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A GATEWAY TO KNOWLEDGE

Monthly Newsletter
March, 2024

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MAA FOUNDATION ACTIVITIES



Women Empowerment: Maa Foundation is dedicated to advancing women's empowerment. Additionally, as part of the goal, Maa Foundation is offering women vocational training through our initiative "Sui Dhaga".

MESSAGE FROM THE CHIEF EDITOR

“When I let go of what I am, I become what I might be.” – Lao Tzu

It gives us immense satisfaction to share the 83rd Edition of “WINS – E-Newsletter” for March 2024, covering legal updates released during the month of March 2024, articles shared by respected professionals, Case Laws and compliance calendar for the month of April 2024.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, RBI, CBEC, CBDT and other miscellaneous Laws
2. Articles
 - a) Mergers and Acquisitions
 - b) The Role Of Copyright Law In Protecting Creative Works Of Art
 - c) Payment to Operational Creditors in the Resolution Plan under IBC, 2016
3. Case Laws
4. Compliance checklist for the month of April 2024.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at vinayshukla@whitespan.in or [+91 9810 624 262](tel:+919810624262)

With warm regards,

TEAM WINS (Whitespan Information and News Services)
March 31, 2024

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, a semi qualified company secretary and a graduate in Commerce from Kanpur University.
- 7. Ms. Sanjana Bindal**, a semi qualified company secretary and a graduate from H.P. National Law University.

Ministry of Corporate Affairs (MCA)

1. Invitation for comments from various stakeholders on draft rules for refund process from IEPF Authority

Date of Notice: 08th March,2024

Effective Date: 08th March,2024

Link: <https://www.mca.gov.in/bin/dms/getdocument?mds=i7TSThgz%252FIqmEYX2QHJsYQ%253D%253D&type=open>

MCA vide notice dated 08th March 2024 announced that the Investor Education and Protection Fund Authority has invited comments on the draft procedure on refund process at IEPF Authority to simplify and expedite the process of claim refund from IEPF Authority under Companies Act 2013.

The comments are to be suggested via email iepfa.consultation@mca.gov.in. in format prescribed in notice (soft copy as well as in signed pdf) till 15th April 2024.

Securities Exchange Board of India (SEBI)

1. Securities and Exchange Board of India (Grant of Reward to Informant under Recovery Proceedings) Guidelines, 2023

Date of Guideline: 08th March 2024

Effective Date: 08th March 2024

Link:

https://www.sebi.gov.in/legal/guidelines/mar-2023/securities-and-exchange-board-of-india-grant-of-reward-to-informant-under-recovery-proceedings-guidelines-2023_68778.html

SEBI vide its guidelines dated 08th March 2024 released the Securities and Exchange Board of India (Grant of Reward to Informant under Recovery Proceedings) Guidelines, 2023. The guidelines regulate grants and payment of rewards to informants who provide original Information on defaulters' assets with dues certified as 'Difficult to Recover'.

As per the guidelines, a person shall be considered an informant eligible for reward if he furnishes Original Information in relation to the asset of a defaulter concerning the dues which are certified as 'Difficult to Recover'. The reward may be granted in two stages, namely, Interim and Final. Additionally, for the purpose of recommending the eligibility of reward, an Informant Reward Committee shall be constituted, as notified by SEBI.

2. Securities and Exchange Board Of India (Index Providers) Regulations, 2024

Date of Notification: 11th March 2024

Effective Date: 11th March 2024

Link:

https://www.sebi.gov.in/legal/regulations/mar-2024/securities-and-exchange-board-of-india-index-providers-regulations-2024_82144.html

SEBI vide its notification dated 11th March 2024 notified the Securities And Exchange Board Of India (Index Providers) Regulations, 2024. The regulation provides for a regulatory framework for Index Providers in the securities market to foster transparency and accountability in governance and administration of Indices.

These regulations shall apply specifically to Index Providers administering Significant Indices in the Indian securities market. The registration process involves thorough eligibility criteria, including net worth requirements and necessary infrastructure. SEBI emphasizes the fit and proper criteria for individuals associated with Index Providers.

The regulations necessitate index providers to register with SEBI. Additionally, they must publicly disclose their methodology documents and comply with a code of conduct. Global index providers be exempted from registration requirements unless their indices are significantly utilized by domestic asset managers.

3. Simplification and Streamlining of Offer Documents of Mutual Fund Schemes -

Extension of Timelines

Date of Circular: 12th March 2024

Effective Date: 12th March 2024

Link:

https://www.sebi.gov.in/legal/circulars/mar-2024/simplification-and-streamlining-of-offer-documents-of-mutual-fund-schemes-extension-of-timelines_82169.html

SEBI vide circular dated 12th March 2024 revised the date of applicability of simplified form of Scheme Information Document (SID) to 01st June 2024 from 1st April 2024. Draft SIDs to be filed with SEBI on or before 31st May 2024 or SIDs already filed with SEBI or SIDs for which the final observations have already been received from SEBI, can use the old format of SID, provided that the SIDs are updated by 30th June 2024 with data as on 31st May 2024.

Further updation of SID and KIM for half year ended 31st March 2024, may be carried out by AMCs by 30th June 2024. This extension is applicable specifically for half year ended 31st March 2024.

4. Repeal of circular(s) outlining procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer / allotment of securities to more than 49 but up to 200 investors in a financial year

Date of Circular: 13th March 2024

Effective Date: 13th March 2024

Link:

<https://www.sebi.gov.in/legal/circulars/mar-2024/repeal-of-circular-s-outlining-procedure-to-deal-with-cases-where-securities-are-issued-prior-to-april-01-2014-involving-offer-allotment-of-securities-to-more-than-49-but-up-to-200-investors-in-a-82230.html>

SEBI vide circular dated 13th March 2024 repealed circular No. CIR/CFD/DIL3/18/2015 dated 31st December 2015 and Circular No. CFD/DIL3/CIR/ P/2016/53 dated 03rd May 2016 which stated that companies issuing securities to 49 to 200 persons in a financial year may avoid penal action if they provide the investors with an option to surrender the securities and receive the refund along with 15% interest p.a.

The circulars stand rescinded with effect from 6 months from the date of issue of this circular and option shall be available under the circular only to those companies who have completed the entire procedure and submitted the certificate within 6 months from the date of issue of this circular.

5. Entities allowed to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as sub-KUA

Date of Notification: 19th March 2024

Effective Date: 19th March 2024

Link:

https://www.sebi.gov.in/legal/circulars/mar-2024/entities-allowed-to-use-e-kyc-aadhaar-authentication-services-of-uidai-in-securities-market-as-sub-kua_82364.html

SEBI vide circular dated 19th March 2024 notified list of entities in Annexure A which are permitted to use Aadhaar authentication services of UIDAI under section 11A of the Prevention of Money-laundering Act, 2002. The KUAs to facilitate the on-boarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

Link of Annexure A - [Notification dated 14.03.2024 p.pdf \(sebi.gov.in\)](#)

6. Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode

Date of Notification: 20th March 2024

Effective Date: 1st April 2024

Link:

https://www.sebi.gov.in/legal/circulars/mar-2024/safeguards-to-address-the-concerns-of-the-investors-on-transfer-of-securities-in-dematerialized-mode_82417.html

SEBI vide circular dated 20th March 2024 amended Para1.12 of SEBI Master circular for Depositories dated 06th October 2023 prescribing guidelines for transfer of securities from Beneficial Owner(BO) Accounts without proper authorization. Safeguards provided includes:

1. DPs not accepting presigned DIS with blank columns from the BO(s);
2. DIS booklet lost/stolen/not traceable by BO, intimated to the DP immediately by the BO in writing;
3. DP shall ensure that a new DIS booklet is issued only on the strength of the DIS instruction request slip
4. DPs shall not issue more than 10 loose DIS to one account holder in a financial year (April to March)
5. DPs shall put in place appropriate checks and balances with regard to the verification of signatures of the BOs while processing the DIS
6. The DPs shall cross check with the Bos under exceptional circumstances before acting upon the DIS.

The DPs shall mandatorily verify with a BO before acting upon the DIS, in case of an inactive/dormant account, whenever any security in such account is transferred at a time.

7. Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria

Date of Notification: 20th March 2024

Effective Date: 20th March 2024

Link:

https://sebi.gov.in/legal/circulars/mar-2024/amendment-to-circular-for-mandating-additional-disclosures-by-fpis-that-fulfil-certain-objective-criteria_82418.html

SEBI vide circular dated 20th March 2024 in reference to Circular No. SEBI/ HO/ AFD/ AFD-PoD-2/CIR/P/2023/148 dated August 24, 2023 that mandated additional disclosures for FPIs that fulfil objective criteria amended as follows:

1. FPI having more than 50% of its Indian equity AUM in a corporate group shall not be required to make the additional disclosures subject to conditions:
 - i. The apex company of such corporate group has no identified promoter.
 - ii. The FPI holds not more than 50% of its Indian equity AUM in the corporate group, after disregarding its holding in the apex company.
2. Further, Custodians and Depositories shall track the utilization of this 3% limit for apex companies, without an identified promoter, at the end of each day. When the 3% limit is met or breached, Depositories shall make this information public before start of trading on the next day.
3. Any prospective investment in the apex company by FPIs, that meet the 50% concentration criteria in the corporate group, the FPIs shall be required to either realign their investments below the 50% threshold within 10 trading days or make additional disclosures.

8. Introduction of Beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets

Date of Notification: 21st March 2024

Effective Date: 28th March 2024

Link:

https://www.sebi.gov.in/legal/circulars/mar-2024/introduction-of-beta-version-of-t-0-rolling-settlement-cycle-on-optional-basis-in-addition-to-the-existing-t-1-settlement-cycle-in-equity-cash-markets_82455.html

SEBI vide circular dated 21st March 2024 introduced the Beta version of T+0 settlement cycle on optional basis with its operational guidelines in addition to the existing T+1 settlement cycle in equity cash market, for a limited set of 25 scrips and with a limited number of brokers. For its smooth implementation, the MIIs will publish additional operational guidelines along with the list of 25 scrips for the Beta version of T+0 settlement cycle and disseminate the same on their respective websites.

Further, on periodic basis, MIIs shall disseminate the list of brokers that are participating in the Beta version of T+0 settlement cycle on their websites.



**RESERVE BANK
OF INDIA
(RBI)**

1. Cut-off time for uploading of GST, ICEGATE and TIN 2.0 luggage files

Date of Notification: 13th March 2024

Effective Date: 13th March 2024

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12624&Mode=0>

RBI vide notification dated 13th March 2024 notified that after the operationalization of NEFT 24X7 and RTGS 24X7, agency banks have to upload their luggage files in RBI's QPX/e-Kuber on all days except the Global holidays, which are January 26, August 15, October 2, all non-working Saturdays, all Sundays and any other day declared holiday by RBI for Government Transactions due to exigencies.

Further the luggage files are to be uploaded in RBI's QPX/e-Kuber on or before 1800 hours prescribed by O/o Principal Chief Controller of Accounts, Central Board of Indirect Taxes & Customs and O/o Principal Chief Controller of Accounts, Central Board of Direct Taxes. No extension in cut-off time will be allowed to agency banks by RBI beyond 1800 hours for uploading of these luggage files in QPX/e-Kuber.



Central Board of Direct Taxes (CBDT)

1. Ex-post facto extension of due date for filing Form No. 26QE which was required to be filed during the period 01.07.2022 to 28.02.2023

Date of Circular: 07th March 2024

Effective Date: 07th March 2024

Link:

<https://incometaxindia.gov.in/communications/circular/circular-4-2024.pdf>

CBDT vide circular dated 07th March 2024 ex-post facto, extended the due date of filing of Form No 26QE for specified persons who deducted tax under section 1945 but failed to file Form No. 26QE. The due date is extended to 30.05 2023 for cases where the tax was deducted by specified persons under section 194S of the Act during the period from 01.07 2022 to 28.02 2023.

Further the fee levied under section 234E and/or interest charged under section 201(1A) (ii) of the Act in such cases for the period up to 30th May, 2023 is waived off.

Miscellaneous Laws

1. Extension of RoDTEP support for exports made by Advance Authorisation (AA) holders, Export Oriented Units (EOU), Special Economic Zones (SEZ) units

Date of Circular: 08th March 2024

Effective Date: 08th March 2024

Link:

<https://www.dgft.gov.in/CP/>

DGFT vide circular dated 08th March 2024 amended the Foreign Trade Policy, 2023. Key highlights of the amendment are as follows:

1. Ineligible supplies/items/categories under the Scheme the serial numbers (viii), (x), (xi) and (xii) of FTP 2023 are deleted with effect from 11th March 2024(Para 4.55).
2. Rebate granted on eligible export provided in Appendix 4RE for exports of products manufactured by Advance Authorisation holders (except Deemed Exports), EOU and SEZ units (Para 4.54).
3. For exports of products manufactured by AA holders (except Deemed Exports), EOU and SEZ units, the eligible RoDTEP export items, rates and per unit value caps, wherever applicable, are contained in Appendix 4RE (Para 4.59A).
4. The implementation date/period for exports under Appendix 4RE is from 11.03.2024 till 30th September2024 only. The RoDTEP implementation for exports of products manufactured by SEZ units will happen after IT integration of SEZ units with Customs Automated System (ICEGATE) from 01st April 2024.
5. Revised RoDTEP rates for 25 HS codes are provided in Appendix 4R available at DGFT portal www.dgft.gov.in under the link > 'Regulations > RODTEP'

2. RODTEP implementation for exports of products manufactured by AA holders and EOU for 166 Tariff lines

Date of Circular: 11th March 2024

Effective Date: 11th March 2024

Link: <https://www.dgft.gov.in/CP/>

DGFT vide circular dated 11th March 2024 in reference to the Notification No.70/2023 dated 08th March 2024 notified that the RoDTEP implementation for exports of products manufactured by AA holders (except Deemed Exports) and EOU for 166 Tariff lines contained in Annexure to notification will come into effect from 01st April 2024.

3. Patent Amendments Rules 2024

Date of Circular: 16th March, 2024

Effective Date: Publication in the Official Gazette

Link: https://ipindia.gov.in/writereaddata/Portal/IPORule/1_83_1_Patent_Amendment_Rule_2024_Gazette_Copy.pdf

DPIIT vide circular dated 16th March 2024 notified Patents (Amendment) Rules, 2024 that come into force on the date of their publication in the Official Gazette. Key Highlights are as follows:

1. The time within which the applicant for a patent has to keep the Controller informed of the details in respect of other applications filed in any country in the undertaking to be given by him has now been reduced to 3 months from the date of issuance of first statement of objections.
2. The Controller can use accessible and available databases, for considering the information relating to applications filed in a country outside India and can direct the applicant to furnish a fresh statement and undertaking in Form 3 within 2 months from the date of such communication by the Controller. The Controller may condone the delay or extend the time for filing Form 3 for a period up to 3 months upon a request made in Form

3. Rule 13 introduced a new provision vide which a patent applicant can file one or more further applications under Section 16 including in respect of an invention disclosed in the provisional or complete specification or a further application filed under section 16 of the Patents Act 1970.
4. Rule 29-A relating to Grace Period has been inserted which says that an application specified in Section 31 (Anticipation by public display, etc.) will be filed in Form 31 with the fees to avail the grace period.
5. Rule 70-A relating to Certificate of inventorship has been inserted issued by the Controller to the inventor for a patent in force. The request to be made in Form 8-A along with the fees.
6. The delay or extension of any proceedings can be condoned by the Controller for a period of 6 months by making a request in Form 4 before the expiry of the said period of 6 months.
7. Forms that have been substituted: Form 3, Form 4, Form 8A, Form 27 and Form- 31.

Article 1

MERRGERS AND ACQUISITIONS

Changes in business trends and mergers and acquisitions (M&A) play an important role in shaping the strategies and decisions of companies, investors and other stakeholders involved in the business process.

SOME KEY CHANGES AND TRENDS CURRENTLY AFFECTING THE M&A LANDSCAPE:

- 1. Business Integration:** Many industries are experiencing increased integration as companies look to gain market share, increase competitiveness, and achieve economies of scale. This trend is especially common in industries such as healthcare, technology and consumer goods, where companies merge to expand product offerings and strengthen market share.
- 2. Cross-border business:** Cross-border merger and acquisition activity continues to increase as companies seek to grow beyond their home markets. In some regions, globalization, technological advancement, and better environmental management have made it easier to cross borders, allowing companies to enter new markets, diversify revenue, and benefit from synergies.
- 3. Strategic partners and mergers:** Companies are turning to partnerships, collaborations and mergers, as well as traditional mergers and acquisitions, to achieve their business goals. These partnerships provide flexibility, risk sharing, and access to additional resources and capabilities without the complexity of fully integrated partnerships.

- 4. Focus on technology and innovation:** The rapid development of technological innovation drives merger and acquisition activities in areas such as software, biotechnology and fintech. The company is considering acquiring or joining the technology industry and changing its business model to improve its digital capabilities, enable innovation and stay ahead of changing consumer preferences and trends.
- 5. Private equity firms:** Private equity firms play an important role in mergers and acquisitions and actively seek acquisitions and investments across the industry. Private investors focused on generating sufficient capital and value can target companies with growth potential, efficiency and profitability
- 6. Special Purpose Acquisition Company (SPAC):** SPACs, also known as private limited companies, are growing in popularity as an alternative to public listings. These shell companies are financed through an initial public offering (IPO) with the aim of acquiring an existing business within a certain period of time. SPACs offer companies a faster, easier way to go public by bypassing the traditional IPO process.
- 7. Impact of COVID-19 Pandemic:** The COVID-19 Pandemic has had a significant impact on merger and acquisition activities, resulting in disruptions, delays and restructurings, fear of commitment. While some sectors, such as healthcare, technology and e-commerce, have seen an increase in merger and acquisition activity due to changes in consumer and digital transformation, other sectors such as travel, hospitality and retail have experienced declines or re-evaluated. important idea.

8. Regulatory and regional issues: Regulatory and regional disputes continue to impact M&A decisions, especially cross-border transactions involving sensitive business or national security issues. Businesses must adapt to the changing environment, competition and geographic risks to ensure compliance and business success.

STRATEGIC RATIONALE

Reason 1: Business Expansion and Growth

M&A is an important strategy for companies looking to expand their business to achieve and invest in new growth. Business expansion through merger and acquisition activities allows companies to enter new regions or populations, facilitating access to untapped customers. For example, a company may acquire a local business in a foreign market to expand rapidly and gain a competitive advantage.

Additionally, Mergers and Acquisitions often provide strategies for businesses to enter into businesses that may be difficult. Reach comes only through organic growth. By merging or acquiring companies with complementary products or strong positions in certain markets, companies can quickly increase market share and differentiate themselves from their customers.

These strategies not only support revenue growth, but also create synergies, allowing the company to leverage skills, resources and distribution to strengthen its market position and increase profitability.

Reason 2: Achieving Economies of Scale

Combining operations through mergers or acquisitions to enable companies to achieve economies of scale is an important factor in improved operational efficiency and cost reduction. Economies of scale result from improved production, distribution and efficiency through resource pooling and optimization.

For example, the merger of two manufacturing companies will lead to optimization of production facilities, thus saving costs from bulk purchases, sharing technology or better use of resources. This increased efficiency allows organizations to combine to produce goods or services at lower costs, thus promoting competition and the ability to achieve competitive pricing.

Additionally, economies of scale allow companies to allocate resources more efficiently to research, innovation and expansion, thereby improving their capital structure to invest in future growth and development.

Reason 3: Product and Service Diversification

Diversification through mergers and acquisitions allows a company to expand its product or service portfolio, thereby reducing dependence on one business or product line. Companies can spread risk and generate more revenue by acquiring businesses in different industries or offering complementary products.

For example, companies in the healthcare sector can share their information by calling technology companies specialized in healthcare. This differentiation not only reduces risks associated with changes in the business, but also generates sales and increases the overall impact of the business.

In addition, diversification enables companies to adapt to changing consumer preferences and business models, providing flexibility and flexibility in the business environment. business dynamics.

Reason 4: Acquiring New Technologies and Skills Mergers and acquisitions increase a company's competitive advantage by helping acquire new technologies, intellectual property, or expertise. For example, a company that wants to stay ahead in the digital space will start with advanced data or artificial intelligence solutions.

Organizations can increase innovation, increase productivity and remain competitive by integrating new technologies and skills. reprint. This initiative not only drives innovation in the organization, but also strengthens its leading position in the industry by using technology to attract customers and open new growth opportunities.

Also gain unique skills and experience from merger and acquisition projects to support leadership. . The importance of continuous learning and innovation in the company that fosters long-term success.

Reason 5: Eliminate Competition and Improve Performance Business Development

One of the main reasons behind many mergers and acquisitions is to eliminate competitors or mergers. work. Through strategic mergers and acquisitions, companies can reduce competition, increase market share, and put more energy into their business. For example, the merger of two major players in a particular industry will lead to increased business; So much so that it is more important for the joint venture to decide the cost strategy, determine the business model and control the business. This type of integration often leads to better communication with suppliers and increased control of distribution, ultimately increasing the company's position in the business ecosystem.

Additionally, eliminating competition in M&A operations allows companies to create synergies, increase operational efficiency, and create major new growth opportunities that they could not achieve alone.

IMPORTANCE OF DUE DILIGENCE:

1. **Risk Mitigation:** Due diligence helps identify and assess potential risks associated with the target company, including financial, operational, legal, and regulatory risks. By uncovering these risks early in the process, the acquiring company can develop strategies to mitigate them and avoid costly surprises post- acquisition.
2. **Value Maximization:** Thorough due diligence enables the acquiring company to gain a comprehensive understanding of the target's financial performance, operational capabilities, and growth prospects. This insight allows for informed decision-making and negotiation of a fair purchase price that reflects the target's true value.

3. **Legal and Regulatory Compliance:** Conducting due diligence ensures that the target company is in compliance with relevant laws, regulations, and industry standards. It helps identify any legal or regulatory issues that could pose a risk to the transaction or result in potential liabilities post-acquisition.
4. **Synergy Identification:** By examining the target company's operations, systems, and processes, due diligence helps identify potential synergies and integration opportunities. This insight allows the acquiring company to develop a strategic integration plan aimed at maximizing operational efficiencies and value creation post-acquisition.

KEY AREAS OF EVALUATION:

1. **Financial Performance:** Assessing the target company's financial performance involves reviewing its historical financial statements, revenue streams, profitability margins, cash flow projections, and debt obligations. Key financial metrics, such as EBITDA (earnings before interest, taxes, depreciation, and amortization), working capital, and capital expenditures, provide valuable insights into the target's financial health and viability.
2. **Operational Capabilities:** Evaluating the target company's operational capabilities involves assessing its production processes, supply chain management, distribution networks, and technological infrastructure. Understanding the target's operational strengths and weaknesses helps identify areas for improvement and integration post-acquisition.
3. **Legal and Regulatory Compliance:** Reviewing the target company's legal and regulatory compliance involves examining contracts, licenses, permits, litigation history, and regulatory filings. This ensures that the target is in compliance with applicable laws and regulations governing its industry and operations.

4. **Potential Risks:** Identifying potential risks involves conducting a thorough analysis of the target company's business model, market position, competitive landscape, customer base, and industry trends. This helps uncover risks related to market volatility, technological disruption, customer churn, and other factors that could impact the success of the transaction.

BEST PRACTICES FOR CONDUCTING DUE DILIGENCE:

1. **Develop a Comprehensive Due Diligence Plan:** Create a detailed due diligence plan outlining the scope, objectives, timelines, and responsibilities for each aspect of the evaluation process.
2. **Engage Experienced Advisors:** Seek guidance from experienced advisors, including legal counsel, financial analysts, tax experts, and industry specialists, to ensure a thorough and objective assessment of the target company.
3. **Utilize Technology and Data Analytics:** Leverage technology and data analytics tools to streamline due diligence processes, analyze large volumes of data, and identify patterns or anomalies that may warrant further investigation.
4. **Maintain Confidentiality and Data Security:** Safeguard sensitive information and maintain confidentiality throughout the due diligence process to protect the interests of both the acquiring company and the target.
5. **Document Findings and Recommendations:** Document all findings, observations, and recommendations resulting from the due diligence process in a comprehensive report. This serves as a valuable reference for decision-making and integration planning post-acquisition.

POST-MERGER INTEGRATION (PMI):

Unlocking Value Through Seamless Transition Post-merger integration (PMI) is a critical phase in the M&A process, where the success of the transaction is determined by how effectively two companies merge their operations, cultures, and resources. Here's an examination of the key considerations for successful integration and insights from past M&A transactions:

1. Aligning Business Processes:

- **Assessment:** Conduct a comprehensive analysis of both companies' business processes, including sales, marketing, operations, finance, and HR.
- **Standardization:** Identify common processes and best practices to standardize across the newly merged entity, eliminating redundancies and streamlining operations.
- **Communication:** Ensure clear communication with employees about changes to processes and provide training and support to facilitate the transition

2. Integrating IT Systems:

- **Compatibility Assessment:** Evaluate the compatibility of IT systems, including ERP, CRM, and communication tools, to identify integration challenges and dependencies.
- **Migration Plan:** Develop a detailed migration plan outlining timelines, milestones, and resource requirements for integrating IT systems.

- Data Management: Establish protocols for data migration, cleansing, and security to ensure the integrity and confidentiality of sensitive information.

3. Retaining Key Talent:

- Talent Assessment: Identify key talent within both organizations and assess their potential impact on the merged entity's success.
- Retention Strategies: Implement retention strategies, such as performance incentives, career development opportunities, and transparent communication, to retain key employees during the transition period.
- Cultural Integration: Foster a culture of inclusion and collaboration that values the contributions of employees from both companies, minimizing the risk of talent attrition.

CASE STUDIES AND BEST PRACTICES:

1. Procter & Gamble-Gillette (2005): Procter & Gamble's acquisition of Gillette involved a meticulous integration strategy focused on aligning business processes, integrating IT systems, and retaining key talent. By leveraging Gillette's expertise in product innovation and distribution channels, Procter & Gamble successfully expanded its market reach and achieved significant cost synergies.
2. Disney-Pixar (2006): Disney's acquisition of Pixar Animation Studios exemplifies successful cultural integration, as both companies shared a passion for creativity and storytelling. By preserving Pixar's unique culture and creative autonomy, Disney retained key talent and capitalized on Pixar's track record of box office success, resulting in blockbuster hits like "Toy Story 3" and "Finding Nemo."

FUTURE OUTLOOK:

Navigating the Evolving Landscape of M&A Activity as we look ahead, the landscape of mergers and acquisitions (M&A) activity is poised for continued evolution, shaped by a convergence of economic, geopolitical, technological, and societal factors. Here's an outlook on the future of M&A activity, highlighting emerging trends and opportunities:

1. Economic Conditions:

- **Global Recovery:** With the gradual recovery from the COVID-19 pandemic, M&A activity is expected to rebound as companies seek growth opportunities, strategic partnerships, and operational efficiencies.
- **Low Interest Rates:** Persistently low interest rates are likely to fuel M&A activity by making financing more accessible and cost-effective for acquirers, particularly in sectors such as healthcare, technology, and renewable energy.

2. Geopolitical Events:

- **Trade Policy Uncertainty:** Ongoing trade tensions and geopolitical uncertainties may influence M&A decision-making, prompting companies to reassess cross-border investments and supply chain strategies.
- **Regulatory Scrutiny:** Increased regulatory scrutiny, particularly in sensitive industries such as technology, healthcare, and finance, could impact the pace and structure of M&A transactions, requiring companies to navigate complex regulatory landscapes and antitrust considerations.

3. Technological Advancements:

- **Digital Transformation:** The acceleration of digital transformation initiatives is expected to drive M&A activity in sectors such as software, cybersecurity, artificial intelligence, and cloud computing, as companies seek to enhance their digital capabilities and competitive positioning.
- **Emerging Technologies:** Investments in emerging technologies such as block chain, Internet of Things (IoT), and autonomous vehicles are likely to spur M&A activity as companies look to capitalize on innovation and gain a first-mover advantage in rapidly evolving markets.

4. Evolving Consumer Behavior:

- **Shift to E-Commerce:** The continued shift towards e-commerce and digital channels is expected to drive consolidation in retail, consumer goods, and logistics industries, as companies adapt to changing consumer preferences and shopping habits.
- **Focus on Sustainability:** Increasing awareness of environmental, social, and governance (ESG) factors is influencing M&A strategies, with companies prioritizing sustainability initiatives and seeking opportunities to acquire or partner with socially responsible businesses. Predictions and Expert Insights
- **Cross-Border Collaboration:** Despite geopolitical uncertainties, cross-border M&A activity is expected to remain robust, driven by globalization, market access considerations, and the pursuit of strategic partnerships in emerging markets.
- **Sector-Specific Opportunities:** Sectors such as healthcare, technology, renewable energy, and infrastructure are expected to see heightened M&A activity, fueled by innovation, regulatory changes, and shifting consumer demand.
- **Focus on Resilience and Agility:** Companies will prioritize resilience and agility in their M&A strategies, seeking to diversify revenue streams, strengthen supply chains, and mitigate risks in an increasingly uncertain and volatile environment.

In conclusion, the landscape of mergers and acquisitions (M&A) is dynamic and influenced by a multitude of factors, including economic conditions, technological advancements, regulatory environments, and shifting consumer behaviors. Companies are increasingly relying on M&A as a strategic tool to achieve growth, expand market presence, drive innovation, and enhance competitiveness.

The importance of thorough due diligence cannot be overstated, as it helps mitigate risks, maximize value, ensure compliance, and identify synergies for successful integration post-acquisition. Best practices for conducting due diligence emphasize the need for comprehensive planning, expert guidance, technological utilization, confidentiality, and documentation.

Post-merger integration (PMI) is crucial for unlocking value and ensuring a seamless transition between merging entities. Aligning business processes, integrating IT systems, and retaining key talent are vital components of successful integration strategies, as demonstrated by case studies.

Looking ahead, the future outlook of M&A is characterized by continued evolution and opportunities across various sectors. While challenges such as regulatory scrutiny and geopolitical uncertainties persist, companies are expected to focus on resilience, agility, and innovation in their M&A strategies to navigate through the complexities of an ever-changing business landscape.

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Article 2

The Role Of Copyright Law In Protecting Creative Works Of Art

ABSTRACT:

Copyright registration is a legal process by which copyrights in original works such as art, music and literature are protected under intellectual property and the owner or creator of these works has exclusive rights to their use, distribution and reproduction. The main purpose of copyright registration is to prevent original works from being misused or plagiarized by third parties, thus encouraging the creativity of artists, writers and musicians and deserving of being compensated for their efforts. In addition, registration of the law can prove the legality of the existence of the work and can also be used in court in cases of violation and dispute.

Additionally, when a work is registered as copyright, it is publicly registered with the Copyright Office, ensuring that others are informed that the work is protected. Registration of a license gives the owner the right to sue for damages and attorneys' fees in the event of infringement. This does not apply to unregistered businesses. Moreover, national registration laws form the basis for seeking international legal protection under various international treaties and agreements.

INTRODUCTION:

Copyright is a fundamental basis that protects the integrity and value of the creative arts and grants creators exclusive rights over their works. These rights include the right to reproduce, distribute, perform and present their works, ensuring that artists, writers, musicians, filmmakers and others retain their rights in how they use and derive financial benefit from that work. By providing legal protection to these creators, the law can create an enabling environment for innovation and creativity by encouraging people to invest layers of time, energy, and capital to create new and old businesses.

The law also eliminates illegal activities by establishing clear standards regarding ownership and production. Under the law, creators can assert their rights and take legal action against those who infringe their works by copying, displaying or distributing them without permission. This not only protects the financial interests of producers, but also preserves the integrity and originality of their beautiful vision.

In fact, copyright is a concept that supports cultural and artistic practices and ensures that creators are rewarded for their creations. Help promote and support the principles of originality and creativity in the ever-evolving field of artistic expression.

The law sets clear standards for ownership and production, allowing producers to defend their rights and take legal action against those who violate their business. This not only protects the creator's financial interests, but also ensures the accuracy and integrity of their beautiful vision.

Law can also play a role in the development of culture and arts by supporting a beautiful ecosystem that allows people from many societies to create and encourages the richness of human expression. The law supports the creation and publication of a variety of artistic works, from major arts to digital art, by protecting the rights of the creator.

Thanks to international laws and agreements, the protection of rights goes beyond national borders. These agreements establish standards and procedures for protecting creative works in different countries, ensuring that creators receive the same and effective protection regardless of where their works are created or distributed.

Definition and Purpose of Copyright:

Copyright refers to legal rights to intellectual property. This means that the original creator of the product and the person authorized to do so are the only people who have the right to create the work. The law gives the creator of an original product the exclusive right to further use and reproduce that product over time. When copyright expires, copyrighted material becomes public domain.

So the meaning of the law is person this; When someone creates a product, they have the right to own that product. Therefore, only that or someone authorized by him/her has the right to create the work. The law gives the original creator of the product exclusive rights to use or copy the product for a certain period of time. Currently, copyrighted material is released into the public domain.

Copyright serves several purposes, primarily aimed at promoting creativity, protecting the rights of creators, and fostering innovation. Here are some key purposes of copyright:

Encouraging Creativity: Copyright law provides creators with the incentive to produce original works by granting them exclusive rights to control the use and distribution of their creations. Knowing that they can profit from their work encourages creators to invest time and resources into producing new content.

Protection of Intellectual Property: Copyright protects the expression of ideas and creative works from being used without permission. It safeguards the economic and moral rights of creators by giving them control over how their works are used, reproduced, distributed, and adapted.

Economic Incentive: Copyright enables creators to financially benefit from their works by granting them the exclusive right to reproduce, distribute, perform, display, and license their creations. This economic incentive encourages investment in creative industries and supports the livelihoods of creators.

Preserving Cultural Heritage: Copyright helps preserve cultural heritage by safeguarding traditional knowledge, folklore, and indigenous creations. It ensures that cultural expressions are respected, preserved, and attributed appropriately, preventing their unauthorized exploitation or misappropriation.

Promoting Innovation and Progress: Copyright law balances the interests of creators and the public by providing limited monopolies. This encourages the dissemination of knowledge and facilitates the exchange of ideas while fostering innovation and progress in various fields, including arts, sciences, literature, and technology.

Facilitating Access to Information: Copyright law includes limitations and exceptions that allow for the use of copyrighted works without permission under certain circumstances, such as for educational, research, criticism, or parody purposes. These provisions balance the interests of creators with the public's right to access and use information.

Overall, copyright plays a crucial role in incentivizing creativity, protecting intellectual property, fostering innovation, preserving cultural heritage, and promoting access to information, thereby contributing to the enrichment of society as a whole.

Scope of Protection:

The scope of protection provided by copyright law encompasses various aspects of original creative works. Copyright protects original expressions fixed in a tangible medium of expression, including literary works, such as books, articles, and computer programs; musical compositions and recordings; dramatic works, including plays and choreography; artistic works, such as paintings, sculptures, and photographs; audio visual works, including films and videos; and architectural designs.

Copyright grants creators exclusive rights to reproduce their works, distribute copies, publicly perform or display their works, and create derivative works based on the original. These rights enable creators to control the use and exploitation of their works, ensuring that they can benefit financially from their creative endeavour.

The scope of protection also extends to digital content and online distribution, covering works distributed over the internet, social

media platforms, and digital streaming services. Additionally, copyright law provides protection against unauthorized reproduction, distribution, and adaptation of copyrighted works, including piracy and infringement through technological means.

Furthermore, copyright law includes moral rights provisions that protect the integrity and attribution of creators' works, ensuring that their artistic reputations are preserved and respected. Overall, the scope of protection afforded by copyright law is broad, encompassing a wide range of creative expressions and providing creators with the legal framework to safeguard their rights and interests.

DURATION OF COPYRIGHT PROTECTION:

In India, the duration of copyright protection is outlined in the Copyright Act of 1957, which has been subsequently amended to accommodate changes in international copyright standards. As of my last update, the duration of copyright protection in India generally follows the international standards established by the Berne Convention and the TRIPS Agreement.

For literary, dramatic, musical, and artistic works, copyright protection lasts for the lifetime of the author plus an additional 60 years from the year following the author's death. In the case of joint authorship, the duration of copyright extends for 60 years after the death of the last surviving author.

For cinematographic films, sound recordings, photographs, posthumous publications, anonymous works, and works of government or international organizations, the duration of copyright protection is 60 years from the year of publication, creation, or fixation, as the case may be.

For works published anonymously or under a pseudonym, where the author's identity is not disclosed, the duration of copyright protection lasts for 60 years from the year of publication. However, if the author's identity is revealed before the expiration of the 60-year period, the copyright term extends to the author's life plus an additional 60 years.

It's important to note that these terms are subject to certain exceptions and special provisions outlined in the Copyright Act, particularly regarding the duration of copyright for works made for hire, government works, and international agreements.

Overall, the duration of copyright protection in India aims to strike a balance between providing adequate protection to creators and ensuring that works eventually enter the public domain to promote cultural and intellectual enrichment.

Enforcement of Copyright:

In India, copyright enforcement is primarily governed by the Copyright Act of 1957, amended to address contemporary challenges. The act provides legal recourse to copyright owners through civil and criminal avenues.

Civil enforcement allows copyright holders to file lawsuits seeking injunctions, damages, and other remedies against infringers in civil courts. This can include temporary injunctions to halt ongoing infringement and claims for compensation for financial losses suffered due to unauthorized use.

Criminal enforcement provisions enable law enforcement agencies to pursue criminal charges against copyright infringers. Penalties for criminal copyright infringement may include fines and imprisonment, acting as a deterrent against piracy and counterfeiting.

To bolster enforcement efforts, India has specialized bodies such as the Copyright Office and the Intellectual Property Appellate Board (IPAB), which handle copyright registrations, disputes, and appeals.

Furthermore, India's adherence to international agreements like the Berne Convention and the TRIPS Agreement ensures that copyright protection is extended to foreign works, facilitating cooperation in cross-border enforcement efforts.

Overall, a combination of legal mechanisms, institutional support, and international cooperation is crucial for effective copyright enforcement in India.

Copyright Infringement and Remedies:

Copyright infringement occurs when someone violates the exclusive rights of a copyright holder without permission, such as reproducing, distributing, performing, or adapting their work.

Remedies for copyright infringement typically include both civil and criminal actions.

In civil cases, copyright holders can seek various remedies through litigation, including injunctions to stop further infringement, damages or monetary compensation for financial losses suffered, and an account of profits earned by the infringer through unauthorized use of the copyrighted work. Courts may also order the destruction of infringing copies and payment of legal costs.

Criminal enforcement involves law enforcement agencies pursuing charges against copyright infringers. Penalties for criminal copyright infringement may include fines and imprisonment, acting as a deterrent against piracy and counterfeiting.

Additionally, copyright holders can employ technological measures to protect their works, such as digital rights management (DRM) systems and copyright management information (CMI) to control access and usage of digital content.

Overall, copyright infringement is addressed through a combination of legal actions, including civil litigation, criminal prosecution, and technological safeguards, aimed at protecting the rights of copyright holders and deterring unauthorized use of their works.

CONCLUSION:

In conclusion, copyright law serves as a fundamental pillar in safeguarding the rights of creators, promoting creativity, and fostering innovation. Through copyright registration, creators gain legal protection for their original works, ensuring that they have exclusive control over their creations and can benefit financially from their efforts. Copyright not only encourages artistic expression but also preserves cultural heritage and promotes access to information.

The enforcement of copyright in India is vital to maintaining the integrity of the creative industries and protecting the rights of copyright holders. Civil and criminal enforcement mechanisms, supported by specialized bodies and international agreements, play a crucial role in deterring infringement and ensuring that creators receive fair compensation for their works.

Furthermore, copyright infringement is addressed through a range of remedies, including civil litigation, criminal prosecution, and technological measures. These measures aim to protect the rights of copyright holders and promote a vibrant creative ecosystem that benefits society as a whole.

In essence, copyright law strikes a balance between the interests of creators and the public, providing a framework that fosters creativity, protects intellectual property, and promotes cultural and economic development. By upholding the principles of originality and innovation, copyright law contributes to the enrichment of human culture and knowledge.

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Article 3

Payment to Operational Creditors in the Resolution Plan under IBC, 2016

The Resolution Professional shall examine each resolution plan received by him to conform that each resolution plan under section 30(2)(b) of the Code provides for the payment of debt of operational creditors in such manner as may be specified by the Board.

1.Provision of payment for operational creditors

The resolution plan shall provide for the payment of the debts to operational creditors under section 30(2)(b) of the Code. *In the cases of Synergies-Dooray Automotive Ltd (Company Appeal No.123/2017, NCLT Hyderabad, Date of Decision-2nd August, 2017, Hotel Gaudavan Pvt Ltd (Company Appeal No. 37/2017, NCLT Principal Bench, Date of Decision -13th December, 2017).* The Supreme Court has clarified that the CIRP of the corporate debtor in this case will take place in accordance with the resolution plan of Arcelor Mittal dated 23.10.2018, as amended and accepted by the Committee of Creditors on 27.03.2019, as it has provided for amounts to be paid to different classes of creditors by following Section 30(2) and Regulation 38 of the Code [para 103, page164]. It provides payment of workmen & Employees (100%), Secured Financial Creditors (89.80%), Secured Financial Creditor (having no charge on project assets of the Corporate Debtor- 1.70%), Unsecured Financial Creditors (with admitted claims less than Rs.10 lakh-100%), Unsecured Financial Creditors (with admitted claims equal to or above 4.08%), Operational Creditors other than workmen and Employees with admitted claim amount less than Rs. 1 crore (100%), Operational Creditors with admitted claim amount equal to or more than Rs. 1 crore (20.50%) (para 103, p163-164) *In the matter of Binani Industries Ltd v. Bank of Baroda & Ors. Company Appeal (AT) (Insolvency) No. 82 of 2018, NCLAT with Company Appeal (AT)(Insolvency) No. 123 of 2018. NCLAT Delhi order dated 14.11.2018.* The 'I&B' Code defines 'Resolution Plan' as a plan for Insolvency Resolution of the 'Corporate Debtor' as a going concern.

It does not spell out the shape, colour and texture of 'Resolution Plan', which is left to imagination of stakeholders read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve Insolvency (rescue a failing, but viable business); should maximise the value of assets of the 'Corporate Debtor', and should promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders. Resolution Plan is not sale, not an auction, not recovery and not liquidation. *In the case of Bank of India vs. Mandhana Industries Ltd, MA 692/2018 & MA 811/2018 in CP(IB) 1399(MB)/2017, NCLT Mumbai Date of Decision 30th November, 2018.* There is no difference between the Financial Creditors, one has supported and voted the Resolution Plan as against other has dissented the Resolution Plan. Reliance is placed in *the case of Central Bank of India v. Resolution Professional of Sirpur Paper Mills Ltd*, wherein it was held that "no discrimination can be made between the 'Financial Creditors' in the Resolution Plan on the ground that has dissented and voted against the Resolution Plan or the other has supported and voted in favour of the Resolution Plan. Insolvency and Bankruptcy Board of India, by a notification dated 5th October, 2018 has deleted Regulation 38(1)(c) of the CIRP Regulations, which provided for the payment of liquidation value to dissenting financial creditors. Thus, there is no provision for payment of liquidation value to dissenting financial creditors, in the Resolution Plan. *In the matter of Oriental Bank of Commerce Vs. M/S Allied Strips Ltd & Ors, CA-62(PB)/2019 in C.P. NO.IB-46(PB)/2018, and in the matter of Sandeep Mahajan, Resolution Professional (Applicant) NCLT Principal Bench, New Delhi Order Dated 30.5.2019.* Regulation 38(1) of the IBBI (Insolvency Process for Corporate Persons) requiring a Resolution Plan Applicant that the amount due to operational creditors under a Resolution Plan is to be given priority in payment over financial creditors (page 20). The provision for making payment for statutory and workmen & employees dues have been made as operational dues, before making payment to financial creditor, govt. dues like tax etc (page 18). These are covered by the expression 'operational creditor" (page-33).

In the matter of Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors., Company Appeal (AT) (Ins.) No.242 of 2019, NCLAT Date of decision 4/07/2019. NCLAT held that the suggestion of 'Resolution Applicant' to distribute the financial package offered by it only to the 'Secured Financial Creditors', denying the right of 'Operational Creditors' and other stakeholders, is also against the provision of Section 30(2) and Regulation 38(1A) and thereby can not be upheld. (para 144, page 73). The NCLAT held that if both Section 5(7) and Section 5(8) read together, it is evident that there is no distinction made between one or other 'Financial Creditor'. All persons to whom a financial debt is owed by the 'Corporate Debtor', which debt is disbursed against the consideration for time value of money, whether they come within one or other clause of Section 5(8), all of such person form one class i.e., 'Financial Creditor' they cannot be sub-classified as 'Secured' or 'Unsecured Financial Creditor' for the purpose of preparation of the 'Resolution Plan' by the 'Resolution Applicant' (para 164, p-84). A 'Resolution Plan' shows upfront payment in favour of the Creditors including the 'Financial Creditors', 'Operational Creditors' and the other Creditors. It is not a distribution of assets from the proceeds of sale of liquidation of the 'Corporate Debtor' and, therefore, the 'Resolution Applicant' cannot take advantage of Section 53 for the purpose of determination of the manner in which distribution of the proposed upfront amount is to be made in favour of one or other stakeholders namely- the 'Financial Creditor', 'Operational Creditor' and other creditors. Thus, the NCLAT held that Section 53 cannot be made applicable for distribution of amount amongst the stakeholders as proposed by the 'Resolution Applicant' in its 'Resolution Plan'. Reliance was placed upon the case of *'Binani Industries Limited vs. Bank of Baroda & Anr. -Company Appeal (AT) (Insolvency) No.82 of 2018 etc.* The NCLAT held that the 'Financial Creditors' cannot be discriminated on the ground of 'Secured' or 'Unsecured Financial Creditors' for the purpose of distribution of proposed amount amongst stakeholders in the 'Resolution Plan' by the 'Resolution Applicant'. (para 168-172, page 87- 89).

In Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, Supreme Court of India Date of Decision 15.11.2019. The minimum value that is required to be paid to operational creditors under a resolution plan is set out under Section 30(2)(b) of the Code as being the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53. The Insolvency deliberated upon the objections to Section 30(2)(b) of the Code, in as much as it provide for a minimum payment of a “liquidation value” to the operational creditors nothing more (para 44, p-70). The Supreme Court has clarified that Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for a minimum payment to operational creditors. However, this against does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured. Full freedom and discretion has been given to the committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would otherwise be able to realise outside the process of the Code, thereby styming the corporate resolution process itself (para 92, p-156). The Supreme Court has pointed out *in Swiss ribbons, equitable*” does not mean equal distribution; it means distribution which does justice to every stakeholder involved in the process. *In the same case*, wherein Supreme Court held that Section 30(2)(b) is only a beneficial provision ensuring protection in terms of payment of a certain minimum amount to the dissenting Financial Creditors. It was held that Operational Creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-classes (i) and (ii) of clause (b) and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. However, it does not prevent the Committee of Creditors to provide for distinct treatment to different class and sub-class of the Financial Creditors

In Vistra ITCL (India) Limited & Ors. V. Dinkar Venkatasubramanian & Anr., Civil Appeal No.9133 of 2019 & Anr., Civil Appeal No.9133 of 2019 & Anr., (Two Judge Bench of the Supreme Court), wherein the amount payable under the resolution plan to the operational creditor should not be less than the amount payable to the under Section 53 of the Code, in the event of liquidation of the corporate debtor. The amended provision also provides that the financial creditors who have not voted in favour of the resolution plan shall be paid not less than the amount which would be paid to them in accordance with sub-section (1) of Section 53 of the Code, in the event of liquidation of the corporate debtor.

In *Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors.*, Civil Appeal No.4242 of 2019 with Civil Appeal No.4967-4968 of 2019 (Civil Appellate Jurisdiction), Supreme Court of India Date of Decision 22nd January, 2020. The Hon'ble Supreme Court clarified that Section 53 of the Code would be applicable only during liquidation and not at the stage or resolving insolvency. Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of Creditors, but only to provide for a minimum payment to operational creditors. However, this again does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured, which can be based upon the value of their security, which they would otherwise be able to relies outside the process of the Code, thereby stymying the corporate resolution process itself. Hon'ble Court further clarified that equitable treatment is only of similarly situated creditors as well financial and operational creditors or secured or unsecured cannot be paid the same amount percentage wise in an any resolution plan. Reliance is placed in the case of *Essar Steel Ltd. In Vikas Prakash Gupta, Resolution Professional of the Corporate Debtor in the matter of Punjab National Bank vs. NRC Limited, MA 2531/2019 in CP(IB) 1886/MB/2018, NCLT Mumbai Date of Decision 13.03.2020*. It is clarified that even if any claims of Operational Creditors are admitted at a stage for any reason whatsoever, then the same shall be treated in the same manner as set out in the Resolution Plan.

In Pacific World Shipping vs. Dadi Impex Pvt. Ltd & Ors., Company Appeal (AT)(Ins.) No.728 of 2019, NCLAT Date of Decision: 28th February, 2020. The Resolution Plan contains 2% provision for the Operational Creditors and 100% for the Financial Creditors. The Adjudicating Authority approved the Resolution Plan and Appellate Authority affirmed the Resolution Plan as to it fulfils the conditions laid down in section 30(2)(b). In the matter of Committee of Creditors of EMCO Limited vs. Mrs. Mary Mody, Co. Appeal (AT) (Insolvency) No. 307 of 2020, NCLAT New Delhi Date of Decision: 2 March, 2021. It is well settled proposition of law that for the cost incurred prior to the CIRP process, in case any Resolution Plan is approved, the Resolution Applicant shall bear the expenses as against, if the company go into liquidation under Section 33(1) of the Code, then the distribution of assets under section 53(1) would arise. In the matter of Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd (Applicant) in the matter State Bank of India Vs. Jet Airways (India) Ltd, I.A. No.2081 of 2020 in CP (IB) No.2205/MB/2019, NCLT Mumbai Bench, Court No.1, Date of order: 22 June, 2021. Dissenting Financial Creditor would be paid the liquidation value due to them in priority to other financial creditors out of the amounts reserved for the Financial Creditors in terms of the Resolution Plan. In the same case, Liquidation value due to Operational Creditors including government dues, taxes or other creditors or stakeholder is presumed to be Nil. Further, in any case, if the liquidation value due to the Operational Creditors is not Nil, then liquidation value due to the Operational Creditors shall be paid and shall be given priority in payment of Financial Creditors. In the matter of Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd (Applicant) in the matter State Bank of India Vs. Jet Airways (India) Ltd, I.A. No.2081 of 2020 in CP (IB) No.2205/MB/2019, NCLT Mumbai Bench, Court No.1, Date of order:22 June, 2021. The net worth of the Corporate Debtor including government dues, taxes or the other creditors or stakeholders (including dues to employee other than workmen) is presumed to be Nil. Further, in any case, if the liquidation value due to Operational Creditor is Nil.

In case the liquidation value is not Nil then such amount shall be first paid out of the positive bank balance of the Corporate Debtor on the effective date and the remaining amount shall be paid out of the amounts reserved for AFCs of the Corporate Debtor on a pro rata basis. In Small Industries Development Bank of India (SIDBI) vs. Vivek Raheja, Resolution Professional, Company Appeal (AT)(Insolvency)No.570 of 2022, NCLAT Principal Bench, New Delhi Date of Judgement: 16th September, 2022. Distribution of proceeds of the plan value as per voting share of the secured creditor is in accordance with the provisions of section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016.

In the matter of DBS Bank Limited Singapore vs. Ruchi Soya Industries Limited And Another, Civil Appeal No.9133 of 2019 with Civil Appeal No.787 of 2020, Supreme Court of India Date of Judgement: January 03, 2024. The Hon'ble Court is of the opinion that the Amendment Act, 2019, effective from 16.08.2019 was certainly applicable when the appeals were heard and decided by NCLAT on 18.11.2019 and 9.12.2019, which was post the enforcement of the Amendment Act (para 24). In the same case, the purpose of the amendment was only to ensure that a dissenting financial creditor does not get anything less than the liquidation value, but not for getting the maximum of the secured assets. Further, CoC can decide the manner of distribution of resolution proceeds amongst creditors and others, but Section 30(2)(b) protects the dissenting financial creditor and operational creditors by ensuring that they are paid a minimum amount that is not lesser than their entitlement upon the liquidation of the corporate debtor (para 25). In the same matter, on the resolution plan being approved, an unwilling secured creditor does and must forgo the security, albeit such an unwilling secured creditor is entitled to the value of the security as payable on the liquidation of the corporate debtor. Section 30(2)(b)(ii) forbids the dissenting financial creditor from settling for a lower amount payable under the resolution plan (para 26).

2. Different treatment with dissenting financial creditors

Dissenting financial creditors may be given different ratio of their admitted claims. In the matter of Rahul Jain Vs. Rave Scans Pvt. Ltd & Ors., Civil Appeal No.7940 of 2019, Supreme Court of India Date of Decision: November 8, 2019. Hon'ble Supreme Court noted that liquidation value of the corporate debtor was ascertained at Rs.36 crores against it, the appellant offered Rs.54 cores. The plan was approved and, except the objections of the dissenting creditor (Hero). In the instant case, Hero (was provided with 32.34% of its admitted claim at it has dissented with the plan. Tata Capital Financial Services Ltd was provided with 75.63%, other financial creditors (Indian Overseas Bank, Bank of Baroda and Punjab National Bank) were provided with 45% of their admitted claims. Resolution process began well before the amended regulation came into force (in fact, January, 2017) and the resolution plan was prepared and approved before that event. The Hon'ble Supreme Court affirmed the order of Tribunal and set aside the direction of NCLAT. Thus, dissenting financial creditors may be given different percentage of their admitted claim.

In the matter of DBS Bank Limited Singapore vs. Ruchi Soya Industries Limited And Another, Civil Appeal No.9133 of 2019 with Civil Appeal No.787 of 2020, Supreme Court of India Date of Judgement: January 03, 2024. The dissenting financial creditor cannot object to the resolution plan, but can object to the distribution of the proceeds under the resolution plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1), if the corporate debtor had gone into liquidation. The Hon'ble Court is of the view that it would be appropriate and proper if the question framed is referred to the large bench.

3. Dissenting Homebuyers are not treated equally with dissenting Financial Creditors

Dissenting Homebuyers are not treated equally with dissenting Financial Creditors. In India Resurgence ARC Private Limited v. Amit Metaliks Limited & Another, Civil Appeal No.9133 of 2019 & Anr. It is correct to the extent that the legislature has not stipulated that the dissenting financial creditor shall be entitled to enforce the security interest. However, it is incorrect to state that the dissenting financial creditor would not be entitled to receive the liquidation value, the amount payable to him in terms of Section 53(1) of the Code. In the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors Vs. NBCC (India) Ltd & Ors, Civil Appeal No.3395 of 2020, Supreme Court of India Date of Judgement:24th March, 2021. Dissenting homebuyers are not treated as same level of dissenting other financial creditors [para 168]. After approval of the resolution plan by CoC, where homebuyers as a class assented to the plan, any individual homebuyer or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance [para 170]. In the same case, the Hon'ble Supreme Court held that the housing project which is already complete or nearing completion is not out of the purview of the resolution plan. The corporate insolvency resolution process is on the complete corporate debtor not on project wise. Thus, no housing project can be segregated on the ground the same has been completed [para 169.1, 175].

4. Inclusion of the security of Financial Creditor in the Resolution Plan

A secured creditor who is losing its security, to receive its shares of dues is justified. In the case of Bank of India vs. Mandhana Industries Ltd, MA 692/2018 & MA 811/2018 in CP(IB) 1399(MB)/2017, NCLT Mumbai Date of Decision 30th November, 2018. An application filed under Section 60(5) of the Code by dissenting secured Financial Creditor, namely Axis Bank Limited. The Resolution Plan includes sale of security of one Financial Creditors.

The Tribunal held that a secured creditor who is losing its, there are two outcomes in it. One is some creditors agreeing for a resolution to the existing situation. Another is some creditors may not agree for the resolution. The dissenting creditors are governed by sections 30(2) & 53 of the Code. The dissenting financial creditors shall be paid in cash equivalent to the liquidated sum he is entitled to receive u/s 53 of the Code. Such payment has to be in terms of money alone. The Supreme Court affirmed the order. In Ashish Chhawccaria, Resolution Professional for Jet Airways (India) Ltd in the matter of State Bank of India Vs. Jet Airways (India) Ltd, CP(IB)No.2205/MB/2019, NCLT Mumbai Bench, Court No.-1, Date of order 22.06.2021. Dissenting Financial Creditors would be paid the liquidation value due to them in priority to other financial creditors in terms of Section 30(2) of the Code with Regulation 38(1)(b) of Regulations, out of the amount reserved for the Financial Creditors in terms of the Resolution Plan.

5. Different Treatment between the same group of Secured Financial Creditor

There may be inequitable distribution amongst secured Financial Creditors, if approved by CoC. In the case of IIFCL Mutual Fund vs. Committee of Creditors of GVR Infra & Ors., Company Appeal (AT)(Insolvency) No. 938 of 2020, NCLAT Date of Decision 2.11.2020. The appellant voted in favour of the Resolution Plan, the appeal is as regard to distribution mechanism. There is inequitable distribution amongst 4 out of secured Financial Creditors. The Appellate Authority held that there is compliance of section 30(2) of the Code. Therefore, the Adjudicating Authority/Appellate Authority has no power to review the commercial Wisdom of the committee of creditors.

6. Whether Spectrum can be treated as security interest to lenders

Spectrum cannot be treated as security interest to lenders. In *Union of India vs. Vijay V. Iyer*, Company Appeal (AT)(Insolvency) No. 733 of 2020 with others NCLAT (Principal Bench) New Delhi Date of Decision: 13 April, 2021. In pursuance of the order of Hon'ble Supreme Court, the Appellate Authority has summarized the findings on various issues i.e. (i) Triggering of Corporate Insolvency Resolution Proceedings under "I&B" Code by the Corporate Debtor with the object of wiping off of such dues, not being for insolvency resolution, but with malicious or fraudulent intention, would be impermissible; (ii) TSPs have the right to use spectrum under licence granted to them. They cannot be said to be the owners in possession of the spectrum but only in occupation of the right to use spectrum. Ownership of spectrum belongs to Nation (people) with Government only being its Trustee. Possession correlates with the ownership right; (iii) Under Section 18 of the "I&B" Code, the Interim Resolution Professional is bound to monitor the assets of the Corporate Debtor and manage its operations, take control and custody of assets over which the Corporate Debtor has ownership rights including intangible assets which includes right to use spectrum. (iv) Trading in intangible assets like use of spectrum derives strength from the terms and conditions of the Licence Agreement/UASL, clause 6.3 whereof vests in Licence a right to transfer or assign the Licence Agreement with prior written approval of the Licensor and subject to fulfilment of conditions which include payment of full past dues in full till the date of transfer. Insolvency Proceedings arise out of default in discharge of financial or operational debt and are triggered for insolvency resolution of corporate persons, etc. in a time bound manner for maximization of value of assets of such person;(v) While a licence can be transferred as an intangible asset of the Licensee/Corporate Debtor under Insolvency Proceedings in ordinary circumstances, however, as the trading is subjected to clearance of dues by Seller or Buyer, as the case may be, the Transferor/Seller or Transferee/Buyer being in default, would not qualify for transfer of licence under the insolvency proceedings.

(vi) The spectrum cannot be utilized without payment of requisite dues which cannot be wiped off by triggering CIRP under “I&B” Code. (vii) The defaulting Licensees/Telcos cannot be permitted to wriggle out of their liabilities by resorting to triggering of CIRP by seeking initiation of CIRP under Section 10 of the Code. (viii) Having regard to clauses of Tripartite Agreement according priority/ first charge to DOT, the spectrum cannot be treated as a security interest by the Lenders.

7. Making provision in the Resolution Plan for minority shareholders

Committee of Creditors may make provision in the Resolution Plan for making payment to minority shareholders. In Jaypee Kensington Boulevard Apartments Welfare Association & ors. Vs. NBCC (India) Ltd & Ors., Civil Appeal No. 3395 of 2020 with Civil Appeal No.3396 of 2020 etc., Supreme Court of India Date of Decision 24th March, 2021. As regards providing for minority shareholders in the Resolution Plan, the amount provided is the decision of the Committee of Creditors. Reliance is placed in the matter of Essar Steel.

8. Ultimate decision of CoC for making Payment to each class or sub-class of creditors

The ultimate decision of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors. In Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors., Civil Appeal No.4242 of 2019 with Civil Appeal No.4967-4968 of 2019 (Civil Appellate Jurisdiction), Supreme Court of India Date of Decision 22nd January, 2020. The Hon’ble Supreme Court clarified that the ultimate decision of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximizing the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors.

9. Payment of statutory Dues

The Supreme Court passed order for making payment of statutory dues in instalments. In Vikas Prakash Gupta, Resolution Professional of the Corporate Debtor in the matter of Punjab National Bank vs. NRC Limited, MA 2531/2019 in CP(IB) 1886/MB/2018, NCLT Mumbai Date of Decision 13.03.2020. The payment of Government and Statutory Authority dues shall be, in full and final settlement of all Admitted Government and Statutory Authorities Claims of the Government and Statutory Authorities. Any charge created in favour of any Government or Statutory Authority shall be immediately released upon payment of Government and Statutory Authority Payment. It includes all claims or demands made by, or liabilities or obligations owed or payable to or assessed by, any Government and Statutory Authority, in relation to any dues, direct Taxes (including stamp duties) penalties, fees, interest, fines, levies, ceases, assessment or additions or any other charges against or in relation to the corporate debtor. In Bikram Chatterji & Ors. Vs. Union of India & Ors., I.A.s in Writ Petition (C) No.940 of 2017, Supreme Court of India Date of Decision 10 June, 2020. The Court directed that rate of interest on the outstanding premium and other dues to be realized in all such cases at the rate of 8% per annum and let the Noida and Greater Noida Authorities are able to realize the same. In case failure to pay, the concession granted shall stand withdrawn. In Union of India vs. Association of Unified Telecom Services Providers of India etc., M.A.(D) No.9887 of 2020 in Civil Appeal No.6328-6399 of 2015, (Civil Appellate Jurisdiction), Supreme Court of India Date of Decision 1 September, 2020. The Hon'ble Supreme Court discussed regarding payment of AGR dues and the issue regarding transferring the license/spectrum and be part of the resolution plan was left to the NCLT. The Hon'ble Court inter-alia held that the Telecom Operators shall make the payment of 10% of the total dues as demanded by DOT by 31.03.2021. The payment shall be made in yearly instalment basis.

10. Challenge the Resolution Plan in the Court

It would be for the NCLT to consider the same and pass an appropriate order. In Col. Sanjeev Dhawan And Ors vs. Union of India, W.P.(C) 10337/2019, Delhi High Court Date of Decision 27 August, 2020. As regards IBC proceedings, the Id. High Court held that this Court is not inclined to interfere with the proceedings before the Id. National Company Law Tribunal (NCLT). It has been informed that the petitioner has filed their objections to the Resolution Plan submitted by the Resolution Professional. It would be for the NCLT to consider the same and pass an appropriate order. In case of further query, clarification, you may direct contact to the Author. Various books of the author have published, i.e.

1. [SERIOUS FRAUD UNDR THE COMPANIES ACT & THE LLP ACT](https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr_1_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1) -https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr_1_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1
2. [LAW ON INSOLVENCY AND BANKRUPTCY](https://www.amazon.in/dp/9356596808?ref=myi_title_dp) -https://www.amazon.in/dp/9356596808?ref=myi_title_dp
3. [ADJUDICATION OF COMPANIES ACT, MATTERS UNDER NCLT \(Third Edition-2023\)](https://www.amazon.in/dp/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM)
https://www.amazon.in/dp/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM

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Case Laws

CASE LAWS

1. NBCC (INDIA) LTD. VS. ZILLION INFRAPROJECTS PVT. LTD.

The Supreme Court reiterated that a dispute cannot be referred to arbitration based solely on the arbitration clause contained in another contract unless there is a specific reference in the main contract to incorporate that arbitration clause. The Bench, comprising Justices B.R. Gavai and Sandeep Mehta, held that unless there is an explicit reference in the main contract to include the arbitration clause of another contract, the parties cannot be compelled to arbitrate. This decision underscores the importance of clear and unambiguous language in contracts, particularly regarding arbitration provisions, to ensure that parties' intentions are accurately reflected and enforced.

2. MAHANADI COALFIELDS LTD. VS. BRAJRAJNAGAR COAL MINES WORKERS' UNION

The Supreme Court, in its observation on Tuesday (March 12), emphasized that workers engaged in performing tasks of a perennial or permanent nature cannot be categorized as contract workers under the Contract Labour (Regulation & Abolition) Act, 1970. The Bench, consisting of Justices P.S. Narasimha and Sandeep Mehta, stated that duties of a permanent or perennial nature are not suitable for contract workers and should be carried out by regular or permanent employees. This decision underscores the principle that workers should not be denied the opportunity for job regularization based on the nature of their work, particularly when it involves tasks that are essential and continuous in nature.

3. THE TELANGANA RESIDENTIAL EDUCATIONAL INSTITUTIONS RECRUITMENT BOARD VS. SALUVADI SUMALATHA & ANR.

The Supreme Court (on March 05) held that merely because a recruitment agency is not in a position to satisfy the Court, relief cannot be extended to a deprived candidate. It was also observed that courts have to be cautious and slow in dealing with the recruitment process adopted by the recruitment agency. A lot of thought process has gone into applying the rules and regulations, the Court said.

4. ELECTORAL BOND SCHEME: UNCONSTITUTIONAL:

Judgment Name: Association for Democratic Reforms & Anr. vs. Union of India & Ors.

Bench: Chief Justice of India DY Chandrachud, Justice J.B. Pardiwala, Justice B.R. Gavai, Justice Sanjiv Khanna, and Justice Manoj Misra

Articles and Acts Involved: Constitution of India, 1950; Articles 32, 110, and 145 (3); Finance Act, 2017; Representation of People Act, 1951; Income Tax Act, 1961; Companies Act, 2013; Reserve Bank of India Act, 1934; Sections 31 and 31 (3)

Supreme Court Decision: The bench heard petitions challenging the constitutionality of the electoral bond scheme, which facilitates anonymous donations to political parties. On February 15, 2024, the SC struck down the electoral bond scheme, deeming it violative of Article 19 (1) (a) and unconstitutional.

5. JAIPUR VIDYUT VITRAN NIGAM LTD. & ORS. V. ADANI POWER RAJASTHAN LTD. & ANR.

The Supreme Court imposed costs of Rs. 50k on Adani Power Rajasthan Limited observing that a litigant cannot continue to hitchhike on the same judgment by relying on the inherent power or jurisdiction of the Court. The Court dismissed the Adani Power Rajasthan Limited's (APRL) miscellaneous application seeking relief on the Late Payment Surcharge (LPS) issue, holding that such a demand could not be made through a miscellaneous application and that the matter had already been addressed in previous judgments.

The Court clarified that the Supreme Court Rules, 2013 do not permit a litigant to apply for modification of a judgment once a matter stands concluded. Justice Aniruddha Bose and Justice Sanjay Kumar observed, "The maintainability of the present application cannot be explained by invoking the inherent power of this Court either. The applicant has not applied for review of the main judgment. In the contempt action, it failed to establish any willful disobedience of the main judgment and order on account of non-payment of LPS. Now the applicant cannot continue to hitchhike on the same judgment by relying on the inherent power or jurisdiction of this Court."

Adani Power Rajasthan Limited (APRL), a power generating company and the distribution licensees of Rajasthan, collectively referred to as Rajasthan Discoms had entered into a Power Purchase Agreement (PPA) under which APRL was to supply electricity to the Discoms. Due to insufficient domestic coal allocation by the Government of India, APRL resorted to importing coal from Indonesia, resulting in higher costs. APRL sought compensation for the resulting losses under the change in law clause of the PPA. The Rajasthan Electricity Regulatory Commission (RERC) granted the relief to APRL.

The Court observed that “despite that question being left open by the Contempt Court, we are of the view that a miscellaneous application is not the proper legal course to make demand on that count. A relief of this nature cannot be asked for in a miscellaneous application which was described in the course of hearing as an application for clarification.” The Court further held that “this Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute.” Accordingly, the Supreme Court imposed costs of Rs. 50,000/- on APRL and dismissed their application.

6. M. Radheshyamlal v. V Sandhya and Anr. Etc.

This judgment arises from three separate suits regarding ownership and possession of a property in Chennai. Sungani Bai, the original owner, executed a settlement deed in 1945, dividing the property among three parties. The plaintiff claims adverse possession of the property since 1950. However, the defendants, who acquired the property through a subsequent sale deed, contested this claim.

The courts examined the evidence presented by both parties. The plaintiff failed to establish key elements required to prove adverse possession, such as hostile possession known to the true owner, uninterrupted possession, and payment of taxes. The plaintiff's complaint to the police contradicted his claim of possession since 1950, further weakening his case.

Consequently, the courts dismissed the plaintiff's appeals, upholding the decrees favoring the defendants. However, considering the plaintiff's age and the length of his possession, the court granted him an extension until March 31, 2025, to vacate the property. This extension is subject to the plaintiff and his family members filing undertakings to vacate the property peacefully. Failure to comply will result in immediate execution of the possession decree.

In summary, the judgment dismisses the plaintiff's appeals due to his failure to prove adverse possession convincingly. It grants him additional time to vacate the property, subject to certain conditions.

7. SATYENDAR KUMAR JAIN VS DIRECTORATE OF ENFORCEMENT

The Supreme observed that whole of property linked to a scheduled offense is need not be considered as "Proceeds of Crime" under Prevention of Money Laundering Act. But any property meeting the definition of "Proceeds of Crime" under Section 2(1)(u) will indeed be considered crime properties, the court said. In that regard, the Bench of Justice Bela M Trivedi and Justice Pankaj Mithal observed that, "Not even in case of existence of undisclosed income and irrespective of its volume, the definition of "Proceeds of Crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of "Proceeds of Crime" under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of proceeds of crime, but all properties qualifying the definition of "Proceeds of Crime" under Section 2(1)(u) will necessarily be the crime properties."

8. NBCC (India) Limited v. Zillion Infraprojects Pvt. Ltd.

The Supreme Court reiterated that general reference to another contract would not have the same effect as incorporating the arbitration clause. The Court distinguished between incorporating an arbitration clause in a contract as opposed to merely making a reference to arbitration in a contract. It further explained that that a reference to arbitration in a contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract. Justice B.R. Gavai and Justice Sandeep Mehta observed, “When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.”

The contract awarded to the Company by NBCC led to certain disputes between the parties, eventually resulting in the invocation of arbitration by the Company. The Delhi High Court had appointed a Sole Arbitrator under Section 11(6) of the Arbitration & Conciliation Act 1996 to adjudicate a dispute between the parties. However, the Supreme Court, found that the High Court had erred in its decision. “In view of Clause 1.0, the documents stated therein shall also form part of the agreement. In view of Clause 2.0, all terms and conditions as contained in the tender issued by the DVC to the NBCC shall apply mutatis mutandis except where these have been expressly modified by the NBCC,” the Court stated. Consequently, the Court set aside the Order of the High Court and held that mere reference of arbitration to the terms and conditions of a contract without it being incorporated would not make the dispute between the parties amenable to arbitration proceedings. Accordingly, the Supreme Court allowed the appeal.

Compliance Checklist

COMPLIANCE CALENDAR FOR APRIL 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Tax Related Compliance

GSTR-1 Return (Monthly)

GSTR-3B Return (Monthly)

GSTR-5

GSTR-6

Due date for deposit of Tax deducted/collected for the month of March 2023

FEMA Related Compliance

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

RBI Related Compliances

Monthly return (NBS-6) on exposure to capital market

Monthly statement of short-term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

Monthly payment of PF (Non-Corporate)

File monthly return of employees entitled for membership of Insurance Fund (Form No.2 (IF))

File Monthly Return (Form No.5) for employees leaving / joining during the Previous Month

File monthly Return for members of Insurance Fund leaving service during the previous month (Form No.3 (IF))

File monthly return of members joining service during the previous month (Form No. F4(PS))

SEBI Related Compliances

Statement of Grievance Redressal Mechanism.

Corporate Governance Report.

Shareholding Pattern.

Reconciliation of share capital audit report.

Compliance Certificate by RTA (DEMAT)

Ministry of Corporate Affairs

MSME- 1, Pending payments to MSME vendors as at end of half year.

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