sanjay (2014) held that there is no bar in prosecuting persons under the IPC where the offences committed by persons are penal and cognizable offences. (f) A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. (g) Therefore, we set aside the finding of the HC.
Decision	☆ The SC decide the case in favour of the Appellant. ☆ The SC held that a perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties.

150. COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA v. GURVINDER SINGH [SC]

Hint: The Council of ICAI found conduct of the Respondent No.1-Chartered Accountant was derogatory in nature and highly unbecoming (i.e. highly inappropriate) and held him guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 on the ground of member transferring shares in his own name. The Council restrained him (i.e. CA) from practice for 6 months. Whether it correct – Held, Yes.

Decision:

☆ The SC decide the case in favour of the Appellant.

☆ The SC held that we remand the matter to the HC to be decided afresh leaving all contentions open to both parties.

Fact of the Case	☆ The present appeal arises out of a complaint dated 16.03.2005 against Respondent No.1, who is a Chartered Accountant, relating to sale of 100 shares in 1999, which were transferred to the Chartered Accountant's own name. The matter has ultimately been settled between the Complainant and the Chartered Accountant. ☆ However, the Disciplinary Committee took up the case and ultimately found that the conduct of the Respondent No.1-Chartered Accountant was derogatory in nature
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	and highly unbecoming and held him guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as 'the Act'). ★ Therefore, the Council of the ICAI made its recommendation to the HC to remove the aforesaid CA for a period of 6 months from the rolls. The HC, declined to do so. ★ Hence, Appellant i.e. Council of the ICAI file appeal before the SC against the impugned order of the HC.
Legal Principles held—	The SC consider the following facts before passing the final order: (a) We are afraid that the HC has not correctly appreciated Section 21(3) of the Chartered Accountants Act, 1949. (b) On facts, the Disciplinary Committee has found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity. (c) Disciplinary Committee was entitled to do under Schedule I Part-IV sub- clause (2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work. (d) Accordingly, it is clear that the impugned judgment is incorrect. Therefore, it must be set aside.
Decision	★ The SC decide the case in favour of the Appellant. ★ The SC held that we remand the matter to the HC to be decided afresh leaving all contentions open to both parties.

151. Dr. Uppal Devinder Kumar v. Securities and Exchange Board of India

Hint: Two questions raised in this case before the SAT that

- (a) Whether SEBI was not justified in holding that appellant had sponsored or carried out CIS specially when SEBI had specifically recorded that month-wise mobilization of companies was not available.
- (b) Whether impugned order passed by SEBI imposing **penalty upon appellant was not justified.**

Decision: the SAT decide the case in favour of the Appellant.

Fact of the Case	★ The company-PACL was a real estate company involved in the sale and purchase of agricultural land. The said company mobilised funds from the general public by sponsoring a scheme which was in fact a Collective Investment Scheme (CIS) without obtaining registration from SEBI. ★ SEBI conducted an investigation into the affairs of the company 'PACL' and eventually a show cause notice was issued, for violation of the SEBI (Collective Investment Schemes) Regulations, 1999 and section 12(1B).
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	☆ Based on the show-cause notice an order was passed by SEBI under sections 11 and 11B directing the company to refund the amount collected under the CIS and further restrained the directors including the appellant from accessing the securities market till such time the amount was refunded. ☆ The SEBI also passed an order against the company and its directors imposing a penalty of Rs. 7269.49 Crores to be paid jointly and severally by the company and its directors. ☆ The appellant being aggrieved by the said order filed an appeal contending that he was never appointed as a director and thus could not be made liable for the wrongs committed by the company. ☆ The Tribunal allowed the appeal and set aside the order of the Adjudicating Officer. The Tribunal remitted the matter back to the Adjudicating Officer with a direction to decide the matter afresh and record a specific finding as to whether the appellant had acted as a director. Based on the order of Tribunal, proceedings were again initiated and after considering the reply of the appellant a fresh order was passed imposing a penalty of Rs. 1 Crore. ☆ The appellant being aggrieved by the said order had filed the instant appeal.
Applicable Law	☆ A perusal of section 12(1B) clearly indicates that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any CIS, unless he obtains a certificate of registration from the Board in accordance with the regulations. ☆ According to Shorter Oxford Dictionary 6th edition 'sponsor' means a person ☛ taking responsibility or standing surety for another; ☛ contribute to or bear the expenses of an event; ☛ support in a fund-raising activity by pledging money in advance. ☆ Black's Law Dictionary 6th edition defines 'sponsor' as a surety; one who makes a promise or gives security for another, particularly a godfather in baptism. ☆ In the civil law, one who intervenes for another voluntarily and without being requested.
Legal Principles held—	☆ From the aforesaid, it is clear that the appellant has not made a promise or given surety for another. The appellant has not sponsored not pledged any money in advance. There is no evidence to indicate that he had contributed to bear the expenses of the scheme in return for some gain. ☆ Section 12(1B), read with regulations 3 and 4 further states that no person shall carry on or cause to be carried on any CIS. ☆ There is no specific finding by the SEBI that the appellant ☛ was involved in carrying on the CIS or ☛ was involved in the execution of the scheme or ☛ was involved in the collection of the money pursuant to the scheme. ☆ Appellant was director only for 50 days and there is no evidence brought on record to show that the appellant attended any meeting of the BOD(s) nor there is any document to show that the appellant had any role at all in connection with the CIS or sponsoring a CIS or being responsible for the registration of the CIS. ☆ In fact, the evidence on the record is writ large, namely, that the scheme was launched/sponsored and executed by other directors of the company prior to the appointment of the appellant as a director. The SEBI in its order while penalizing other directors to a sum of Rs. 7269 crore has given a categorical finding that the said directors were directly involved in the initiation and sponsoring of the scheme and were directly instrumental in the collection of the monies. Thus, the finding of the SEBI that appellant had sponsored and carried on the CIS is patently based on surmises and conjectures. ☆ If a company is liable to refund the monies received from the investors and if the company fails to pay the amount then the amount can be recovered jointly and severally from every director of the company who is an officer in default. Therefore, when the company is the offender, the vicarious liability of the acts of the directors cannot be computed automatically.

	☆ The contention that being a director of the company, the appellant cannot disown his responsibility for the acts of the company is misconceived. It is not possible to lay down any hard and fast rule as to when a director would be vicariously responsible for the acts as a director in charge of day-to-day affairs of the company. However, a finding has to be arrived at that the appellant was responsible for the day-to-day affairs of the company and was involved in the collection of the monies and in the implementation of the schemes. ☆ It is NOT necessary that every director is required to be penalized merely because he is a director on the ground that he was deemed to be responsible for the affairs of the company. ☆ If the director can explain that he had no role to play in the alleged default or that he was not responsible for the affairs of the company in which case penalty could not be fastened upon him on the mere ground that he was a director. Further, as per section 150, a maximum penalty of Rs. 10,000 for each day could be imposed. ☆ The appellant was a director only for 50 days and if a maximum penalty of Rs. 10,000 per day is taken into consideration then a maximum penalty of Rs. 5 lakh could be imposed. By no stretch of imagination, a penalty of Rs. 1 Crore could be imposed. ☆ The SEBI by a separate order has already given a finding that the company and its directors were directly responsible for sponsoring the CIS without registration and were instrumental in generating the monies through this scheme in violation of the Regulations and the Act. ☆ The SEBI has already imposed penalties against the company and the said directors. The appellant in the instant case no doubt was a director only for a period of 50 days and there is no finding that he was responsible either for sponsoring the scheme or for carrying out the scheme. ☆ The appellant was not instrumental in the launching/sponsoring or carrying on the scheme.
Decision	☆ SAT decide the case in favour of the appellant. ☆ The SAT held that in the absence of any documentary evidence the SEBI was not justified in holding that the appellant had sponsored or carried on the CIS or was instrumental in the collection of the monies pursuant to the scheme especially when the SEBI has specifically recorded that month-wise mobilization of the companies was not available.

152. Bajaj Finance Limited v. SEBI [SAT]

Hint: Banks and NBFC advanced loan to the borrowers against pledged shares. SEBI passed an interim order against the M/s. Karvy Stock Broking Ltd. ('Karvy') and in direction no. (iv) of the said order **prohibited transfer of pledged shares by Karvy to the Appellant (i.e. Bajaj Finance Limited).** The appellant file appeal before SAT and requested to quash interim order or **in the alternative stay on the direction to transfer the shares held by the appellant in the form of pledge to respective beneficial owners.**

Decision: The SAT decide the case in favour of Appellant. SAT directs SEBI to hear the appellant on the basis of their representation. Thereafter, the SEBI shall consider the representations of the appellant and, after giving an opportunity for personal hearing, pass an order as per law

Fact of the Case	☆ SEBI passed an interim order against the M/s. Karvy Stock Broking Ltd. ('Karvy') and in direction no. (iv) of the said order prohibited transfer of pledged shares by Karvy to the Appellant (i.e. Bajaj Finance Limited). ☆ The transfer of securities from Karvy shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE. ☆ Bajaj Finance Limited, a NBFC aggrieved by the interim order passed by the SEBI against the M/s. Karvy Stock Broking Ltd. ☆ Appellant contends that (a) Appellant is in the normal business of an NBFC including lending against pledged securities. Accordingly, by way of a Loan Against Securities Arrangement with Karvy, it
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	has been lending funds towards working capital requirements against pledge of securities since December 2014. (b) Karvy has an outstanding obligation of Rs. 345 Crores plus applicable interest and other charges towards the appellant and its said rights got destroyed by the impugned order. (c) Further, there has been an undertaking from Karvy that such pledged securities were owned by Karvy itself and not from clients' accounts. Further, Karvy violated certain clauses of the loan agreement and withdrew beyond the sanctioned amount a Loan Recall Notice was issued to Karvy seeking refund of the full outstanding loan of Rs. 345 Crores (approximately) along with interest and charges. (d) In the event of failure by Karvy, refund the same to the appellant was planning to invoke the pledge. (e) However, on account of the impugned order which prohibited transfer of securities from Karvy with immediate effect the appellant could not invoke the pledge. (f) At the same time before passing such an order which affected its rights the appellant was not given any notice or opportunity of being heard in any manner. On becoming aware of the impugned order, immediately on November 23, 2019 despite being a Saturday the appellant sent a representation to SEBI raising all these issues which, however, remain unanswered even today. (g) Such unilateral action by SEBI has left the appellant to face the consequences of the impugned order despite no fault of the appellant. (h) Rights of the appellant are seriously affected and not providing an opportunity by SEBI has seriously prejudiced the appellant. ☆ The appellant seeks to quash the impugned order or in the alternative stay on the direction to transfer the shares held by the appellant in the form of pledge to respective beneficial owners.
Legal Principles held –	☆ After hearing the parties by SAT, it was found that Karvy had raised funds from banks and NBFCs by pledging securities and Impugned order passed by the SEBI would adversely impacted the rights of these entities. ☆ As such, even if appellant could not be heard by the SEBI, while passing the impugned order at the least on their representation they were entitled to be heard. It is on record that the appellant wrote to SEBI on November 23, 2019. ☆ It is also an undisputed fact that lending against securities is a normal and permitted business activity of banks and NBFCs and SEBI is fully aware of the same. Therefore, SAT considered view that the impugned order has prejudiced and adversely affected the rights of the appellant as a bonafide lender. ☆ Accordingly, without commenting on the merit of the case, SAT directs SEBI to hear the appellant on the basis of their representation dated November 23, 2019. Thereafter, the SEBI shall consider the representations of the appellant and, after giving an opportunity for personal hearing, pass an order as per law. ☆ Appeal is disposed of on above terms at the stage of admission itself. No order on costs

153. ADJUDICATING OFFICER, SEBI v. BHAVESH PABARI [SC]

Hint: Clarification of the SC on the powers of the adjudicating officer in levying penalty.

Fact of the Case	☆ Two primary questions have been referred by the Referral judgment and order dated 14th March 2016 passed in Siddharth Chaturvedi Vs. Securities and Exchange Board of India in a way interconnected. The questions referred can be enumerated and summarized as follows: (a) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of the SEBI Act, 1992 are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative? (b) Whether the power and discretion vested by Section 15J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered,
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	stands eclipsed by the penalty provisions contained in Section 15A to Section 15HA of the SEBI Act?
Legal Principles held –	☆ For the purposes of the present reference, we may proceed to consider the provisions contained in Chapter VIA of the SEBI Act. ☆ Sections 15A to 15HA are the penalty provisions whereas ☛ Section 15I deal with the power of adjudication and ☛ Section 15J enumerates the “factors to be taken into account by the Adjudicating Officer” while adjudging the quantum of penalty. ☆ So far as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15A to Section 15HA of the SEBI Act is to be mandatorily imposed in case of default/ failure, Section 15J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. ☆ Sections 15A(a) to 15HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head on clash and construe the said provisions harmoniously. ☆ Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The explanation to Section 15 J of the SEBI Act added by Act No.7 of 2017, quoted above, has clarified and vested in the Adjudicating Officer a discretion under Section 15J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15A to 15HA. ☆ Explanation to Section 15J was introduced/ added in 2017 <u>for the removal of doubts created as a result of pronouncement in M/s. Roofit Industries Ltd. case (supra). We are in agreement with the reasoning given in reference order dated 14th March 2016 that M/s Roofit Industries Ltd. had erroneously and wrongly held that Section 15J would not be applicable after Section 15 A(a) was amended with effect from 29th October 2002 till 7th September 2014</u> when Section 15A(a) of the SEBI Act was again amended. ☆ It is beyond any doubt that the second referred question stands fully answered by clarification through the medium of enacting the Explanation to Section 15J vide Act No.7 to 2017, which also states that the Adjudicating Officer shall always have deemed to have exercised and applied the provision. Therefore, we deem it appropriate to hold that the provisions of Section 15J were never eclipsed and had continued to apply in terms thereof to the defaults under Section 15A(a) of the SEBI Act. ☆ Reference Order in Siddharth Chaturvedi & Ors. (supra) on the said aspect has observed that Section 15A(a) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs.1 lakh per day subject to maximum of Rs.1 crore, would make the Section completely disproportionate and arbitrary so as to invade and violate fundamental rights. ☆ Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression “whichever is less” in Section 15A(a) as it existed during the period 29th October 2002 till 7th September 2014, was not to curtail the discretion of the Adjudicating Officer by prescribing a minimum mandatory penalty of not less than Rs. 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made. ☆ The legislative intent is also clear as Section 15A(a) was amended by the Amendment Act No.27 of 2014 to state that the penalty could extend to Rs. 1 lakh for each day during which the failure continues subject to a maximum penalty of Rs. 1 crore and this amendment in 2014 was not retrospective. ☆ Therefore, clarificatory and removal of doubt Explanation to Section 15J was added by the Act No. 7 of 2017. Normally the expression “whichever is less” would connote absence of discretion by prescribing the minimum mandatory penalty, but in the context of Section 15A(a) as it was between 29th October,2002 till 7th September, 2014, read

along with Explanation to Section 15J added by Act No.7 of 2017, we would hold the legislative intent was not to prescribe minimum mandatory penalty of Rs.1 lakh per day during which the default and failure had continued.

- ☆ We would prefer read and interpret Section 15A(a) as it was between 25th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving **discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15J of the SEBI Act.** This will require us to consider the first question referred. **Having dealt with the submissions advanced by the rival parties, (both parties have actually canvassed for a wider and more expansive interpretation of Section 15J), we are inclined to take the view that the provisions of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. However, this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c) of Section 15J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed.**
- ☆ A narrow view would be in direct conflict with the provisions of Section 15I (2) of the SEBI Act **which vests jurisdiction in the Adjudicating Officer, who is empowered on completion of the inquiry to impose “such penalty as he thinks fit in accordance with the provisions of any of those sections.”** Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15J **to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/ concede that in adjudications involving penalties under Sections 15 A, 15B and 15C, Section 15J will have no application.** Such a result could not have been intended by the legislature.
- ☆ Therefore, we hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15 J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.
- ☆ **There is a distinction between a continuing offence and a repeat offence.**
 - (a) **The continuing offence is a one which is of a continuous nature as distinguished from one which is committed once and for all.**
 - (b) **The term “continuing offence” was explained and elucidated by giving several illustrations in State of Bihar vs. Deokaran Nenshi & Ors. (1972) 2 SCC 890. In case of continuing offence, the liability continues until the rule or its requirement is obeyed or complied with. On every occasion when disobedience or noncompliance occurs and reoccurs, there is an offence committed. Continuing offence constitutes a fresh offence every time or occasion it occurs.**
 - (c) **In Union of India & Anr. Vs. Tarsem Singh (2008) 8 SCC 648, continuing offence or default in service law was explained as a single wrongful act which causes a continuing injury. A recurring or successive wrong, on the other hand, are those which occur periodically with each wrong giving rise to a distinct and separate cause of action.**
 - (d) **We have made reference to this legal position in view of clause (c) of Section 15J of the SEBI Act which refers to repetitive nature of default and not a continuing default. The word “repetitive” as used therein would refer to a recurring or successive default.**
- ☆ This factum has to be taken into consideration while deciding upon the quantum of penalty.
- ☆ However, this dictum does not mean that factum of continuing default is not a relevant factor, **as we have held that clauses (a) to (c) in Section 15J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty.**

154. PVP GLOBAL VENTURES PVT LTD v. SEBI [SAT]

Hint: In the present case, the adjudicating Officer passed penalty order and imposed certain amount as penalty on the Appellant (i.e. PVP) but it does not contained provision w.r.t. liability of interest on non-payment of penalty. But,

recovery officer **issued a certificate of recovery, which included interest on the penalty** against the Appellant. Question arise, whether the action of recovery officer is tenable in law to include interest on penalty amount.

Decision: The SC decide the case in favour of the Respondent (SEBI). The SC **held that recovery officer was justified in charging the interest on penalty from the date of the penalty order** passed by the Adjudicating Officer.

Fact of the Case	★ The adjudicating Officer passed penalty order and imposed certain amount as penalty on the Appellant (i.e. PVP). ★ This order had attained finality and thereafter the recovery officer issued a certificate of recovery, which included interest on the penalty against the Appellant. In this process, the Appellant bank account is attached. ★ Aggrieved, the Appellant filed the instant Appeal before the Tribunal challenging that interest cannot be levied by the recovery officer and that a separate demand notice for the recovery is required to be issued.
Legal Principles held –	★ The object and intention of inserting Section 28A to the SEBI Act was to provide a mechanism for recovery of the amount due to SEBI. ★ Instead of prescribing an independent mechanism for collection and recovery of the amounts due to SEBI, the legislature deemed it fit to follow the mechanism provided under the Income Tax Act and accordingly inserted Section 28A to SEBI Act wherein the provisions of the Income Tax Act relating to collection and recovery have been incorporated. ★ Thus, the legislature by inserting Section 28A to SEBI Act has provided that if a person fails to pay the amounts referred in Section 28A, then the Recovery Officer shall draw up a statement/certificate and proceed to recover the amounts specified in the certificate by any one or more of the five modes specified therein. ★ This Tribunal decided the Dushyant N. Dalal & Anr. v. SEBI which judgment was affirmed by the SC, after considering the provision of Section 28A of SEBI Act read with Section 220 of the Income Tax Act held that the liability to pay interest under Section 28A read with Section 220 is automatic and arises by operation of law. ★ The Supreme Court Observed that 1. We further find that the Adjudicating Officer in its order while imposing penalty had also directed the appellant to pay the penalty amount within 45 days. In our view this order of penalty would also be deemed to include a notice of demand and thus a formal requirement for issuance of a separate notice of demand pursuant to the order of penalty is NO longer required. Thus, the contention raised by the appellant is not sustainable and is rejected. 2. The contention that interest was impliedly waived when the penalty was reduced by the Tribunal or that interest cannot be imposed with retrospective effect is patently misconceived. Hon'ble Supreme Court while affirming the judgment of this Tribunal in Dushyant Dalal's case (supra). 3. From the aforesaid, it becomes clear that interest was not only chargeable under Section 28A read with Section 220(2) of the Income Tax Act but the provisions of Interest Act, 1978 could also be taken into consideration and interest could be charged from the date on which the penalty became due.
Decision	★ The SC decide the case in favour of the Respondent (SEBI). ★ The SC held that recovery officer was justified in charging the interest on penalty from the date of the penalty order passed by the Adjudicating Officer.

155. THERM FLOW ENGINEERS PVT. LTD. v. SEBI [SAT]

Hint: In the given case, Shares of the target company inter se transfer between the promoters via open market and acquisition of the promoters is of miniscule (extreme small) proportion go beyond the permitted limit without making public announcement, this would result in violation of the SEBI (SAST) regulations, 2011. SEBI passed order against the Appellant directing them to make a public announcement to acquire shares Target Company within a period of 45 days from the date of the order and to pay interest at the rate of 10% p.a. as detailed in the order.

Decision: The SAT decide the case in favour of the Appellant.

Fact of the Case	☆ The Appellant is the promoter of the Target Company consisting of a consortium of individual promoters. ☆ Shares of the target company inter se transfer between the promoters via open market and acquisition of the promoters is of miniscule (extreme small) proportion go beyond the permitted limit, this would result in violation of the SEBI (SAST) regulations, 2011. ☆ On the happening of the aforesaid event, SEBI passed order against the Appellant directing them to make a public announcement to acquire shares Target Company within a period of 45 days from the date of the order and to pay interest at the rate of 10% p.a. as detailed in the order. ☆ The Appellant filed appeal against the order of the SEBI before the SAT.
Applicable Law	☆ The SAT consider the two judicial pronouncements: (a) Nirma Industries Ltd & ANR v. SEBI (2013): ☛ The Hon'ble Supreme Court in para 17 observed that in the given set of circumstances of that case the withdrawal of the open offer to acquire 20 % of shares of the Company was neither in the interest of the investor nor in the development of the securities market. ☛ Thus, the case of Nirma was decided in its own circumstances. (b) SEBI v. Kishore R. Ajmera (2016): ☛ The Hon'ble Supreme Court found that the manipulative and fraudulent market practices are required to be curbed by bringing a comparative legislative to bring about some clarity and certainty which cannot be disputed.
Legal Principles held—	The SAT observed that that violation of the Takeover Regulation was only to the extent of 0.04 % and that too due to transfer of shares between the promoters via open market. Therefore, the direction of the WTM to make public announcement to acquire shares was disproportionate.
Decision	☆ The Court decide the case in favour of the Appellant (Therm Flow) and pass the following order: 1. The appeal is hereby partly allowed. The order of the WTM directing the appellant to make public announcement to acquire shares of the target company and to pay interest at the rate of 10 % as detailed in the order is hereby set aside. 2. Instead it is hereby directed that the appellant shall transfer 2000 shares in open market within a period of 4 weeks and shall deposit an amount of Rs.3, 60,300 in the Investor Protection and Education Fund established by SEBI within a period of 6 weeks from the date of this order. 3. In default, the amount shall carry interest at the rate of 12 % p.a. from the date of this order till the date of deposit.

156. GRD SECURITIES LTD. v. NATIONAL STOCK EXCHANGE & ANR [SAT]

Hint: In the given case, appellant has delayed in depositing margin money. As a result of which, **DAC after considering the oral and written submissions of the appellant, imposed a monetary penalty to the tune of Rs. 2,05,43,900/- and suspension of one trading day** in the CD segment after giving three weeks' notice.

Decision: The SAT decide the case in favour of the Appellant and require the appellant to pay penalty mere Rs. 50 Lakhs within 4 days from the date of the order and **suspension of one trading day** in the CD segment.

Fact of the Case	☆ This appeal is filed challenging the decision of the Disciplinary Action Committee ('DAC' for short) of the National Stock Exchange of India Limited ('NSE' for short) whereby the review application of the appellant was rejected. ☆ Consequently, the earlier decision of the DAC which directed the appellant to pay a penalty of Rs. 2,05,43,900/- and face suspension of one trading day in the currency derivative segment of the Exchange stood confirmed. ☆ The appellant is a member broker in the Capital Market (CM), Futures and Options (F&O) and Currency Derivatives (CD) segments of the NSE. ☆ During a regular inspection of the books and records of the appellant for the calendar year 2016 in February 2017 NSE noticed that the appellant falsely reported margin
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	amounting to Rs. 2,05,43,947/- in the CD segment in respect of two clients on two occasions on April 26, 2016 and June 21, 2016. ★ Accordingly, DAC in its meeting held on January 12, 2018, after considering the oral and written submissions of the appellant, imposed a monetary penalty to the tune of Rs. 2,05,43,900/- and suspension of one trading day in the CD segment after giving three weeks' notice. This was communicated to the appellant on February 8, 2018. ★ This matter came up in appeal before this Tribunal which quashed the said order passed by the DAC of NSE on March 1, 2018 and directed the appellant to file a review application before the DAC. ★ The order impugned in this appeal is issued by the DAC of NSE further to giving another opportunity of personal hearing to the appellant and considering their written submissions.
Legal Principles held—	★ We do not agree with the contentions of the appellant that it was only a technical violation. It is quite evident from the facts that though cheques may have been received from the clients the appellant had not credited these amounts to the account upfront which is a basic requirement of margin collection from clients. ★ Moreover, in respect of client Monotype India it is not even clear whether the margin was ever collected. ★ The submission that margin requirement as on T + 5, not as on the trading day, is what is relevant is not correct and hence not admissible. ★ Upfront collection of margins is an important mechanism for ensuring prompt settlement and in promoting market integrity. As such any explanation to the contrary is not sustainable. ★ However, we are not able to agree with the stand of SEBI and NSE that no discretion in imposition penalty can be exercised, once a violation is established. ★ The Circular issued by SEBI dated August 10, 2011 specifies different percentages of penalty w.r.t. short collection/non-collection of margins from clients in equity and currency derivatives segment. While it specifies small proportion of 5% to 10% of margin shortfall as penalty for non-reporting, it specifies that 100% of the short collection shall be imposed as penalty. ★ If such violation is noticed at the time of inspection, then in addition to 100% penalty one day suspension has to be imposed. The said circular does not differentiate between situations involving upfront collection of cheques but late depositing or late crediting of the said amount and no upfront collection at all and hence suffers from the proportionality principle. ★ In order to incorporate proportionality, as is provided for small percentages of short falls in margin collection in the same circular itself, the word 'shall' in the circular has to be read as 'may' as it would enable the Exchange authorities to distinguish between no collection of margin at all and delayed collection of margin, particularly, in situations like no impact on the settlement or market at all. ★ Accordingly, we are unable to agree with the interpretation of the spirit of the circular provided by SEBI as well as NSE. ★ In this matter before us, the penalty imposed is Rs. 2,05,43,900/- and suspension from trading in the Currency Derivatives segment for one day. The appellant before us submits that the annual income from brokerage from CD segment is only to the tune of about Rs. 3 lakhs which is not disputed. ★ While we totally agree that upfront collection of margin is an important regulatory tool to safeguard market integrity, at the same time we are equally concerned with proportionality while imposing a penalty of a very heavy amount which can completely ruin an entity for a single violation. ★ It is an undisputed fact that the appellant has not committed any other violation. While the SEBI circular is quite mechanical in directing the Exchanges to impose a fixed penalty, the Exchange Rules provide for an appeal/review and empowers the authority to review/rescind/reconsider the penalty imposed.

	★ Given these factors we are of the considered view that based on the facts and circumstances of the present matter, the law has to be interpreted in its spirit invoking proportionality. Though we are inclined to reduce the penalty given these facts, the penalty has to be in tune with the violation. ★ The appellant's submission that brokerage from the CD segment is only just over Rs. 3 lakh is incomplete since it has not disclosed the total earnings including that from other segments of the market. ★ Moreover, it is imperative to underscore the importance of prompt upfront margin collection for promoting market integrity.
Decision	★ The SAT held that Balancing all these, a penalty of Rs. 50 Lakhs and one-day suspension from the CD segment would meet the ends of justice in the matter. Appellant is directed to pay the penalty within four weeks from today. Respondent NSE shall implement the one-day suspension after giving 15 days' notice to the appellant. ★ The SAT decide the case in favour of the Appellant.

157. SEBI v. KISHORE R.AJMERA [SC]

Hint: what is the degree of proof required to hold brokers/sub brokers liable for fraudulent/ manipulative practices under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and/or liable for violating the Code of Conduct specified in Schedule II read with Regulation 9 of the SEBI (Stock - Brokers and Sub-Brokers) Regulations, 1992 ('Conduct Regulations, 1992').

Decision: The SC held that Penalty for matching trade is not tenable but Penalty for synchronised trade and circular trade is tenable in law based on the aforesaid observation.

Fact of the Case	★ Civil Appeal No. 2818 of 2008 (SEBI v. Kishore R. Ajmera) is with regard to the allegation of indulging in "matching trades" thereby creating artificial volumes in the scrip of M/s. Malvica Engineering Ltd. (MEL). ★ Civil Appeal No.6719 of 2013 (SEBI Vs. Ess Intermediaries Pvt. Ltd.), Civil Appeal No.252 of 2014 (SEBI Vs. M/s. Rajendra Jayantilal Shah, Civil Appeal No.282 of 2014 (SEBI Vs. M/s. Rajesh N. Jhaveri) are with regard to indulging in "synchronised trades" in the scrip of M/s. Adani Export Ltd. (AEL) by respondents who were sub brokers. ★ Civil Appeal No. 8769 of 2012 (SEBI Vs. Networth Stock Broking Ltd.) is w.r.t. "circular trading" of the scrip on behalf of one Indumati Goda. ★ In all the above cases, the Whole time member of the SEBI imposed penalty which was set aside by the SAT. ★ Therefore, SEBI challenged the orders of SAT before the SC. ★ The question of law arising in this group of appeals is "what is the degree of proof required to hold brokers/sub brokers liable for fraudulent/ manipulative practices under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and/or liable for violating the Code of Conduct specified in Schedule II read with Regulation 9 of the SEBI (Stock - Brokers and Sub-Brokers) Regulations, 1992 ('Conduct Regulations, 1992').
Legal Principles held –	★ It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. ★ While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. ★ The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.

- ☆ Insofar as C.A. No.2818 of 2008 SEBI v. Kishore R. Ajmera is concerned the proved facts are that
 - (a) Both the clients are known to each other and were related entities;
 - (b) This fact was also known to the sub-broker and the respondent-broker;
 - (c) The clients through the sub-broker had engaged in mutual buy and sell trades in the scrip in question, volume of which trade was significant, keeping in mind that the scrip was an illiquid scrip.
- ☆ In addition to the above, there is **no other material to hold either lack of vigilance or bona fides on the part of the sub-broker so as to make respondent-broker liable.**
- ☆ An irresistible or irreversible inference of negligence/lack of due care etc., in our considered view, **is not established even on proof of the primary facts alleged so as to make respondent-broker liable under the Conduct Regulations, 1992 as has been held in the order of the Whole Time Member, SEBI which, according to us, was rightly reversed in appeal by the SAT.**
- ☆ This will take us to the second and third category of cases i.e. M/s Ess Intermediaries Pvt. Ltd., M/s Rajesh N. Jhaveri and M/s Rajendra Jayantilal Shah [second category] and M/s Monarch Network Capital Limited (earlier known as Network Stock Broking Limited) [third category]. In these cases, **the volume of trading in the illiquid scrips in question was huge, the extent being set out hereinabove.** Coupled with the aforesaid fact, **what has been alleged and reasonably established, is that buy and sell orders in respect of the transactions were made within a span of 0 to 60 seconds.**
- ☆ While the said fact by itself i.e. **proximity of time between the buy and sell orders may NOT be conclusive in an isolated case such an event in a situation where there is a huge volume of trading can reasonably point to some kind of a fraudulent/manipulative exercise with prior meeting of minds.**
- ☆ Such **meeting of minds** so as to attract the liability of the broker/sub-broker may be between the broker/ sub-broker and the client or it could be between the two brokers/sub-brokers engaged in the buy and sell transactions.
- ☆ When over a period of time such transactions had been made between the same set of brokers or a group of brokers a conclusion can be reasonably reached that there is a concerted effort on the part of the concerned brokers to indulge in synchronized trades the consequence of which is large volumes of fictitious trading resulting in the unnatural rise in hiking the price/value of the scrip(s).
- ☆ It must be specifically taken note of herein that the trades in question were not “negotiated trades” executed in accordance with the terms of the Board’s Circulars issued from time to time.
- ☆ It is clarified that a negotiated trade invokes consensual bargaining involving synchronizing of buy and sell orders which will result in matching thereof but only as per permissible parameters which are programmed accordingly.
- ☆ The conclusion has to be gathered from various circumstances like that
 - ☛ volume of the trade effected;
 - ☛ the period of persistence in trading in the particular scrip;
 - ☛ the particulars of the buy and sell orders, namely, the volume thereof;
 - ☛ the proximity of time between the two and such other relevant factors.
- ☆ The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; **that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine.**
- ☆ The failure of the brokers/sub-brokers to alert themselves to this minimum requirement and their persistence in trading in the particular scrip either over a long period of time or in respect of huge volumes thereof, in our considered view, would not only disclose negligence and lack of due care and caution but would also demonstrate a deliberate intention to indulge in trading beyond the forbidden limits thereby attracting the provisions of the FUTP Regulations.

	★ The difference between violation of the Code of Conduct Regulations and the FUTP Regulations would depend on the extent of the persistence on the part of the broker in indulging with transactions of the kind that has occurred in the present cases. ★ Upto an extent such conduct on the part of the brokers/sub-brokers can be attributed to negligence occasioned by lack of due care and caution. Beyond the same, persistent trading would show a deliberate intention to play the market. ★ The dividing line has to be drawn on the basis of the volume of the transactions and the period of time that the same were indulged in. ★ In the present cases, it is clear from all these surrounding facts and circumstances that there has been transgressions by the respondents beyond the permissible dividing line between negligence and deliberate intention.
Decision	★ The SC held that Penalty for matching trade is not tenable but Penalty for synchronised trade and circular trade is tenable in law based on the aforesaid observation. ★ IN other words, C.A. No.2818 of 2008 dismissed; Rest of the appeals allowed.

158. IN RE: NEESA TECHNOLOGIES LIMITED & ORS [SEBI]

Hint: In the present case, company issue NCDs, while issuing NCD violated the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 and the provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulation").

Decision: SEBI held that the failed to comply with the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 in respect of its offer and issuance of NCDs and the aforesaid provisions of the ILDS Regulations.

Fact of the Case	★ In the present case, the Company had offered and allotted NCDs to 341 persons during the FY 2013-2014 and mobilized Rs.5.96 Crores. Considering the number of persons to whom the NCDs were offered and issued in terms of the first proviso to section 67(3) of the Companies Act, 1956. ★ On the basis of the material available on record i.e., correspondences exchanged between SEBI and NTL; ☛ complaint and additional documents received by SEBI and information obtained from the MCA website i.e. MCA 21 Portal and IDBI Trusteeship Services Limited (ITSL), SEBI vide an ex-parte interim order, prima facie observed that Neesa Technologies Limited ('NTL') had engaged in fund mobilizing activity from the public, through its offer and issue of NCD and ☛ violated the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 and the provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulation"). ★ Company and its directors filed replies contending that they have not violated any of the provisions of the companies Act or Regulations as alleged. ★ The Company had contended that the NCDs were treated as 'deposits' by RoC and therefore SEBI would not have jurisdiction in the matter.
Legal Principles held –	★ The SEBI Observed that (a) The Company had admitted issuing NCDs. (b) Further, the RoC issued notice has mentioned that the NCDs was issued for Rs.5.96 Crores. (c) The allegation of the RoC is that the Company failed to pay the interest on such NCDs or pay back the money collected under such NCDs in violation of Section 74(1) and (2) of the Companies Act, 2013. (d) Section 67(3) is in respect of "shares" and "debentures". In view of the same, the Company having admittedly issued debentures in a public issue is under the jurisdiction of SEBI. ★ Accordingly, SEBI conclude that provisions of Sections 56, 60 and 73 of the Companies Act, 1956 are required to be complied with by a company making a public issue of securities. In addition to the above, the Company was mandated to comply with 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations in respect of its public offer and issuance of NCDs. ★ These provisions have allegedly not been adhered to by the Company.

	☆ By making a public issue of NCDs, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956. A Company making a public issue of securities cannot choose whether to list its securities or not as listing is a mandatory requirement under law. ☆ As per Section 73(1) of Companies Act, 1956, a company is required to make an application to one or more RSE for permission for the shares or debentures to be offered to be dealt with in the stock exchange. ☆ Further, there is no material to say that the Company has filed an application with a RSE to enable the securities to be dealt with in such stock exchange. Therefore, the Company has failed to comply with this requirement. ☆ As the Company failed to make an application for listing of such securities, the Company had to forthwith repay such money collected from investors under NCDs. If such repayments are not made within 8 days, then after that company becomes liable to repay, the Company and every director is liable to repay with interest at such rate. ☆ The liability of the Company to refund the public funds collected through offer and allotment of the impugned securities is continuing and such liability would continue till repayments are made. There is no record to suggest that the Company made the refunds as per law. ☆ As the amounts mobilized through the issue of NCDs have not been refunded within the time period as mandated under law. Therefore, it would be appropriate to levy an interest @ 15% p.a. as provided for under the above section read with rule 4D (which prescribes that the rates of interest, for the purposes of Sections 73(2) and Section 73(2A) shall be 15% per annum) of the Companies (Central Government's) General Rules and Forms, 1956 on the amounts mobilized by the Company through its offer and issue of NCDs, from the date when the same was liable to be repaid till the date of actual payment to the investors. ☆ Section 117C stipulates that, where a company issues debentures, it shall create a debenture redemption reserve (DRR) for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. ☆ There is no record to suggest that the Company had created DRR and has therefore violated Section 117C of the Companies Act, 1956. ☆ As NCDs are 'debt securities' in terms of the ILDS Regulations, the Company was also mandated to comply with the provisions of the ILDS Regulations in respect of its public issue of NCDs. ☆ However, the Company failed to comply with the provisions of the ILDS Regulations. From the foregoing, I conclude that the Company.
Decision	☆ SEBI held that the failed to comply with the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 in respect of its offer and issuance of NCDs and the aforesaid provisions of the ILDS Regulations and ☆ Therefore, company is liable for suitable action under the Companies Act, 1956, the SEBI Act and the ILDS Regulations including action for default under section 73(2) of the Companies Act, 1956.

159. SEBI v. OPEE STOCK-LINK LTD & ANR [SC]

Hint: In the given case, Investigation of SEBI revealed that in the matter of the IPO of the aforesaid two companies, shares which were meant for RIIs had been cornered through hundreds of benami/fictitious demat account holders.

Decision: The SC decide the case in favour of Appellant on the basis of grounds as mentioned in legal principles.

Fact of the Case	☆ These are the cases which reflect the manner of getting excessive number of shares in an irregular manner, which would adversely affect Retail Individual Investors (RII), who are the persons with relatively less means and who desire to invest their hard earned money into shares of companies, whereby they also make an effort to participate in the progress of the economy. We are concerned with issue of shares in the nature of IPO made by
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	Jet Airways Limited and Infrastructure Development Finance Company Limited, which had been oversubscribed. ☆ Investigations was made by the officials of the SEBI and in pursuance of the said investigation it was revealed that in the matter of the IPO of the aforesaid two companies, shares which were meant for RIIs had been cornered through hundreds of benami/fictitious demat account holders. ☆ As modus operandi was quite similar in applications for shares made in respect of both the companies and parties concerned are common, we have referred to the issue of Jet Airways India Limited. ☆ SEBI observed that that respondent in Appeal had received 12,053 shares out of which 3272 shares were transferred before the day of listing of shares of the company with the stock exchange, 3598 shares on the day of listing and 5183 shares after the day of listing. ☆ The said shares were purchased through off market transactions from 553 demat account holders, who had been allotted shares of the said company. ☆ The said 553 demat account holders sold the shares to the said respondent at the rate of Rs. 1170/- per share, though the market value of the said shares was much more than Rs. 1170/- per share. Thereafter, the said shares were sold by the said respondent at a higher price. ☆ Upon investigation, it was also found that most of those 553 demat account holders were not genuine persons. The Whole Time Member [WTM] of the SEBI came to the conclusion that the dealings of the respondents were not fair and were in violation of the Act as well as the Regulations, and imposed penalty on the respondents. ☆ On appeal, SAT set aside the order of the WTM. SEBI challenged the order of SAT before the SC.
Legal Principles held –	☆ We do not find any substance in the submissions made on behalf of the respondents to the effect that the price of the shares of Jet Airways India Ltd. paid by the respondents to the demat account holders was reasonable. ☆ Even according to the submission made by the learned counsel, value of the said shares, during the said period varied from Rs.1172/- to Rs. 1339/- and in such circumstances, nobody would believe that all the demat account holders would sell their shares at the same rate, viz. Rs.1170/- per share to the respondents. Therefore, these transactions are definitely of fishy nature. ☆ The submission to the effect that no RII had made any complaint to the SEBI is not at all relevant because the SEBI need not act only on the basis of a complaint received. If from its independent sources, the SEBI, after due enquiry comes to know about some illegality or irregularity, the SEBI has to act in the manner as it acted in the instant case. However, the fact remains that because of the undue advantage which the respondents got, some small investors or RII must have not got the shares, which they ought to have been allotted. ☆ We do NOT agree with the submission that a common address given by several demat account holders would NOT show any irregularity; because normally a person would give his own address when he is opening his demat account. <u>Rarely, a person would give someone else's address if he is not having any permanent address or is likely to shift his residence.</u> ☆ In the instant case, not one or a few, but several demat holders had given one particular address and it is also pertinent to note that upon initiation of an inquiry at the instance of the SEBI, most of the demat accounts had been closed by the demat account holders. The submission was also to the effect that the shares could have been sold before they were listed with a stock exchange and such a sale cannot be said to be an illegality. ☆ Looking at the fact that number of persons, having common address of their demat accounts, selling their shares at the same price to a particular person before listing of shares of a company with a stock exchange is not a normal thing. ☆ In the facts and circumstances of the case, we do not accept the said submission made by the learned counsel appearing for the respondents. The submission made to the effect that the Tribunal is a final fact finding authority cannot be disputed. According to the learned counsel, the facts found by the SAT should NOT be disbelieved by this Court.

	☆ However, for coming to a definite conclusion contrary to the findings arrived at by the lower authority, the appellate authority (i.e. SAT) ought to have recorded specific reasons for arriving at a different conclusion, but we do not find any sound reason for coming to a different conclusion in the impugned order. ☆ On the other hand, we find detailed discussion for coming to a particular conclusion in the order, which was passed by the WTM of the SEBI and therefore, we do not see any reason for the SAT to disturb the said finding without mentioning any strong and justifiable reason for coming to a different conclusion.
Decision	☆ The SC decide the case in favour of Appellant.

160. SEBI v. BURREN ENERGY INDIA LTD& ANR [SC]

Hint: Acquirer entered into share purchase agreement on 14th February, 2005 and Burren appointed two of its Directors on the board of UBL and on the same date UBL, which is a person acting in concert with Burren, appointed the same persons on the BOD(s) of the target company. But both companies made public announcement from 15th February, 2005. According to SEBI, this amounted to violation of Regulation 22(7) of the SEBI Regulation inasmuch as the said appointment was made during the offer period which had commenced on and from 14th February, 2005.

Decision:

- ☞ SC decide the case in favour of the appellant and reverse the order of the SAT.
- ☞ SC held that based on the aforesaid observation the offer period shall be commenced from the date of a share purchase agreement.

Fact of the Case	☆ Burren Energy India Ltd ("Burren") is incorporated in England, to acquire the entire of the ESC of one Unocal Bharat Limited ("UBL"), which is incorporated in Mauritius. The shares of UBL were acquired by one Unocal International Corporation ("UIC") incorporated in California in USA. UBL at the relevant time, held 26.01% of the issued share capital of Hindustan Oil Exploration Co. Ltd. ("the target company"). ☆ Burren entered into a share purchase agreement with UIC on 14th February, 2005 to acquire the entire ESC of UBL, in England and by virtue thereof all the shares of UBL were registered in the name of Burren on the same day itself. ☆ On account of this transformation, Burren came to hold 26.01% of the share capital in the target company. ☆ As the acquisition was beyond the stipulated 15% of the ESC of the target company the Regulations got attracted making it obligatory on the part of Burren to make a public announcement, which was accordingly made for sale/purchase of 20% of the shares of the target company at a determined price of Rs.92.41 per fully paid up equity share was made on 15th February, 2005 by Burren and UBL acting as a person acting in concert. ☆ On 14th February, 2005 i.e. date of execution of the share purchase agreement, Burren appointed two of its Directors on the board of UBL and on the same date UBL, which is a person acting in concert with Burren, appointed the same persons on the BOD(s) of the target company. ☆ According to SEBI, this amounted to violation of Regulation 22(7) of the SEBI Regulation inasmuch as the said appointment was made during the offer period which had commenced on and from 14th February, 2005. ☆ The adjudicating authority imposed a penalty of Rs. 25 lakhs which was set aside by the SAT. Hence the appeal by SEBI.
Legal Principles held –	☆ The appellant contended that (a) It appears to be that the words 'Memorandum of Understanding (MOU)' are, in an appropriate situation may also include a concluded agreement between the parties. (b) Even in a given case, where a MOU is to fall short of a concluded agreement and, in fact, the concluded agreement is executed. Subsequently, the 'offer period' would still commence from the date of the MOU. ☆ According to the learned counsel,

	(a) if the offer period commences from the date of such MOU, there is no reason why the same should not commence from the date of the share purchase agreement when the parties had not executed a MOU. (b) It is also submitted that the commencement of the 'offer period' from the date of public announcement would primarily have relevance to a case where acquisition of shares is from the market and there is no MOU or a concluded agreement pursuant thereto. (c) In reply, the respondents urged that Regulation 22(7) of the Regulations can have no application to the present case inasmuch as the disqualification from appointment on the BOD(s) of the target company will operate only when the acquirer or persons acting in concert are individuals and not a corporate entity. ★ In the present case, while Burren was the acquirer, UBL was the person acting in concert. This is evident from the letter of offer (public announcement) dated 15th February, 2005. The embargo under Section 22(7) is both on the acquirer and a person acting in concert. The expression 'person acting in concert' includes a corporate entity [Regulation 2(1) (e) (2) (i) of the Regulations] and also its directors and associates [Regulation 2(1) (e) (2)(iii) of the Regulations]. If this is what is contemplated under the Regulations we do not see how the first argument advanced by Shri Divan on behalf of the respondents can have our acceptance. ★ Insofar as the second argument advanced by Shri Divan is concerned it is correct that in the definition of 'offer period' contained in Regulation 2(1)(f) of the Regulations, a concluded agreement is not contemplated to be the starting point of the offer period. ★ But such a consequence must naturally follow once the offer period commences from the date of entering into a MOU which, in most cases would reflect an agreement in principle falling short of a binding contract. If the offer period can be triggered of by an understanding that is yet to fructify into an agreement, we do not see how the same can be said not to have commenced/started from the date of a concluded agreement i.e. share purchase agreement as in the present case.
Decision	★ SC decide the case in favour of the appellant and reverse the order of the SAT. ★ SC held that based on the aforesaid observation the offer period shall be commenced from the date of a share purchase agreement.

161. NATIONAL SECURITIES DEPOSITORY LTD v. SECURITIES AND EXCHANGE BOARD OF INDIA

Hint: Question arises in this case, whether an administrative circular that is issued by SEBI under Section 11(1) of the SEBI Act, 1992, can be the subject matter of appeal under Section 15T of the said Act.

Decision:

- ★ The SC decide the case in favour of the Respondent and reversed the order of SAT.
- ★ The SC held that Administrative circular is outside the preview of the appellate jurisdiction.

Fact of the Case	★ The present appeal raises an interesting question as to whether an administrative circular that is issued by SEBI under Section 11(1) of the SEBI Act, 1992, can be the subject matter of appeal under Section 15T of the said Act. ★ By an administrative circular dated 9th November, 2005, SEBI under the caption "review of dematerialization charges" issued an administrative circular under Section 11(1) of the SEBI Act to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. ★ Depositories were advised by the said circular to amend all relevant bye-laws, rules and regulations in order to see that with effect from 9th January, 2006, no charges shall be levied by a depository on DPs and consequently by a DP on a beneficiary owner when a beneficiary owner transfers all securities lying in his account to another branch of the
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	same DP or to another DP of the same depository or another depository, provided the BO account at transferee DP and that transferor DP are identical in all respects. ★ A preliminary objection was raised in the appeal filed by the respondent before the SAT. It was urged that under the SEBI Act, SEBI has administrative, legislative and quasi-judicial functions. Appeals preferred to the SAT can only be from quasi-judicial orders and not administrative and legislative orders. ★ This preliminary objection was turned down by the impugned judgment by the SAT. According to the Tribunal, the expression "order" is extremely wide, and there being nothing in the Act to restrict an appeal only against quasi-judicial orders, appeals would lie against all three types of orders under the Act i.e. administrative orders, legislative orders as well as quasi-judicial orders. This was held purportedly following the decision in Clariant International Ltd. & Anr. v. Securities & Exchange Board of India [(2004) 8 SCC 524]. ★ Therefore, the Tribunal rejected the preliminary objection and went into the merits of the arguments against the impugned circular, and dismissed the same. ★ Appellant file appeal to the SC against the rejection of the preliminary objection raised before the SAT.
Legal Principles held –	★ The Supreme Court Observed that: (a) SEBI is an expert body created by the Act which has administrative, legislative and quasi-judicial functions. (b) It may be stated that both Rules made under Section 29 as well as Regulations made under Section 30 have to be placed before Parliament under Section 31 of the Act. (c) It is clear on a conspectus of the authorities that it is orders referable to Sections 11(4), 11(b), 11(d), 12(3) and 15-I of the Act, being quasi-judicial orders, and quasi-judicial orders made under the Rules and Regulations that are the subject matter of appeal under Section 15T. (d) Administrative orders such as circulars issued under the present case referable to Section 11(1) of the Act are obviously outside the appellate jurisdiction of the Tribunal for the reasons given by us above.
Decision	★ The SC decide the case in favour of the Respondent and reversed the order of SAT. ★ The SC held that Administrative circular is outside the preview of the appellate jurisdiction.

162. LAUREL ENERGETICS PVT LTD. v. SEBI [SC]

Hint: In the present case, shares of target company is interse transfer between promoters in July 2014 at Rs.6.20 per share. Acquirer promoters of the target company are the promoters of parent company also. Public announcement for open offer made in 2015 at Rs.3.20 per share instead of Rs. 6.20 per share. Accordingly, the SEBI rejected the offer price and directed to increase it to Rs.6.20. Moreover, whether corporate veil could be lifted to avail exemption under section 10 of the Regulations.

Decision:

- ★ The SC decide in favour of the Respondent (i.e. SEBI) and held that the offer price should be Rs, 6.30 per share. It is not permissible for the court to lift corporate veil for granting exemption under section 10. Where the corporate veil is to be lifted, **the regulation itself specifically so states**.

Fact of the Case	★ Indiabulls Real Estate Ltd ("IBREL"), a listed company, had two lines of business viz real estate and power generation. ★ The target Company "Rattan India Infrastructure Ltd ["Rattan Company] is the WoS of IBREL. ★ The Appellant ("Laurel") is the WoS of Nettle Construction Pvt. Ltd, which was wholly owned by one Rajiv Rattan. Appellant company and Rajiv Rattan have been listed as promoters of IBREL in the year 2009-10. ★ In 2011, IBREL demerged its power business to Rattan Company i.e. target company. The target company was listed in BSE and NSE in July 2012. ★ The appellant acquired 18% of the equity share holding of the target company at a price of Rs.6.30 per share sometimes in July, 2014. It made certain other purchases with which we are not concerned, because the price paid for those acquisitions was less than Rs.6.30 per share.
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	☆ On 20th October, 2015 Laurel and Arbutus Consultancy LLP along with various other entities, who were persons acting in concert (PAC), made a public announcement under Regulation 15(1) of the SEBI (SAST) Regulations, 2011 when an open offer was made for acquisition of 35,93,90,094 equity shares of the Target Company from the equity shareholders of the Target Company at the price of Rs.3.20 per share. ☆ SEBI observed, by an order, that the exemption provisions contained in Regulation 10 would not apply to the 2014 acquisition, as a result of which the price of Rs.3.20 per share was not accepted and the higher price of Rs.6.30 was stated to be an amount that would have to be paid to the equity shareholders of the Target Company. ☆ From the aforesaid order, the SAT dismissed an appeal on 5th April, 2017, holding that Regulation 10 did not exempt the acquisitions of 2014, as a result of which the price payable per share necessarily became Rs.6.30 instead of Rs.3.20 per share. ☆ Appellant filed an appeal before the Supreme Court against the order of the SAT.
Issue in question	Whether the appellant could be considered as the promoter of the target company also being the promoter of the parent company so as to consider it as a promoter for more than 3 years in the target company also by lifting the corporate veil of the parent company and the target company?
Legal Principles held –	☆ When we come to Regulation 10 itself, and we see some of the other clauses contained in the regulation, with which we are not directly concerned, the corporate veil is lifted in certain specified circumstances. ☆ A reading of sub regulation (iii) would show that holding companies and their subsidiaries are treated as one group subject to control over such companies being exclusively held by the same persons. This shows that it has been statutorily recognized in sub regulation (iii) that in a given situation viz. holding subsidiary relationship, the corporate veil would be lifted. ☆ When we come to sub regulations (iv) and (v), it is clear that these two sub regulations follow the pattern contained in sub regulation (ii) in as much as when it comes to PAC, the period should be not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement. ☆ Also, when it comes to shareholders of a target company who have been PAC for a period of not less than 3 years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, the corporate veil is not lifted. ☆ The difference between sub regulations(ii), (iv) and (v) on the one hand, and sub regulation (iii) on the other, again shows us that it is impermissible for the court to lift the corporate veil, either partially or otherwise, in a manner that would distort the plain language of the regulation. ☆ Where the corporate veil is to be lifted, the regulation itself specifically so states. ☆ In the factual scenario before us, it is not possible to construe the regulation in the light of its object, when the words used are clear. ☆ This statement of the law is of course with the well-known caveat (i.e. alert) that the object of a provision can certainly be used as an extrinsic aid to the interpretation of statutes and subordinate legislation where there is ambiguity in the words used. ☆ As has already been stated by us, we find the literal language of the regulation clear and beyond any doubt. ☆ The language of sub regulation (ii) becomes even clearer when it is contrasted with the language of sub regulation (iii), as has been held by us above. ☆ Having gone through the appellate tribunal's judgment, we find that, for the reasons stated by us, we cannot fault its conclusion and accordingly the appeals stand dismissed.
Decision	☆ The SC decide in favour of the Respondent (i.e. SEBI) and held that the offer price should be Rs, 6.30 per share. ☆ It is not permissible for the court to lift corporate veil for granting exemption under section 10. Where the corporate veil is to be lifted, the regulation itself specifically so states.

Hint: SEBI passed two order viz. Penalty Order and order of disgorgement of unlawful gains. In the order of disgorgement, it was stated that returned unlawful gain within 45 days from the date of the order, otherwise they will be debarred for a period of 7 years. However, the delinquent person has not complied with both the orders. Consequently, WTM of the SEBI demand interest on both the order. The question arise before the SC, "whether interest can be recovered on orders of penalty issued under the Act and/or orders of disgorgement of unlawful gains, when the said amounts have remained unpaid".

Decision: SEBI decide the case in favour of Respondent held that Interest will be payable on Penalty Order Only. Further, no penalty will be levy on disgorgement order of unlawful gains.

Fact of the Case	★ The present appeals raise an interesting question under Section 28A of the SEBI Act, 1992 (SEBI Act), namely, as to whether interest can be recovered on orders of penalty issued under the Act and/or orders of disgorgement of unlawful gains, when the said amounts have remained unpaid. ★ In the penalty cases, it is SEBI who is before us as appellant, whereas in the disgorgement case, it is private individuals who are before us. ★ C.A. 5677 of 2017 is the disgorgement case. In this case while awarding interest for the years 2005 to 2009, WTM had not expressly awarded any future interest and that this was done deliberately inasmuch as if the amount of Rs. 6 crores was not paid within 45 days from the date of the order, the consequence was specified as being debarment for a further period of 7 years which was so severe that further future interest was deliberately not found necessary to be awarded. SAT upheld that interest is payable. Aggrieved broker appealed against this order. ★ Insofar as the penalty orders are concerned, the delinquent (i.e. guilty) persons paid the penalty but did not pay the interest charged under section 28A. ★ SAT held that the imposition of interest has to operate prospectively and set aside that portion of the order levying interest. It is against this part of the order that SEBI has appealed.
Legal Principles held –	★ SC examine the Interest Act, 1978 which would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings. ★ Therefore, it is clear that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. ★ The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Therefore, Deprivation of the use of such money would sound in equity. ★ This being the case, it is clear that, despite the fact that Section 28A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28A read with Section 220(2) of the Income Tax Act only prospectively. ★ However, since it has not the same 2014 Amendment which introduced Section 28A, with effect from 18.7.2013, also introduced Section 15JB retrospectively, with effect from 20.4.2007. This is a positive indication that Section 28A was intended only to have prospective application. It must be taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that NO interest could be charged from the date on which penalty became due. ★ The Civil Appeals 10410- 10412 of 2017 are allowed insofar as the penalty cases are concerned. However, going to the facts in Civil Appeal No. 5677 of 2017, we observe that the same whole time member of SEBI has passed similar orders in other cases where all the aforesaid orders show that the said whole-time member was fully cognizant of his power to grant future interest which he did in all the aforesaid cases. ★ In fact, in the last mentioned case, whose facts are very similar to the facts of the present case, the order was passed "without prejudice to SEBI's right to enforce disgorgement along with

	further interest till actual payment is made." The words "along with further interest till actual payment is made" are conspicuous by their absence in the order dated 21.7.2009.
Decision	★ The SC decide the case in favour of the Respondent (i.e. SEBI). ★ The SC set aside the order of the Tribunal in respect of no interest could be charged from the date on which penalty become due. The SAT was incorrect in stating that the order dated 21.7.2009 contained an obligation to pay interest at the rate of 12% per annum on the unlawful gain of Rs.4.05 crores till payment. ★ The SC held that Interest shall be paid on the penalty order even if provision of levy interest is not expressly given in the penalty order, on default of penalty within the stipulated time. ★ However, no interest will be payable on non-compliance of disgorgement order of unlawful gains. Because, if there is default in payment of Rs. 6 crores within the stipulated time, no future interest is payable inasmuch as a much severer penalty of being debarred from the market for 7 years was instead imposed.

164. RATNABALI CAPITAL MARKETS LTD v. SEBI & ORS [SC]

Hint: In the given case, two companies are merged who are dealing in shares and stock and seeks to get benefit of exemption of fee continuity in terms of para 7 of SEBI Circular. As per SEBI Circular, in the case of merger carried out as a result of compulsion of law, fees would not have to be paid afresh by a transferee entity provided that majority shareholders of transferor entity continues to hold majority shareholding in the transferee entity.

Decision: The SC decide the case in favour of the Respondent and held that SEBI was entitled to charge the stipulated fees based on the grounds as stated in the legal principles rules.

Fact of the Case	★ The short question that arises for our consideration in these civil appeals filed is whether the appellants were entitled to the benefit of fee continuity under para 7 of Circular dated 30.9.2002 issued by SEBI. ★ In 1995, Ratnabali Securities Ltd. ("RSL") was registered as a broker with National Stock Exchange ("NSE") and had paid initial registration fees for the first year and thereafter it had paid fees on turnover basis for subsequent four years. No further fees on turnover basis was paid by RSL under the said Regulations for continuation of registration except a fee of Rs. 5,000 for a block of next 5 years. ★ RSL operated in cash and spot market. ★ SEBI adopted recommendations of Gupta Committee stating that no company whose net worth was less than Rs. 3 Crores would be allowed to trade as a broker in the derivative segment of the Stock Exchange. ★ To meet this net worth criteria, RSL and RCML merged under the Scheme of Amalgamation sanctioned by the order of the Calcutta High Court. Under that order, all rights, licences, assets, properties and registrations of RSL stood transferred by operation of law to RCML. ★ On 30.9.2002 SEBI issued a circular stating that in the case of merger carried out as a result of compulsion of law, fees would not have to be paid afresh by a transferee entity provided that majority shareholders of transferor entity (RSL) continues to hold majority shareholding in the transferee entity (RCML). ★ After the merger of RSL with RCML, a demand was made by SEBI for registration fees on turnover basis. According to RCML, when the above two companies stood merged on 9.2.2000, which merger was approved by Calcutta High Court, all assets and liabilities, including benefits in the form of licences obtained by RSL, stood transferred by operation of law in the hands of RCML. ★ According to RCML, the concept of merger constitutes transfer by operation of law. ★ According to RCML, the concept of merger operates on account of legal compulsion or compulsion in law. ★ According to RCML, in the case of merger, which takes place after complying with the procedure prescribed by Sections 391 to 394 of the Companies Act, duly approved by the High Court, the assets and liabilities of the transferor company comes into the hands of RCML on account of legal compulsion.
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	☆ There is nothing voluntary in such cases of merger. According to RCML, the registration fees once paid by RSL should be given the benefit of continuity vide para 7 of Circular dated 30.9.2002 issued by SEBI. ☆ In other words, RCML now claims that it is entitled to the benefit of registration fees which RSL had paid from time to time as a broker in the cash and spot market. This claim of RCML has been rejected by the impugned decision. Hence, this civil appeal.
Legal Principles held –	☆ We repeat that there is a dichotomy (i.e. division) between functions of the SE and the functions performed by SEBI. ☆ The licences given by the stock exchange enables the stock- broker to buy and sell securities on the exchange whereas the regulation of the trade per se is done by SEBI for which it is entitled to charge requisite registration fees. ☆ In the present case, we have no doubt in our mind that, on merger of the above two companies, a new entity stood emerged/constituted, which was given a right to operate in the derivative segment and, therefore, it had to pay fresh registration fees on the turnover basis. That new entity (RCML) was not entitled to the benefit of continuity of fees deposited earlier by RSL, which got merged into RCML. ☆ According to RCML, the two companies were required to merge because of acceptance of recommendations of Gupta Committee by SEBI. ☆ According to the report of the said Committee, if a broker desires to enter derivative market then he is required to have a net worth of at least Rs. 3 Crores. According to RCML, the said requirement constituted a pre-condition for entering the derivative market. According to RCML, this pre-condition of possessing net worth of Rs. 3 Crores constituted compulsion of law, which made RSL merged into RCML and, in the circumstances, the appellants were entitled to the benefit of Circular dated 30.9.2002 issued by SEBI. Under the said circular, mergers/amalgamations carried out as a result of compulsion of law stood excluded from payment of fees afresh. We do not find any merit in the above arguments. ☆ Two points arises for determination in the present case. They are interconnected. 1. Whether RCML, on amalgamation, duly sanctioned by Calcutta HC, was entitled to claim the benefit of Fee Continuity and, 2. Whether the demand made by SEBI imposing fresh turnover/registration fees on the merged entity (RCML) constituted an act in derogation of the provisions of any other law for the time being in force in terms of section 32 of the SEBI Act, 1992. ☆ We make it clear that it would depend on the facts of each case whether a scheme under section 391 could be construed as an alternative to liquidation. It is NOT in every matter that the scheme under section 391 would constitute an alternative to liquidation. Therefore, it would depend on the facts of each case. ☆ Under circular dated 30.9.2002 what SEBI intends to say is that fresh turnover/registration fees would not be payable by a company which goes for amalgamation/merger as an alternative to liquidation. In other words, if the company's net worth is negative and if that company is on the brink of liquidation, which compels it to go for a scheme under section 391, then in such cases SEBI exempts such companies from payment of fresh turnover/ registration fees. Such is not the case herein. ☆ On the contrary, in the present case, amalgamation has taken place in order to increase the "reserves" component of the net worth. The difference between the amount

	recorded as fresh share capital issued by the transferee company on amalgamation and the amount of share capital of the transferor company to be reflected in the Revenue Reserve(s) of the transferee company was the sole object behind amalgamation. ★ Therefore, SEBI was right, in the present case, in refusing to give the benefit of exemption to the transferee companies. These transferee companies were not on the brink of liquidation. The scheme under section 391 was not an alternative to liquidation. Hence, the transferee companies were not entitled to claim the benefit of Circular dated 30.9.2002. ★ Further, we do not find any merit in the argument that the demand raised by SEBI for fresh turnover/registration fees constituted an act derogatory of the provisions of the Companies Act. ★ In our view, on the emergence of a new entity, which was entitled to operate in derivative market, SEBI was certainly entitled to regulate its trade in the derivative segment for which it was entitled to charge requisite fees. ★ Under the 1992 Act, a duty is cast on SEBI: (a) To protect the interest of investors in securities and (b) To regulate the trade in securities on the Stock Exchange. Such Regulation is not a part of the Companies Act. ★ Derivative market is highly speculative. It carries lot of risks. In fact, history shows that many investors and traders lost money earlier when badla transactions were prevalent. Derivative market, to a certain extent, replaces badla. ★ The point to be noted is that Gupta Committee recommended the net worth of Rs. 3 Crores in order to secure the interests of investors and traders who regularly play in derivatives. ★ In the circumstances, it cannot be said that raising of an amount of Rs. 3 Crores as net worth constituted legal compulsion for RSL to merge into RCML. ★ As stated above, the Government decided to vest SEBI with statutory powers in order to deal effectively with all matters relating to capital market. ★ The main function of SEBI is to regulate the trade which takes place in the securities market and for that purpose it is entitled to charge registration fees.
Decision	★ The SC held that, in the present case, ☞ We are concerned with merger of two distinct independent companies. ☞ We are not concerned with merger of firms. ☞ We are not concerned with joint ventures. ☞ After the merger of RSL into RCML a new entity has emerged. In the circumstances, SEBI was entitled to charge the stipulated fees. ★ The SC decide the case in favour of the Respondent.

165. PENTA GOLD LIMITED v. NATIONAL STOCK EXCHANGE [SAT]

Hint: Whether underwriter discharge its obligation in terms of Regulation 106P of the SEBI(LODR) Regulation, 2009 by procuring application from third party.

Decision:

- ★ The SC decide the case in favour of the Appellant (Penta).
- ★ The SC held that underwriter could procure applications from third parties.

Fact of the Case	☆ Underwriter entered into an underwriting Agreement, wherein it was clearly mentioned that the underwriters agree to underwrite and/or procure subscription for the issue of shares in case the issue is undersubscribed. Admittedly, the said underwriting agreement was vetted (i.e. carefully examined) by NSE before the public issue was opened. ☆ However, in case of the public issue is undersubscribed, then it is the obligation on the underwriters to subscribe the undersubscribed portion of public issue. ☆ The basic question raised in this appeal, where a public issue is undersubscribed, whether, the underwriters to the public issue are entitled to discharge their obligation contained in regulation 106P of the SEBI (ICDR) Regulations, 2009 by procuring applications from third parties. ☆
Applicable Law	☆ There are two ways to subscribe the unsubscribed portion of the public issue: (a) On one hand, regulation 106P(2) of ICDR Regulations require the merchant banker to underwrite at least 15% of the issue size on his own account and further regulation 106P(4) provides that if the other underwriters or the nominated investors fail to fulfil their obligation then the merchant banker shall fulfil their underwriting obligations. (b) On the other hand, the model underwriting agreement prescribed by SEBI in the year 1993 which continues to be in force till date permits the underwriters to procure applications from the investors to subscribe to the unsubscribed shares if the issue is undersubscribed. ☆ The model underwriting agreement prescribed by SEBI further provides that in the event of failure by the underwriters to subscribe to the shares, the issuer company shall be free to make arrangement with one or more persons to subscribe to such shares without prejudice to the rights of the issuer company to take such measures and proceedings as may be available to it against the underwriters including the right to claim damage for any loss suffered by the company by reason of failure on part of the underwriters to subscribe to the shares.
Legal Principles held –	☆ In these circumstances, in the interest of investors and securities market, we dispose of the appeal by passing the following order:- (a) The impugned communication of NSE dated April 6, 2018 is quashed and set aside; (b) Appellant is at liberty to ascertain from the underwriters within 3 days from today as to whether they are ready and willing to discharge their obligation set out in regulation 106P of the ICDR Regulations and intimate the same to the NSE immediately thereafter. (c) If the underwriters express their inability to discharge their obligation under the ICDR Regulations, then the appellant company be permitted to take into consideration the shares subscribed by the 8 investors and proceed to complete the public issue process. (d) If the underwriters agree to discharge their obligation set out in the ICDR Regulations, then, in the peculiar facts of present case, no action need be taken against the underwriters. ☆ Before concluding, we deem it proper to bring to the notice of SEBI that there is no clarity between the ICDR Regulations and the model underwriting agreement prescribed by SEBI in the year 1993 (which is still in operation) in relation to the obligations to be discharged by the underwriters.
Decision	☆ The SC decide the case in favour of the Appellant (Penta). ☆ The SC held that underwriter could procure applications from third parties.

166. BOI SHAREHOLDING LIMITED v. SEBI [SAT]

Hint: Penalty order passed by the SEBI under Section 15HB in regard to delay in implementation of anti-money laundering policy, even if no time schedule is given under the circular for implementation the same.

Decision: The SAT decide the case in favour of the Appellant and passed reduced penalty order.

Fact of the Case	☆ This appeal is filed challenging the order of the Adjudicating Officer ('AO' for short) of SEBI whereby a penalty of Rs. 40 Lakhs has been imposed on the appellant under Section 15HB
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	of SEBI Act read with Section 19G of the Depositories Act, 1996 for delayed implementation of the SEBI Circulars/Guidelines relating to anti-money laundering (AML) policy.
Legal Principles held –	☆ In the Master Circular on AML/CFT dated December 31, 2010 issued by SEBI, we note that all the registered intermediaries were directed to comply with the requirements contained therein on an immediate basis. ☆ Similarly, subsequent amendments made on January 24, 2013 also required adoption on immediate basis though the Circular dated March 12, 2014 does NOT specify the implementation time schedule. However, following the spirit of the basic policy it has to be presumed that implementation has to be done at the earliest. ☆ From the evidence produced before us, it is clear that the appellant has implemented all the requirements of the AML/CFT policy as specified in the SEBI Circulars though belatedly. ☆ We have also noted that for delayed implementation/violation, SEBI has imposed varying penalty including NO penalty in some cases. ☆ However, under the relevant Sections i.e. 15HB of SEBI Act read with Section 19G of the Depositories Act, 1996, the penalty imposable for each violation shall not be less than Rs. 1 Lakh which may extend to Rs. 1 Crore. ☆ Accordingly, the minimum penalty imposable in case of 6 violations committed by the appellant should be in tune with the statutory provisions relating to the penalty.
Decision	☆ The SAT decide the case in favour of the Appellant and passed reduced penalty order. ☆ Based on the given fact, it was clarified that the appellant has implemented all the required policies and procedures on AML/CFT policy as stipulated under the various circulars of SEBI but though belatedly and by the penalty precedent set by SEBI itself we are of the view that the penalty of Rs.40 Lakh imposed on the appellant is excessive. ☆ Therefore, we reduce the amount of penalty imposed on the appellant to Rs. 6 Lakhs.