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NEWSLETTER

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CENTRE FOR RESEARCH IN CORPORATE LAW AND GOVERNANCE

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About CRCLG...

Taking the legacy of standing distinct in the field of academic excellence in legal education, Army Institute of Law, Mohali launched the Centre for Research in Corporate Law and Governance (CRCLG) in 2018 to provide to its scholars, a deep insight into the contours of corporate conundrums.

CRCLG, as a multi-faceted functional body, looks forward to conduct workshops, panel discussions, seminars, conferences, and guest lectures by the leading and eminent scholars from the legal field. It effectively deals with the discipline, balances and imbalances of corporate law exhaustively to provide to the readers a holistic understanding of the subject and matters connected and incidental thereto. It shall work promptly to promote and provide:

• comprehensive research; preparing the students with analytical skills to critically evaluate legal provisions of corporate law & governance.

• in-depth study of corporate law and governance interwoven with its economic, business and legal context with particular regard to how corporate law and governance mechanisms facilitate or inhibit economic activity.

• to provide a new way of thinking about the growing challenges in corporate law and how to respond to them.

Dealing with the traditional issues and the contemporary ones, the newsletter shall give the reader an opportunity to fathom into the corporate world.

INSOLVENCY & BANKRUPTCY CODE, 2016- RESOLUTION WITH MAXIMISATION

ZARISH ALI (5TH YEAR)

The Insolvency and Bankruptcy Code, 2016 is an effort to consolidate the laws relating to Insolvency under one code, for the creation of an effective and efficient insolvency regime in the country where in the past both the applicants and economy have suffered. The regime of previous legislation had failed to maximize the value of stressed assets and had focused on reviving the corporate debtor with the same erstwhile management. Moreover, the rights of creditors and debtors were scattered across various legislations. Different adjudicatory forums catered to different classes of creditors and there was no uniform concept or definition of 'insolvency'. As result of which, the Code of 2016 was enacted to reorganize insolvency resolution of corporate debtors in a time bound manner to maximize the value of assets of such person. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is one of the significant objectives of the Code along with creation of holistic procedural and substantive regime which aims to provide for timely and effective results both to the creditors and debtors, on either side of an application for process.

The Code makes a clear distinction between insolvency and bankruptcy – the former being a short-term inability to meet liabilities during the normal course of business, while the latter is a longer term view on the business which is effectuated by a court order that defines how an insolvent debtor will meet their financial obligations and/ or undergo liquidation to meet such obligations.

The Code seeks to provide for designating NCLT and DRT as the Adjudicating Authorities for corporate persons, firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. It also seeks to provide for establishment of functionaries such as the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, Insolvency professional agencies for conducting the affairs of corporate debtor during the insolvency resolution process and Information utilities for developing an information infrastructure to serve as a repository of financial information readily available for access in insolvency proceedings. They collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

With regards to Cross Border Insolvency, the Code empowers Resolution professionals to take control & custody of a debtor's assets that are located in foreign countries and provides for an enabling mechanism under which the Government of India

may enter into reciprocal agreements with the governments of other countries to enforce the provisions of the Code by seeking evidence in relation to assets of the debtor or its personal guarantor.

RESOLUTION MECHANISM

The Insolvency and Bankruptcy Code, 2016 provides for a holistic and a time-bound procedure wherein when the default transpires, the resolution process can be initiated by filing of an application either by a financial creditor, operational creditor or a corporate applicant to the NCLT. The application has to be accepted or rejected within a period of fourteen days of filing of an application. Further, Moratorium is initiated once the application is accepted which signifies the commencement of Insolvency process. An insolvency resolution professional (IRP) is appointed by NCLT who conducts the affairs of the corporate debtor and constitutes a committee of creditor compromising of financial creditors of the corporate debtor after collation of all the claims received against the corporate debtor. The resolution applicant shall then prepare a resolution plan which shall be scrutinized by the Resolution professional after considering the payment of the process costs, payment of debts to operational creditors & financial creditors, management of affairs of corporate debtor. After examination by the RP, the said resolution plan shall be sent to the COC for their approval; once approved with 66% of their votes, the resolution plan shall be submitted to NCLT to access its viability and feasibility.

Once the Adjudicating authority is satisfied that the proposed plan meets the requirements of the provisions of the Code, it shall by order approve the plan which shall be binding on corporate debtor, its members, stakeholders & guarantors. The code is thus, a beneficial legislation to bring the corporate debtor back on its feet and not a mere recovery legislation for creditors.

RECENT DEVELOPMENT- AMENDMENT, 2019

The Insolvency and Bankruptcy code witnessed another amendment on August 6, 2019, bringing in paradigm shift in the recovery process. The old framework entailed a time framework of maximum 270 days (180 days + 90 days). However, the new amendment has taken a firm approach by providing an overall time limit of maximum 330 days for process, covering litigation and all the judicial processes which in turn is likely to instil discipline among various stakeholders and authorities to observe timelines. After adhering to the judicial pronouncements of Essar Steel Ltd, the amendment has cleared its stance on providing similar treatment to operational and financial creditors with no discrimination amongst financial creditors on the basis of existing priorities or security interest which shall not be permitted in the resolution plan. Further, the new amendment postulates statutory recognition to corporate restructuring by clarifying that a resolution plan may include provisions such as mergers, amalgamation and demergers. The new amendment act seeks to provide payment of the

amount not less than the liquidation value to the dissenting financial creditors who do not vote in favour of the resolution plan. It also stipulates that once a resolution plan is approved by the Adjudicating authority, the same shall be binding on all creditors including government, local and statutory authorities to whom debts are owed. Thus, the proposed amendments, paving a stronger path, are sought to restore confidence in the credit market along with timely resolution of Insolvency and bankruptcy.

MERGERS & AMALGAMATIONS

MANNAT MEHTA (5TH YEAR)

Corporate Restructuring is the process of redesigning one or more aspects of a company. Corporate Restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving its short-term and long-term corporate objectives which is why it is vital for the survival of a company in a competitive environment.

One of the forms of external restructuring is Mergers and Amalgamations. The increasing activity of this indicates the reason of an active market at present. With the new central government in India in favour of liberalizing business norms, Mergers and Amalgamations are here to stay. They have become a symbol of new economic world and with the passage of time more and more enterprises are opting for Mergers and Amalgamations with an intent to produce on a massive scale, to reduce the cost of production and to make prices internationally competitive.

It was in 2016, when the Central Government issued a notification for the enforcement of sections relating to Mergers and Amalgamations and vide notification dated 14th December 2016, Ministry of Corporate Affairs issued rules regarding Companies (Compromises, Arrangements, and Amalgamation) Rules, 2016.Mergers and Amalgamations are two terms under the Act of 2013 which are usually used inter-changeably,
However, the two are distinct in nature. Merger is defined as a combination of two or more companies into a single company in which one survives and the other loses its corporate existence. The survivor company acquires both the assets and liabilities of the merged company or companies On the other hand, Amalgamation involves two companies of the same size and stature joining hands wherein two or more existing companies amalgamate or merge together to form a new company by which both the existing companies lose their existence called as amalgamating companies and a new company comes into existence called as purchasing company.

The Act of 2013 entails provisions in relation to Compromise or Arrangements u/s 230 & 231),

Amalgamation including Demergers (u/s 232), Amalgamation of Small companies (u/s 232) & Amalgamation of

foreign companies with the prior permission of RBI (u/s 234).

DUE DILIGENCE IN MERGERS AND AMALGAMATIONS:

Due Diligence refers to the process of appraising, assessing and evaluating business risk with analysis of cost benefit which is involved in Merger & Amalgamation. Due Diligence embraces the assessment process to judge the benefits vis-à-vis the troubles that will be faced in post merger scenario.
The due diligence process includes review of cash flows – past and future, status of tax assessments and its financial impact, valuation of assets, digging out hidden liabilities after an independent assessment, assessment of viability, review of technical feasibility, assessment and analysis of information technology security systems
etc.

RELEVANT AUTHORITIES AND LEGISLATIONS:

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- the Companies Act, 2013 and the rules, orders, notifications and circulars issued thereunder (as amended), which prescribes the general framework governing companies in India, including the manner of issuance and transfer of securities of a company and the process for a scheme of arrangements;
- the Indian Contracts Act, 1872 (as amended), which governs contracts and the rights the parties can agree to contractually under the Indian laws;

the Specific relief Act, 1963 (amended), which prescribes remedies available to private parties for breach of contract; the Income Tax Act, 1961 (amended) is applicable to taxation-related considerations with respect to Mergers and Amalgamations in India, and cross-border transactions; double taxation avoidance treaties also play an important role; the Competition Act, 2002 (amended), which regulates combinations of companies and prohibits anti-competitive agreements, which have or are likely to have an appreciable effect on competition in India;
the Foreign Exchange Management Act, 1999 (amended), read with the circulars and directions issued by the Reserve Bank of India, which, collectively, regulate foreign investment in India;

- the regulations and guidelines issued by the Securities and Exchange Board of India, which regulate the securities market in India, including Mergers and Amalgamations involving companies listed on stock exchanges in India; and
- various central labour legislations, which govern employment-related matters.

CONCLUSION:

In substance, the 2013 Act offers extensive & better straightforwardness, guaranteeing assurance of shareholders interest, while maintaining distance from protests. It can be said that the 2013 Act looks to streamline and make Mergers & Amalgamations much smoother and straightforward.

THE COMPANIES ACT: AMENDMENTS IN A NUTSHELL

Dyuti Rai (4th Year)

The Companies Act 2013 is an Act of the Parliament of India on Indian company law which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company, etc. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules.

The Act has replaced The Companies Act, 1956 (in a partial manner) after receiving the assent of the President of India on 29 August 2013. The Act consolidates and amends the law relating to companies. The Act of 2013 seeks to bring corporate governance and regulation practices in India at par with the global best practices.

The New Company Act, 2013 replaced the Companies Act, 1956 by revising the law as per the requirements of the international best practices as well in keeping with the needs of the current economic environment in the country.

The Companies Act, 2013 provides more opportunities for new entrepreneurs and enables wide application of information technology in the conduct of the affairs by the corporate world. This is a landmark legislation with far-reaching consequences on all companies incorporated in India.

MAJOR AMENDMENTS:

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The Companies (Amendment) Act, 2015

This Act was brought with an aim to improve EoDB in India. The most significant changes include the removal of minimum capital requirement for starting a private limited company, removal of the requirement of obtaining Commencement of Business Certificate post incorporation, making the requirement for common seal optional, and introduction of stringent penalty for Directors of Companies that invite or accept or renew deposits without approval from the Regulatory Authorities. Further, companies having losses or negative reserves were not allowed to declare dividends, and public access to board resolutions was stopped. Also, loans/guarantees can be specifically provided by the holding company to the subsidiary company.

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The Companies (Amendment) Act, 2017

This Act was brought with an aim to improve corporate governance and ease of doing business in India while continuing to strengthen compliance and investor protection. The major amendments include continuing with the provisions relating to layers of subsidiaries, continuing with the earlier provisions with respect of memorandum, making offence for contravention of provisions relating to deposits as non-compoundable, requiring attaching of financial statement of associate companies, stringent additional fees of Rs. 100 per day in case of delay in filing of annual return and financial statement etc. and to punish directors who use loans against conditions under which it was extended.

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The Companies (Amendment) Act, 2019

It seeks to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in the corporate sector as enshrined in the Companies Act, 2013. The major changes include the re-categorising of offences which were in the category of compoundable offences to an in-house adjudication framework, ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults. Further, de-clogging of the NCLT has also taken place by enlarging the jurisdiction of Regional Director ("RD") by enhancing the pecuniary limits up to which they can compound offences under section 441, and vesting in the Central Government the power to approve the alteration in the financial year of a company; and vesting the Central Government the power to approve cases of conversion of public companies into private companies. Other reforms include extending the possibility of mandating dematerialisation of securities even to private limited companies by providing requisite powers to the Central Government, specific responsibility cast on companies to identify significant beneficial owners, stricter enforcement of compliance with corporate social responsibility (CSR) provisions and introduction of penal clause. The Act has also done away with the prerequisite of registering the prospectus with the registrar (in case of a public offer) to only a filing requirement.

DIFFERENTIAL VOTING RIGHTS

NISHANT TIWARI (3RD YEAR)

'Shares'- a term used for denoting the (unit of) ownership interest of a holder in a corporation or an organization. They are mainly of two types: 'equity' and 'preference' shares.

Equity shares ('ordinary' or 'common' shares) are mainly different from preference shares in the form that they come with voting rights and fluctuating rate of dividend.

Preference shares on the other hand, enjoy the privilege of receiving dividend at a fixed rate before any dividend is paid to the equity shareholders.

Apart from equity & preference shares, a new class of shares were introduced known as Dual class shares (DCS) or Differential voting rights (DVRs). These are the shares with rights disproportionate to economic ownership. While, one share has one vote, these share can carry a pattern where one share may carry ten votes or a pattern where ten shares can have one vote. For instance, the Facebook founders retained the control of the entity by issuing two kinds of shares – Class A shares carrying one voting right (listed through the IPO and held by public shareholders) and Class B shares carrying 10 votes each (not listed, held by Mark Zuckerberg and affiliates).

These are widely being brought into the mainstream business world due to their efficacy of preventing hostile takeovers and for the promoter led company who wants to retain decision making power and rights. Some companies that have issued DVR shares on our bourses include Tata Motors, Pantaloons and Gujarat NRE Coke.

The Company Act, 2013, under Section 43 permits a company to issue these shares with differential voting rights as a part of their share capital. Further Rule 4 of the Companies share capital and debentures rules, 2014 provides conditions which a company has to adhere while issuing equity shares with differential rights, some of which are – AOA to authorize such issue, ordinary resolution to be passed, etc.

SEBI'S Framework, 2019

SEBI in its consultation paper has elaborately discussed the need to issue differential voting rights with key highlights such as easy access and autonomous space for managing his/her business and non-dilution of promoter's stake for the companies which prefer equity over debt capital. Further, the DVRs are classified into superior shares

and fractional shares. The former are the shares with superior voting rights as compared to equity shares and the latter being fractional voting rights as compared to equity shares.

The new framework 2019 allows a Company having superior voting rights shares (SR shares) to do an Initial public offer of ordinary shares on conditions such as – the issuer company must be a tech company, shareholder to be considered a part of the promoter group, such SR shares to be issued only to persons holding executive position in the company and such SR shares to be held for a period of six months prior to filing of RHP. Thus, a company which is already listed will not be able to issue SR shares, however, it will be able to issue shares with FRs, which is in continuance of the existing framework.

Further, to safeguard corporate governance, the framework incorporated following proposals:

- Listing and Lock-in' through which SR shares to be listed after IPO on Stock exchanges,
- Transfer/Pledge/Lien shall not be allowed and
- Such shares shall be in lock-in until their conversion to ordinary shares
- Such SR shares shall be treated with par as of ordinary shares except

in the case of voting on resolutions

Post IPO, such SP shares shall be treated as ordinary equity shares in terms of voting rights (One share shall have one vote) with respect to the conditions mentioned in the framework.

- SR shares shall be converted into ordinary shares on the 5th anniversary of listing. The term can be extended by 5 years through a resolution. However, SR shareholders shall not be allowed to cast their vote in such resolution. (Time Based).
- On events like resignation, M&A, demise- SR shares can be converted into ordinary shares. (Event-based)

CONCLUSION:

DVRs are not only gaining prominence but are slightly molding the shareholding practice in the entrepreneurship today. It has widely been counted in as a must-have concept in the charts of almost all the leading business tycoons in the world today.

They possess just one major disadvantage, that being that these are thinly traded legal tenders that cannot be easily converted into cash, making them highly illiquid in tendency.

Otherwise,such shares shall be allowed some privileges in the initial phase of the growth of the companies and to protect the interest of investors, such shares shall be subjected to enhanced disclosure requirements without transmuting the shareholding pattern.

CORPORATE SOCIAL RESPONSIBILITY

SUNIDHI SINGH (3RD YEAR)

What is Corporate Social Responsibility?

According to the United Nations Industrial Development Organization, "Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. It is a way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line-Approach), while at the same time addressing the expectations of shareholders and stakeholders." Also known as Corporate Citizenship, CSR, as a concept, makes it mandatory for all corporate institutions to work for the betterment of the society as a whole as they thrive for their own enhancement.

What activities does it include?

Under Section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014, any activities which are focused at the eradication of hunger and poverty, promotion of education and gender equality, providing basic amenities of life and skills, protection of national heritage and natural environment etc., come under the ambit of CSR activities. Generally, Corporate institutions use the methods of philanthropy, setting up a strict mechanism for ensuring ethical business practices, sending employees for volunteering work at non-profit organizations and investment in social and environment friendly projects to fulfill their CSR objectives.

Indian Scenario

India is the first country in the world to make CSR mandatory for companies after the amendment of 2014. Under Section 135 of the Companies Act, following companies have to spend 2% of their average net profit of the last 3 financial years for CSR activities:
Companies with net worth of Rs. 500 crores or more, or
2. Companies with annual turnover of Rs. 1000 crores or more, or
3. Companies with annual net profits of at least Rs. 5 Crores.

Is there a separate body for looking into such matters?

Each company, under the law, has to create a separate committee consisting of 3 Directors for CSR enforcement to look after the creation of a policy in conformation with Schedule VII of the Companies Act, 2013, allocation of money, execution of project and all other activities incidental thereto. This committee keeps a regular record of the profits of the company and ensures its expenditure on CSR related activities with special emphasis to regional issues.
An annual report is to be compulsorily published with all profit and loss records by the committee.
However, even after the inclusion

of CSR under Section 135 of the Companies Act, there were no specific penalties for non-compliance of the government guidelines for Corporate Social Responsibility previously. The only thing that the Corporate institutions had to do was publish in an annual report whether they had taken up any CSR projects in that financial year or not.

The Amendment of 2019:

The Companies Act of 2013 underwent an amendment in 2019 only to ameliorate the standards of Corporate Law and make the corporate sector more socially responsible. By the way of the latest amendment, new restrictions and penalties have been introduced to ensure ethical business activities.

How is Corporate Social Responsibility a boon?

The benefits of Corporate Social Responsibility are different for different areas.

1. For Employees: CSR activities create a good public image of the company for which the company constantly remains in media observation and employees of such organizations work with enthusiasm and zeal for regular incentives and rewards.
2. For Society: When businesses become conscious of their social and environmental responsibilities, they bring forward new ideas to solve social problems which lead to innovations and better living conditions for human beings.
3. For Businesses: CSR activities help create a trustworthy consumer base. When businesses take part in providing a positive social value, consumers get attracted. History bears testimony to the fact that the companies which have continuously been involved in fighting social problems and taking care of the environment have always achieved highest level of growth.

Examples of some amazing CSR initiatives:

1. GOOGLE:

Google is a leading name in the corporate world and it has taken up many remarkable CSR initiatives. The energy consumption by Google data centers is 50% less as compared to a typical data center and it has invested more than a million dollars on renewable energy resources. Google has also been successful in diverting 84% of waste from its data centers from land fills in 2015, has become carbon neutral since 2007 and has made regular initiatives to reduce wastage of water. Apart from all this, Google provides a healthy and fun environment for all its employees where there can be a free flow of ideas.

2. CHIPOTLE AND INTERMARCHE:

About one-third of the food produced gets wasted every year. This company has taken up the challenge of tackling the problem by starting it 'The Inglorious Fruit and Vegetable' campaign, whereby, the company sells out all the not-so-perfect category of fruits and vegetables at subsidized rates, thereby, benefitting both dealers and consumers.

3. MICROSOFT:

This technology giant has constantly been committed to providing education to the underprivileged around the globe and thereby reducing levels of poverty. TheWyoming data center of Microsoft is beautiful example of their belief in innovation and sustainability, being fully powered by clean energy. Microsoft's AI for Earth initiative aims to solve some of the toughest environmental problems of the world.

There are many such examples of companies in this world who are persistently involved in amazing CSR initiatives like the 18,000 environmental initiatives of XEROX, Levi Strauss's Workers Welfare initiative, Twitter's Fledging Initiative campaign to promote literacy among children and Starbuck's CAFÉ practices to ensure the well-being of coffee farmers and consumers.

However, there is no denying of the fact that we have a long way to go before Corporate Social Responsibility becomes a global success because unethical business practices do exist as the feelings of responsibility and care come from within.

It is a duty for all because growth of any form takes place rapidly only when we are constantly involved in activities that benefit all.

LANDMARK JUDGMENTS

OMVIR SINGH (4TH YEAR)

Salomon v. Salomon & Co. Ltd; 1896

FACTS:
Aaron Salmon's business was incorporated into a company in 1892 which comprised of himself, wife, daughter and four sons. Mr. Salomon as the company's managing director had taken for himself a £10,000 debt out of the 439,000 amount for which the company was sold. An advance of £5000 was paid to Mr. Salomon by Edmund Broderip on the Security of the debentures. Soon after the transaction, there was a decrease in sales followed by a strike action which led to the downturn in the business. To enforce his security, Mr. Salomon was sued by Mr. Edmund because of his position and responsibility in the Company and whether Mr. Salomon is responsible for the debts himself.

JUDGMENT:
The High Court ruled that Mr. Salomon was the Company's creditor since it had started as a sole proprietorship and having been changed into a company, the largest shares belong to Mr Salomon. This decision was upheld by the Court of Appeal. However, the argument of agency and fraud were rejected by the judges of the House of Lords because of the condition of the law on the formation of a company which require a minimum of seven persons and the law does not specify the number of shares which would be owned by each of the shareholders. Therefore, the principle of Separate Entity separates the personality of a company from its members which allows it to sue and can be sued.

Durga Prasad v. Baldeo; 1880

FACTS:
Durga Prasad had constructed some shops at the market with the promise of paying commissions on the sales made from the shop. Baldeo had spent some money for the improvement of the condition of the market on the authority of the government. The issue of a consideration was brought before the court.

JUDGEMENT:
The court nullified the agreement because of the lack of a consideration which must be desired by the promisor.

Bates v. Standard Land Co., 1911

FACTS:
The question of the distinction of the personality of a person and that of a company was brought before the court.

JUDGEMENT:
It was held that members of the board of directors constitute the pillars of the company by which the company can only act or take decisions through them.

Re South of England Natural Gas and Petroleum Co. Ltd., 1911

FACTS:
The shareholders of the company had received copies of the Prospectus with the title that clearly specified that it is meant for private circulation. This was not advertised to the public.

JUDGEMENT:
The court ruled that the prospectus was a public offer of shares despite the indication that described it as private circulation only.

Ramasgate Victoria Hotel v. Montefiore, 1866

FACTS:
Mr. Montefiore who was the defendant in the case had wanted to buy shares from the hotel which was owned by the complainant. He made an advanced deposit to the hotel owner's bank account with the intention of completing the transaction in June. After six months, he received a letter of acceptance of the offer from the complainant by which time the shares had lost its value and the defendant had lost interest in the business. However, Mr. Montefiore refused to proceed with the transactions but did not withdraw his shares. An action of specific performance of the contract was filed by the complainant against Mr. Montefiore and the question of the existence of an agreement between the parties was brought before the court.

JUDGEMENT:
The court dismissed the hotel's action for specific performance that a great deal of time had passed before the offer was made.

A period of six months which has elapsed was enough time for the expiration of the offer of shares.

The State Trading Corporation of India Ltd. & Ors. v. The Commercial Tax Officer, Vishakapatnam & Ors., 1963

FACTS:
The State Trading Corporation had approached the court for the issuance of special writs against agencies of the state governments based on sales tax which were targeted on the corporation. The petition was to ascertain the facts in Article 32 of the Constitution which allows the Supreme Court to issue special orders for the enforcement of the rights of citizens. The question as to whether the
State Trading Corporation which is a company that is registered under the
Indian Companies Act, 1956 can be regarded as a citizen and can seek for the enforcement of the fundamental rights of citizens and whether the STO is an organ of the government and can request for the enforcement of the rights of citizens against a state as under part III of the constitution
of India.

JUDGEMENT:
The Appeal was dismissed by the Supreme Court because as implied by the Powers of the corporate entity, all citizens are persons but all persons cannot be a citizen and a Company or a corporation ceases to be a person from the date of its incorporation. Also, since the corporation performs the functions of a commercial entity, it cannot be regarded as an organ or a department of the government of India.

Ashbury Railway Carriage & Iron Co. Ltd. v. Riche, 1875

FACTS
A railway company was formed with an object of selling railway wagons. The directors entered into a contract with Richie to finance the construction of railway line. The shareholders later rejected the contract as ultravires since it was not given in the objects clause of the Memorandum of Association(MoA) of the Company.

JUDGMENT
The court held that the contract was ultravires and therefore null and void. The Doctrine of Ultravires came into existence which clearly laid down that a company shall work towards fulfilling the objects that are directly or indirectly related to the objects clause of the Memorandum of Association of
the Company and not otherwise.

Royal British Bank Vs. Turquand, 1856

FACTS:
The Directors of a company borrowed a sum of money from the plaintiff. The company's articles provided that the directors might borrow on bonds such sums as may from time to time be authorised by a resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorising the loan and, therefore, it was taken without their authority. The company was however held bound by the loan. Once it was found that the directors could borrow subject to a resolution, the plaintiff had a right to infer that the necessary resolution must have been passed.

JUDGMENT:
Person dealing with the company are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith. Further, outsiders are bound to know the external position of the company, but are not bound to know
its indoor management. It was also held that the company may ratify the ultra vires borrowing by the directors if it is taken bona fide for the benefit of the company and this gave way to the Doctrine of Indoor Management.

Lee v. Lee's Air Farming Ltd., 1960

FACTS:
Lee incorporated a company of which he was the managing director. In that capacity he appointed himself as a pilot of the company. While on the business of the company, he was lost in a flying accident. His widow claimed compensation for personal injuries to her husband while in the course of his employment. It was argued that no compensation was due because Lee & Lee's Air Farming Ltd. were the same person.

JUDGMENT:
Lee was a separate person from the company when he formed the company and when the compensation was payable. His widow recovered compensation under the Workmen's Compensation Act. A member of a company can contract with a company of which he is a shareholder. The directors are not precluded from being an employee of the company for the purpose of workmen's compensation legislation.

Standard Chartered Bank and Ors. v Directorate Of Enforcement and Ors., 2005

FACTS:
The appellant in the present case filed a writ petition before the High Court of Bombay challenging various notices issued to them under Section 50 read with Section 51 of the Foreign Exchange Regulation Act, 1973. The appellant company in the High Court contended that it was not liable to be prosecuted for the offence under Section 56 of the FERA Act. The main issues for consideration were whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment and in a case where an accused is found guilty and the punishment to be imposed is imprisonment and fine, whether the court has got the discretion to impose the sentence of fine alone?

JUDGEMENT:
The Supreme Court settled the disputed question of criminal liability of a corporation. The decision overruled prior decisions to the contrary and holds that corporations are liable for criminal offenses. Corporation could be prosecuted and punished, with fines, regardless of the mandatory punishment of imprisonment required under the respective statute. After this case, the corporations could no longer claim immunity from criminal prosecution on the grounds that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The notion that a corporation cannot be held liable for the commission of a crime had been rejected.

SURANA & SURANA- UILS INTERNATIONAL ESSAY WRITING COMPETITION

The Centre for Trade Laws and Dispute Resolution, UILS, PU, Chandigarh, in collaboration with Surana & Surana International Attorneys organized the second edition of Surana & Surana-UILS International Essay Competition on Corporate Law, 2019 on the theme, 'Corporate Social Responsibility: Global Initiative for Sustainable Development.'

The Competition received nearly 100 entries, which underwent three rigorous rounds of review. The Final Jury consisted of a distinguished panel of judges, including Ms. Alka Bhatia, Economic Advisor, United Nation Development Programme, Malawi and Namibia.

Abhinandan Jain (5th year) & Tanushree Tanwar (5th year) were adjudged as WINNERS of the said competition for their entry titled, 'Blazing the Trail by Juxtaposing SMEs, CSR & SDGs'.

Reaffirming the notion, 'Individual efforts may bring success but only collective efforts can deliver effectively', they presented a formalized model, attempting to develop a cohesive ecosystem for Cluster SMEs in India to achieve Sustainable Development Goals by channelizing its CSR activities.

In all developing nations, including India, small and medium enterprises (SMEs) are the growth-engines of the economy. However, the effect of globalization has incapacitated individual SMEs to optimally deliver towards corporate social responsibility (CSR) due to resource constraints in terms of finance and manpower, lack of professional approach, insufficient infrastructure, amongst other reasons.
In order to ensure maximum realization of their potential in contributing towards sustainable development, the essay suggests a formalized workable multi-dimensional model for cluster SMEs. This model is divided into 5 phases i.e., creation of a local working group, institutionalising and strategizing CSR, incentivising cluster SMEs to implement CSR strategy, implementation of CSR strategy, and lastly, impact measurement and sustainability reporting.
Also, the instant model is replete with simultaneous analysis of the CSR Rules, 2014.

The creditworthiness of the proposed formalized approach founded on a collaborative approach is capable of being understood by the present 'political ecology' in developing countries, such as, India, where

unbalanced power relations amongst stakeholders intercede human-environment interactions, resulting in lopsided allocation of environmental pollution burdens to scattered and small enterprises and businesses.

Acknowledging the lack of homogeneity in application of the proposed model to each and every SME, this essay ultimately addresses the challenges which are anticipated to be faced in the process of formalization of cluster SMEs, such as coordination difficulties against excessive growth of cluster network, domination by a portion of SMEs and endangering autonomy of the rest, excessive consumption of time, money and effort in regularizing the existing system amongst others. The singular suggestion for eliminating the challenges in the process of formalization is, 'initiative', both governmental and entrepreneurial. That being said, CSR in SMEs through this model will build the high road towards SDGs.

Adjudged as winners of the said competition for articulating the afore-explained idea in an essay, Abhinandan Jain & Tanushree Tanwar have been awarded with a cash prize of Rs. 25,000 and the winning essay has been selected for an international publication.

EXISTENCE OF PRICE DISCRIMINATION & ANTI-DUMPING POLICIES: A FAULT LINE IN INDIAN ECONOMY

Yamini Jaswal (5th Year)

This Article won Consolation Prize in the Surana & Surana UILS International Essay Competition on Corporate Law, 2018

Antidumping laws can be traced back to the early twentieth century which is professedly aimed at protecting domestic markets from unfair trade practices and predation from foreign competitors. This essay commences with an appraisal of the theory and practice of AntiDumping laws, then scrutinises recent trends in Anti-Dumping.

In the light of the current global trade environment, the authors shall endeavour to illuminate the lacunae in contemporary trade laws. The essay traverses the journey of state implemented Anti-Dumping policies by establishing the critical relationship between the Competition Law and Dumping Law with special emphasis upon the trade distortion in the world economy. Furthermore, the authors have expounded and exemplified the topical trade scenario between India and China by empirically examining Anti-Dumping duties imposed on the import of Castings for wind operated electricity generators from China.

It is imperative that states, on their own accord, exercise their right to control their porous trade boundaries in congruence with the complex multilateral regulations enshrined in the WTO Agreement on Anti-Dumping.

Adam Smith has famously quoted: "If a foreign country can supply us with commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage."

THE ROAD AHEAD

With regard to injury to domestic industry one finds that injury is usually on two broad aspects: volume effect and price effect. There has been reduction in market share as well as profits of the domestic industry. In about 60% cases domestic industry suffered negative profitability due to sales below cost of production. Hence, regulation and overseeing by the state of the market becomes necessary to ensure that as a social and political instrument it serves the society rather than making the society and state serve it.

Trade remedy measures like antidumping measures become an important tool in this task of the state. Trade remedy measures properly used are easy tool in the hands of regulators to check the growth of market distortions and prevent the functioning of the market from collapsing. The state within its constraints has to ensure that market functions in a manner whereby its various national and international obligations are met.

In the past few weeks, we have seen an aggressive stance taken by the draconian trump government against China, with regards to Ant- Dumping measures, and vice-versa. This battle of Goliaths shall harm the entire World economy, including India's. Although in its present scenario, the face-off between the world's two largest economies may not jeopardise the country's export prospects. But in fact, if the US extends curbs on Chinese garments and textiles,

India will have an opportunity to exploit that advantage and ship out more to the largest economy, which is already its single-biggest market in these items. But the country may have to gear up with more anti-dumping measures to counter any potentially massive inflows of products, including steel, which will be targeted by these countries.Due to the various false allegations levelled by the domestic industry, there has been a tectonic disruption & distortion in the Indo-China Trade environment.

It is time for both the countries to come together for mutual reforms in the anti-dumping system, which happens to be discriminatory and biggest distortion among protectionist measure and should be imposed if the economic rationale of expanding trade gains and improving national welfare is being seen. Both the countries should express willingness to reciprocate through bilateral agreements and understand that removal of these barriers will set

the stage for a new level of economic cooperation. Competition Law although intersects with Anti-Dumping policies, it's fundamentally different as the latter has a protectionist foundational beginning. Above all, if antidumping were to be a tool against unfair trade as it was initially meant to be, it would be essential to reconsider the definition of dumping and think carefully what is fair and what is not. Is it fair enough to accuse and penalise someone just because prices are not equalised? There is a need to review Anti-Dumping Law. Also there is a need to bring this issue in competition policy because draft competition policy does not directly resolve this issue.

Want to write for us?

Contact the student conveners
or
E-mail us at:
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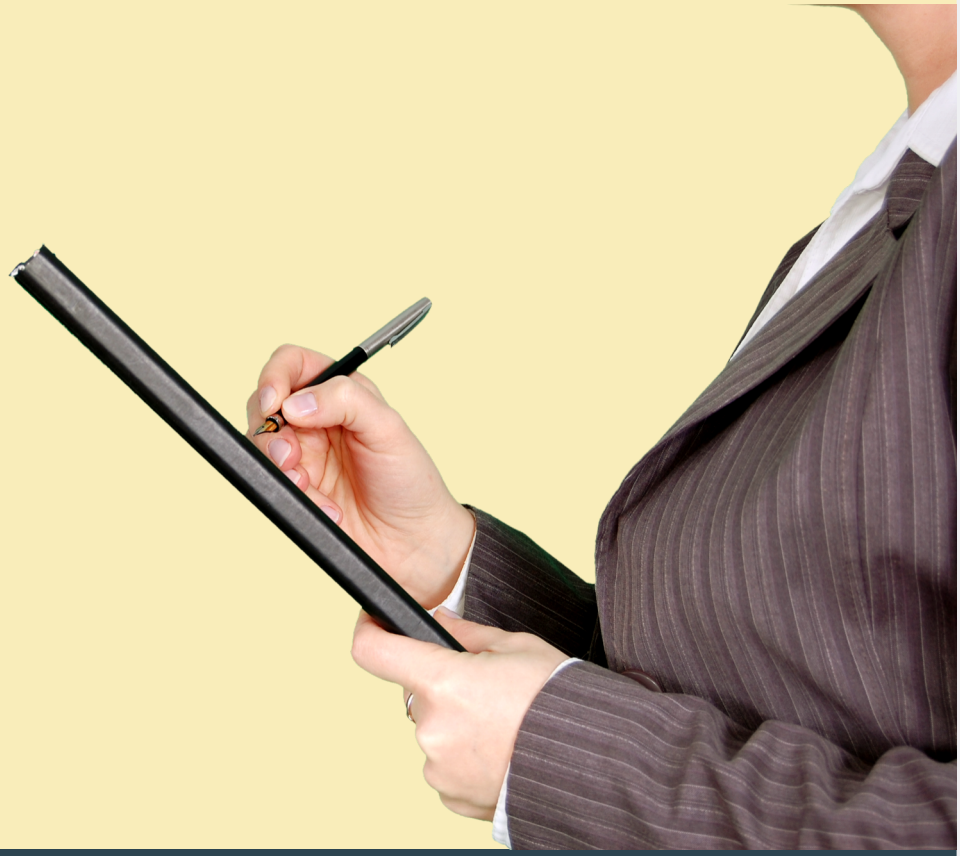

EVENTS

Past Events:

- Intra-Institute Essay Writing Competition

Forthcoming events:

- Sessions and Seminars
- Workshops
- Legislative Writing Competition
- Essay Writing Competition

Events and Competitions
to Look Out For:

- Workshop on Drafting, Pleading and Conveyance at ICFAI Law School, Dehradun
  Dates of Workshop: September 6th -7th, 2019

- DR. A.P.J. Abdul Kalam Air and Space Law Policy Essay Competition by IJLPP
  Submit By: October 31st, 2019

- Conference on Arbitration and Conciliation at Faculty of Law, University of Lucknow
  Date of Conference: October 20th, 2019
  Last Date of Submission: October 10th, 2019

- Call for Papers: Amity Law Review
  Last Date of Submission: October 25th, 2019

- Call for Papers: NLIU Bhopal's Indian Arbitration Law Review [Volume 2]
  Last Date of Submission: October 17th, 2019

- Seminar on Child Rights and Child Protection at Nehru Memorial Law College, Hanumangarh
- Dates of Seminar: November 16th -17th, 2019

- Seminar on Environmental Issues at Geeta Institute of Law, Panipat
  Date of Seminar: November 10th, 2019
  Last Date of Submission: October 15th, 2019

- RMLNLU-CTIC Conference and Essay Writing Competition on International Trade Law
  Last Date of Submission: November 17th, 2020

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	NISHANT TIWARI (3rd Year)	SUNIDHI SINGH (3rd Year)

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