

Top 10 cases in Corporate Laws

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In the Year 2019, we saw significant developments in the Companies Act. The Companies (Amendment) Ordinance, 2019 was promulgated on 21-02-2019. On July 25, 2019, Companies (Amendment) Bill, 2019 was introduced and it received assent of President on July 31, 2019.

Due to initiatives taken by the Govt. India's ranking on the World Bank's index of 'Ease of Doing Business' has moved up 14 positions to 63rd position as compared to 77th position in 2018. The Government took many initiatives to provide ease of doing business to the stakeholders. Various revolutionary changes have been introduced like, introduction of significant beneficial ownership rules, de-criminalisation of more than 46 offences in Companies Act, 2013, Start-up entrepreneur's friendly modification of norms relating to shares with differential voting rights, creation of Independent Director's databank, so on and so forth.

In the year 2019, the contribution of the judiciary has also been significant. We have witnessed various ruling during the year which added new dimensions to the rules of interpretation. In the year 2019, we have reported 4,850+ judgments on various laws including Income-tax, GST and IBC. In Corporate Laws alone we have reported approx. 1,250 cases. Out of these cases, we have selected 10 landmark rulings which may be relevant for you for future references. The digest of these 10 cases are given below:

1. Temple construction allowed at disputed site of Ayodhya; separate land given for Mosque

M Siddiq (D) ThrLrs v. Mahant Suresh Das [2019] 111 taxmann.com 191 (SC)

The Supreme Court in a historic and landmark judgment in the Ram Janmabhoomi and Babri Masjid case settled the long standing dispute over the place of worship in the holy city of Ayodhya. In the process, the five-member bench laid down certain legal principles which will also have far reaching implications and will continue to guide the legal fraternity.

The origin of the dispute can be traced back to 16th century when Babur's general Mir Baqi built a mosque on the site which Hindus believe was the birth place of their revered God Ram. The dispute led to several law suits. In the meanwhile, the mosque was destroyed by a group of Hindus in 1992. The three parties claiming possession of the disputed land are Ram Lalla Virajman, Nirmohi Akhara and Sunni Waqf Board. Having moved through various legal stages, the case or the bunch of cases finally reached the Supreme Court. It was heard by five-judge Constitution Bench headed by Chief Justice, Ranjan Gogoi.

After going through claims and counter-claims of all the parties, voluminous historical documents, report of the Archaeological Survey of India (ASI), travelogues, etc., the Supreme Court announced the judgment. It gave the decision on disputed land in favour of Ram Lalla Virajman and asked the Central Government to constitute a trust for construction of temple. It dismissed the claims of Nirmohi Akhara as time barred and ordered the government to provide five acres of land to the Sunni Waqf Board for construction of a mosque. Thus, the Supreme Court provided finality to a long-pending dispute.

2. Supreme Court's Ruling on what constitutes 'Basic Wage' and what constitutes 'Special Allowance'

Regional PF Commissioner (II), West Bengal v. Vivekananda Vidyamandir [2019] 103 taxmann.com 18 (SC)

The Regional Provident Fund Commissioner and establishments filed appeals to Supreme Court raising a common question of law, "Whether special allowances paid by an establishment to its employees would fall within the expression 'basic wages' under section 2(b)(ii) read with section 6 for computation of deduction towards Provident Fund?"

The Supreme Court has held that where allowances paid by an establishment to the employees are part of the basic wage but "camouflaged as an allowance" so as to avoid deduction and contribution to PF account of employees, the order of the authority under the EPF Act that special allowance was to be included in "basic wage" for computation of deduction towards provident fund was to be upheld.

3. Apex Court strikes down provision related to 'automatic stay' on arbitral awards

Hindustan Construction Company Ltd. v. Union of India [2019] 111 taxmann.com 468 (SC)

In a significant judgment, the Supreme Court struck down insertion of section 87 (providing for automatic stay of arbitral award when challenge is made under section 34 into Arbitration and Conciliation Act, 1996) by section 13 of Arbitration and Conciliation (Amendment) Act, 2019 as being manifestly arbitrary under Article 14 of Constitution. The Supreme Court has made it clear that there cannot be automatic stay on arbitral awards and authorities like National Highway Authority of India (NHAI), which act as arm of the Government, cannot come under the ambit of the Insolvency and Bankruptcy Code (IBC).

4. Govt. employees who resigned from Job are not entitled to pensionary benefits: SC

BSES Yamuna Power Ltd. v. Ghanshyam Chand Sharma [2019] 112 taxmann.com 128 (SC)

In the instant case, the Supreme Court clarified that 'resignation' and 'voluntary retirement' are different and cannot be treated as one and the same thing. The distinction is significant as it has implications for pension benefits of an individual employee. The respondent whose services were regularised on post of a peon on 22-12-1971 tendered his resignation on 7-7-1990, which was accepted by the appellant with effect from 10-7-1990. The Supreme Court held that by resigning, the respondent submitted himself to legal consequences that flow from a resignation under provisions applicable to his service, i.e., Rule 26 of Central Civil Service

Pension Rules 1972 (CCS Pension Rules) which states that upon resignation, an employee forfeits past service and, therefore, under Rule 26 of CCS Pension Rules respondent's past service stood forfeited upon resignation and he was not entitled to pensionary benefits.

5. Supreme Court cancels bail of ex-CFO of Bhushan Steels

Serious Fraud Investigation Office v. NittinJohari [2019] 109 taxmann.com 224 (SC)

Pursuant to investigation into affairs of Bhushan Steels (BSL) respondent, i.e., NittinJohari, who was Chief Financial Officer (CFO) of BSL, was arrested and remanded to SFIO's custody for commission of fraud punishable under section 447 of Companies Act, 2013. The respondent's application for regular bail under section 439 Code of Criminal Procedure was rejected by Special Judge by taking note of mandatory nature of section 212(6)(ii) pertaining to grant of bail for offences, as well as of gravity of economic offence committed, deep-rooted nature of conspiracy, and huge loss of public funds involved. However, the High Court by impugned order allowed bail application of respondent.

The Apex Court held that, the High Court had failed to apply its mind to all circumstances that were required to be considered while granting bail, particularly in relation to economic offences and, therefore, impugned order was to be set aside and, therefore, matter was to be remanded to the High Court to reconsider bail application filed by respondent and respondent would continue to remain in custody.

6. Office of CJI is a public authority and comes under the ambit of RTI Act: SC

Central Public Information Officer v. Subhash Chandra Agarwal [2019] 111 taxmann.com 206 (SC)

In a landmark ruling, the Supreme Court of India held that office of the Chief Justice of India is a public authority and comes under the ambit of the RTI Act. The Court rules that "Transparency does not undermine judicial independence. Judicial independence and accountability go hand in hand. Disclosure is a facet of public interest". However, the Apex Court cautioned that RTI cannot be used as a tool of surveillance. It was held that disclosure of information of judges of Supreme Court, who had declared their assets, does not impinge upon the personal information and right to privacy of the judges. Therefore, the Apex Court held that said information can be furnished under RTI Act.

CPIO, Supreme Court of India to furnish information of the judges who had declared their assets. Such disclosure would not, in any way, impinge upon the personal information and right to privacy of the judges. The fiduciary relationship rule in terms of clause (e) to Section 8(1) of the RTI Act is inapplicable. Such disclosure would not affect the right to confidentiality of the judges and their right to protect personal information and privacy, which would be the case where details and contents of personal assets in the declaration are called for and sought, in which event the public interest test as applicable *vide* Section 8(1)(j) and proviso to Section 11 (1) of the RTI Act would come into operation.

7. Disqualifying directors from office on failure to submit returns is not ultra vires Constitution, rules High Court

Yashodhara Shroff v. Union of India - [2019] 106 taxmann.com 297 (Karnataka)

In the instant case, the petitioners challenged the list published by the MCA in September 2017 whereby nearly three lakh directors were disqualified under Section 164(2)(a) and Section 167(1)(a) for failing to file annual returns and statements for a period of 3 consecutive years.

The petitioners argued that section 164(2) of the Act is retrospective in effect inasmuch as three continuous years of non-filing of financial statements or annual returns could extend to even prior to 01-04-2014 (on which date the Act came into force) however, the proviso of section 167(1)(a) came into force with effect from May 05, 2018.

The petitioners argued that Section 164(2) of the Act is *ultra vires* Article 14 and/or Article 19(1)(g) of the Constitution of India as being manifestly arbitrary.

The petitioner noted that the MCA had gone beyond the law and worked arbitrary. As, the due date for filing of returns and financial statement was not over yet and in the meantime, it published the list of disqualified directors in September 2017.

The High Court ruled that the proviso of section 167(1)(a) of the Companies Act, 2013 is prospective in nature and it should not enforced retrospectively. Therefore, any disqualification of director arising before 07-05-2018 (date of enforcement of provision of Section 167(1)(a)) would not compel the director to vacate the office in all companies in which the disqualified director is a director. The disqualified director would continue the position of director in other company. On the contrary, those who were disqualified after 07-05-2018 would vacate the office in other companies as well.

With regard to the constitutional validity of the proviso of section 167(1)(a) of the Companies Act, 2013, the Court ruled that, the said provision does not violate Article 19(1)(g) of the Constitution as it is made in the interest of general public.

8. Supreme Court orders reopening of books of account of IL&FS and its group Cos.

Hari Sankaran v. Union of India [2019] 106 taxmann.com 76 (SC)

The Central Government had filed a petition under Sections 241 and 242 alleging *inter alia*, mismanagement by Board of respondent company i.e., IL&FS, and that affairs of IL&FS were being conducted in a manner prejudicial to public interest.

NCLT suspended Board of Directors of IL&FS, and appointed newly constituted Board to conduct business as per Memorandum and Articles of companies.

Thereafter, Union of India filed application under section 130 seeking permission for re-opening of books of account and re-casting thereof, including financial statements of IL&FS, and other group companies for last five years from financial year 2012-13 to financial year 2017-18.

NCLT allowed said application and permitted re-opening of books of account, and re-casting financial statements of said companies. NCLAT by impugned order dismissed appeal against said order. It held that since conditions precedent for invoking power under section 130 had been satisfied, NCLT was justified in passing order under section 130.

The Supreme Court held that since reopening of books of account and recasting of financial statements of aforesaid companies was required to be carried out in larger

public interest, order passed by Tribunal under section 130 and confirmed by Appellate Tribunal, was not to be interfered with.

9. R.Com v. Ericsson controversy

Reliance Communication Ltd. v. State Bank of India [2019] 102 taxmann.com 331 (SC)

In the year 2013, the Ericsson and R.Com entered into a 'Managed Service Agreement' whereby Ericsson agreed to provide R.Com managed services i.e., operation, maintenance, and management of R.Com's network. Ericsson issued invoices from time to time to R.Com for the services provided. However, on non-payment of invoice, Ericsson moved NCLT as an operational creditor under Section 9 of IBC. NCLT admitted petitions and appointed Interim Resolution Professionals to carry out corporate insolvency resolution process.

The NCLAT recorded that R.com gave an undertaking to pay a sum of Rs. 550 crores as net settlement amount within 120 days' time. R.Com, however, failed to make payment as agreed upon and sought additional 60 days extension for making payment. Ericsson refused the request and filed contempt of court petition before the Apex Court on non-payment of Rs. 550 crores as per the undertaking given to the Court.

The Apex Court held R.Com guilty and directed to pay Rs. 550 crores in 4 week time failing which an imprisonment of 3 months will be imposed. Additional fine of Rs. 1 crore on 3 companies has also been imposed and on failure to pay the directors would have to serve 1 month in jail.

As per the waterfall mechanism followed for financial dispute resolution, a secured financial creditor gets paid first. If any money is left, it goes to the unsecured financial creditors, and the remaining amount to operational creditors. In this case, Ericsson was an operational creditor. Thus, it would have been the last to share the proceeds received on liquidation of the company. As it moved to the Apex Court under the Contempt of Court Act and the court ruled in Ericsson's favour to pay the settlement amount, as agreed upon in the undertaking given to the Court, the Ericsson would be entitled to recover its dues.

10. No criminal proceeding for use of Co. documents with honest intent to file plea against oppression

Birla Corporation Ltd. v. Adventz Investments and Holdings Ltd. [2019] 105 taxmann.com 174 (SC)

The respondents were shareholders of the appellant-company. They had filed a company petition under sections 397 and 398 before Company Law Board (CLB) alleging oppression and mismanagement in affairs of appellant-company.

The respondents had filed documents no. 1 to 54 along with the petition. The Appellant-company filed criminal complaint under sections 379 and 120B IPC against respondents alleging theft and misappropriation of all documents. The Magistrate issued summons to respondents for offences punishable under sections 380, 411 and 120B IPC. The respondents filed petition before High Court under section 482 CrPC for quashing of criminal complaint. The High Court held that complaint would not survive in respect of document Nos. 1 to 28 but as originals of document Nos. 29 to 54 were missing, complaint disclosed ingredients of offence of theft. On appeal, Supreme Court held that use of document Nos. 1 to 28 and document Nos. 29 to 54

by respondents in judicial proceedings to substantiate their case would not amount to theft. No 'dishonest intention' or 'wrongful gain' could be attributed to respondents and there was no 'wrongful loss' to appellant so as to attract ingredients of sections 378 and 380 IPC. Continuation of criminal proceedings would be an abuse of process of Court and, therefore, criminal proceedings were to be quashed.