CJA
e-NEWSLETTER
AUGUST-2020
Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

VOLUME : 05
ISSUE : 08

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FROM THE DESK OF CHIEF EDITOR

The right to human dignity is an inherent right in every human being. Something what is inherent cannot be taken away. Nor denied. It is part of being a human being. Any practice which is derogatory to the dignity of a human being must be renounced. Practices which are 'inhuman' cause violence to the dignity of a human being. Article 21 guarantees the right to 'Life'. From birth to death. The right to dignity exists even beyond death. It is a constitutional right. Also, a human right. It is both Constitutional value and morality.

The biggest challenge is, how do we ensure this right? I wish to examine: how one human being can contribute towards to dignity of other human beings. This thought came to my mind when I addressed a meet of Rotarians on zoom on August 13, 2020. It happened to be : The World Organ Donation Day. We all are dependent upon humans for body spare parts: Organs, foetuses, embryos, eggs, wombs, tissues and blood. They are not available in market like the automobile spare parts. Article 23 prohibits 'Human Trafficking'. My body belongs to me. Can I sell parts of my body? Can body parts be commercialised? Human Trafficking would include Trafficking in Organs and Tissues of human body. Section 19 and Section 19A of the Transplantation of Human Organs and Tissues Act, 1994 render commercial dealings in human organs and tissues as criminal offences. Commercialisation, therefore, is constitutionally prohibited and is punishable under the Act of 1994. Commercialisation is a global challenge. Inspite of legal ban, it exits. It is increasing. Rather than decreasing. Its elimination does not seem possible. 'Transplantation' tourism is flourishing. The demand is mani-fold. The supply is so limited. The economic disparity is increasing. The moral and ethical values are de-valuing.

In order to meet the shortage in human material, Dr.Barry Jacob, US based Doctor came up with a plan. Way back in 1983. He saw poverty and starvation deaths in Bangladesh on TV News. Dr.Jacob told the Washington Post : "The waste of all those organs is lying there." He decided to set up his business. Incorporated International Kidney Exchange Company in Virginia. The idea was to buy 'the waste' dirt cheap from third world countries. Sell the same in economically advanced countries. At his own quoted price. His dream was big business. The spirit of humanism and brotherhood was missing in him. The US Surgeons boycotted Dr.Jacob. On the other hand, Dr.Jacob was determined to promote free trade in human organs and material. His mission was : Free Trade is what life is all about. In this context, the US Congress came forward with the

National Organ Transplant Act, 1984. It prohibits the sale of human organs, through inter-state commerce. Anyone indulging in such practice was liable to be criminally prosecuted. The venture of Dr.Jacob was in-human. Sad as well. This I had shared in one of my talks in early 1990's.

In this backdrop, each citizen has a fundamental duty to develop humanism. Also the duty to promote spirit of brotherhood. The Preamble requires : Fraternity assuring the dignity of the individual. Therefore, let us remind ourselves that we are dependent upon each other. It is this understanding alone which can help. The right to human body cannot be absolute. There are no absolute rights. There are always reasonable restrictions. The right over the human body is no exception.

The Act of 1994 allows the close relations to donate/gift an organ to save his or her life. The reluctance on the part of even the close relations is understandable. Consequently, after death, if the immediate relations consent, his or her organs can provide life to others. We are meant to serve humanity. This would help to serve even after death. Service above self. Service beyond life is even better. In such a situation, one would be remembered for giving life even in death. The man is no more. His family including the extended family remains. What a good and positive feeling. The recipient and his family would remain in-debted. What a bond of two families. Many families, though not related, would continue to live in happiness. Always willing to help each other. In normal and difficult times. The added beauty is, it would add to human dignity even in death. In death, you give life to others. By sharing your organs. Can there be a better act than giving life! It is putting life into another life. This is the real recipe for human dignity.

As I was finalising this piece, a news came that 34 years old man was declared brain dead by doctors at G.G. Hospital in Chennai on August 27, 2020. His wife agreed to donate his organs. The G.G. Hospital retained the lungs. 48 years old man, his lungs were damaged due to COVID-19 infection. He had virtually no chance of survival. The survival became possible because of the timely possibility of transplantation. Not only this, one Monika More who had got severed both her hands in a train accident. This happened seven years back. Both her hands have now been transplanted. It is rare that such a dream could become possible. The heart transplant surgery was also performed at the Chennai Hospital. One body has given life to three more.

Let us resolve to pledge our bodies. After death nothing remains. Why not save the lives of others. The mind set needs to change. We all have to die. Let this realisation prompt you to take this step. In Spain, France, Norway, Sweden, Greece and Turkey, there is presumed consent. All citizens are potential donors unless specifically you opt out.

Right to life includes the right to die with dignity. One can pledge one's body during life-time. One can also register one's 'Living Will'. 'Will' your organs. You would add dignity even in death. You will continue to live. For each other. This is the beauty of Life. This will be constitutional value-in-action. In abundance.

Let us change our mind-set. There is nothing unethical. No myths. Pure and simple. Life must continue. May be in another human body. It is creating a human chain. Each link would carry it further. Will that not be the real joy of life! I pause for a positive response. After all, we are all part of the human family. The human race.

Balram K. Gupta

INAUGURAL ADDRESS

I am pleased to address the newly recruited judicial officers for the State of Punjab and Haryana on the inauguration of their online training. I take this opportunity to congratulate you all as well as your parents and members of the family who have joined us in this online inaugural session. It must be a joyous moment for them as they had made immense sacrifice to help you reach at this station of your life. You must pay your gratitude to them.

As we all know the human race is passing through the unprecedented crisis set on by the corona virus. It has made a paradigm shift in the ways we have been conducting ourselves. In this challenge we have to adopt new modes and methods of lifestyle. The pandemic has restricted our physical movements but connected us digitally. I feel proud to say that our country has leap frogged in technology to undertake all our necessary activities. In normal times we always had training in the campus of the judicial academy but on account of the pandemic we conceived of the online training programme under the able guidance of Hon'ble the Chief Justice. I do wish that we could have a physical inaugural session which was not possible. Nevertheless the process of selection which was initiated by the selection committee chaired by me is going to begin a new milestone with the inauguration of the training programme of the trainee judicial officers.

Judicial education and training are one of the most effective means for enhancing the fair administration of justice. In the words of **Albert Einstein "Education is not the learning of facts, but the training of mind to think."** For this improvement in the skills of judges is paramount. Attaining judicial excellence requires among other substantial investments training for judicial officers at all levels. The idea is to transform the judiciary as a centre of judicial excellence with efficient and well trained team of judicial officers with highest standard of professionalism and integrity.

Judicial office is not a regular service and it is the blessed who gets the opportunity to dispense justice. It requires lot of discipline, integrity, commitment and continuous perseverance to match the demands of a judicial office. You all have cleared a preliminary step by your selection in the examination. The real training to inculcate and cultivate the qualities required of a judge shall commence now.

Friends, you are going to start a new journey from today. The path you have chosen is not a bed of roses. A life of a judge demands the best and the tough out of life. A judge is a missionary whose mission is to impart justice in the society. The priorities of his life are different. The motto of a life of judge can be expressed in the words of **Albert Einstein who said "only a life for others is a life worthwhile."**

A selfless service for the humanity is what a life of a judge is. You all have to measure upto the task by cultivating simplicity, discipline, hard work, sensitivity and empathy in your character. In the words of **Justice Gerard Brennan, former Chief Justice of Australian Supreme Court:**

> **"Judge would not succeed and would not find satisfaction in his or her duties unless there is a continual realisation of the importance of the community service that is rendered."**

We have designed the training schedule to impart you the practical training instead of only focusing on a classroom teaching. In this regard we have set a rigorous schedule for you where you shall have the opportunity to have online interactive sessions with the faculty of the Academy and also the practical working in the courts. You shall have three interactive sessions which are spread over in the day with the intervening period to be spent in the courts where you shall have the opportunity to examine the files, what the working of the judicial officers, the art of dealing with the cases and writing of the orders. A real experience can be gained by a judge when he works on a case on his own. The exposure in the courts from the day one alongwith the interactive online sessions shall go a long way to equip you all with necessary skills to discharge the duties of a judge.

While learning the court skills I always emphasis on the good conduct of a judge. Your conduct of a judge. Your conduct must be exemplary both in and outside the court. A judge must be courteous, humble, sensitive, simple and a person with minimum needs. You are required to understand the objective conditions of the society and be fair to everybody.

I would like to emphasis on the trainee judicial officers to maintain strict discipline in their training programme as their conduct, performance, punctuality, attire, attention to the work shall be assessed from time to time.

A strict action may be taken against the trainee judicial officer who is found wanting. The idea of sounding the caveat is not to discourage you on the first day of your training programme but to sensitize you regarding the seriousness of the office which you are occupying and the expectation of the system as well as general public from the judiciary. You have to come up to the expectation on completing your training programme. In this training programme we are not leaving you like a ship without a rudder. You shall have the leadership of the District and Sessions Judges at your respective stations who shall guide you at every step. You can also share your difficulties and problems with the faculty members of the academy. I shall stress upon you all to take keen interest in your working in the court and in case of any doubt or difficulty to discuss with faculty members in your interactive sessions. The training program is of one year but considering the present situation the online training has been scheduled for four months. We shall assess the situation thereafter and chalk out the future course of the training.

I wish and would love to interact with you physically as and when pandemic crisis subsides.

I congratulate you all once again. I wish you success in life and hope you all would prove to be an asset for our justice delivery system.

I would like to part ways with few lines from an inspirational poem by **Mother Teresa title "Life is"-**

"Life is an opportunity benefit from it.
Life is Beauty, admire it.
Life is bliss, taste it. Life is a dream, realize it.
Life is a challenge, meet it. Life is a duty, complete it."

So my friends make the best of the opportunity which the almighty has given to you and aspire to deliver the best of the society.

Justice Rajan Gupta
Judge, Punjab & Haryana High Court
President, BOG, CJA

LATEST CASES : CIVIL

"We need to distinguish between the internet as a tool and the freedom of expression through the internet. There is no dispute that freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial."

- N.V. Ramana, J. in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, para 3

Vineeta Sharma V. Rakesh Sharma: 2020 SCC OnLine SC 641:Daughters Have Coparcenery Rights Even If Their Father Was Not Alive When Hindu Succession (Amendment) Act, 2005 Came Into Force: SC-HELD-In a significant judgment, the Supreme Court held that, a daughter will have a share after Hindu Succession (Amendment) Act, 2005, irrespective of whether her father was alive or not at the time of the amendment. The Supreme court pronounced the judgment in a batch of appeals that raised an important legal issue whether the Hindu Succession (Amendment) Act, 2005, which gave equal right to daughters in ancestral property, has a retrospective effect? "Daughters must be given equal rights as sons, Daughter remains a loving daughter throughout life. The daughter shall remain a coparcener throughout life, irrespective of whether her father is alive or not".

M/S EXL Careers &Anr. V. Frankfinn Aviation Services Pvt. Ltd.: CIVIL APPEAL NO(s). 2904 OF 2020d.o.d 05.08.2020:[Order VII Rule 10 & 10A CPC] Suit In New Court Has To Proceed De Novo On Return of Plaint: SC- HELD-The Supreme Court held that, if a plaint is returned under Order VII Rule 10 and 10A of the Code of Civil Procedure for presentation in the court in which it should have been instituted, the suit shall proceed de novo. The bench, noticing, apparent conflict between the judgment in Oil and Natural Gas Corporation Ltd.v. Modern Construction [(2014) 1 SCC 648] and Joginder Tuli vs. S. L. Bhatia [(1997) 1 SCC 502], had observed that the former needs reconsideration. It was observed that unless a party can prove that it has been actually prejudiced by some proceedings before the Court not having jurisdiction, it would not be in the larger interest to start the proceedings de novo.

Ved Prakash Goel @ Ved Goel &Anr. V. SD Singh & Anr: CIVIL APPEAL NO.2831 of 2020 d.o.d 01.08.2020 - [Motor Accident Compensation] For Age Group 15-25, Multiplier To Be Applied Is '18', Reiterates SC- HELD- The Supreme Court reiterated that, while computing Motor Accident Compensation, for the age group of 15-25 years, the multiplier has to be '18'. Two recent judgments of the Supreme court has modified the award of MACT Tribunals on this ground. The MACT determined the total compensation as Rs.25,48,050/- but on account of contributory negligence to the extent of 50%, it directed the insurer, to pay only half of the said amount to the claimant. The High Court upheld the MACT order. Though the Apex Court upheld the contributory negligence finding, and observed that the impugned judgment and all other perspective do not find any infirmity except two aspects: (a) the multiplier applied was 13 while as per the judgment in Sarla Verma &Ors. v. Delhi Transport Corporation & Another (2009) 6 SCC 121, it should have been 18.(b) The interest granted is of 6% which generally the interest being granted is of 9%".

Ravinder Kaur Grewal V. Manjit Kaur: 2020 SCC OnLine SC 612 -Memorandum Of Family Settlement Binding On Parties; Does Not Require Registration: SC–HELD- The Supreme Court has observed that a 'memorandum of family settlement' is not required to be registered and is binding on the parties. The Court reiterating Kale &Ors. vs. Deputy Director of Consolidation &Ors (1976) 3 SCC 119 and said: "When by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family."

Erudhaya Priya Vs. State Express Transport Corporation Ltd.: 2020 SCC OnLine SC 601 - [Motor Accident Compensation]Future Prospects On Advancement In Life And Career Also To Be Considered In Multiplier Method :SC–HELD- In a notable judgment in a motor accident The Supreme Court has observed that while applying the multiplier method in computing Motor Accident

Compensation, future prospects on advancement in life and career are also to be taken into consideration. While allowing the appeal, the court agreed with the contention of Appellant that, in the age group of 15- 25 years, the multiplier has to be '18' along with factoring in the extent of disability. It further held that in the age group of 15- 25 years, the multiplier has to be '18' along with factoring in the extent of disability. Also, it was observed that the multiplier to be applied has to be '18' and not '17'.

Union of India vs. M/s. K.C. Sharma & Co.: 2020 SCC OnLine SC 644-[Transfer Of Property Act] Protection U/s 53A Available To Person Put In Possession And Has Agreement Of Lease In His Favour: SC–HELD- The Supreme Court has observed that protection under Section 53A of the Transfer of Property Act, 1882 is available to a person who is put in possession pursuant to an agreement of lease in his favour though no lease has been executed and registered. The bench, while dismissing the appeal, observed that the defence under Section 53A of the Transfer of Property Act, 1882 is available to a person who has agreement of lease in his favour though no lease has been executed and registered. Reiterating, the judgment of Hamzabi wherein the Court has held that Section 53A of the Transfer of Property Act, 1882 protects the possession of persons who have acted on a contract of sale but in whose favour no valid sale deed is executed or registered. The respondents were put in possession and the Panchayat has acted upon their proposal for grant of lease.

Babulal Vardharji Gurjar V. Veer Gurja Aluminium Industries Pvt. Ltd. & Anr.: 2020 SCC OnLine SC 647- **[IBC] Limitation Period For CIRP Application Is Three Years From The Date Of Default: SC-HELD**- The Supreme Court reiterated that the limitation period for application under Section 7 of the Insolvency and Bankruptcy Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of Limitation Act if any case for condonation of delay is made out. The issue considered was whether the provisions of Section 18 of the Limitation Act certainly extend the period of limitation under the Code on any acknowledgment of debt by the corporate debtor. The Court allowed an appeal against National Company Law Appellate Tribunal which held that the right to apply under Section 7 of the Code accrued to the financial creditor only on 01.12.2016 when the Code came into force; and that the period of limitation for recovery of possession of the mortgaged property is twelve years.

V.N. Krishna Murthy Vs. Ravikumar: 2020 SCC OnLine SC 664: **[Section 96 CPC] Strangers Cannot File Appeal Unless They Satisfy The Court That They Are 'Aggrieved Persons': SC-HELD-** The Supreme Court has observed that strangers cannot be permitted to file an appeal under Section 96 of the Code of Civil Procedure unless he satisfies the Court that he falls within the category of 'aggrieved persons'. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court.

Deccan Paper Mills Co. Ltd. Vs. Regency Mahavir Properties &Ors.: 2020 SCC OnLine SC 655: **[Cancellation Of Written Instruments] Action Instituted U/s 31 Specific Relief Act is Not An Action in Rem: SC-HELD-** The Supreme Court held that an action instituted under section 31 of the Specific Relief Act, 1963 is not an action in rem, but an action in personam, and therefore arbitrable. Referring to *Muppudathi Pillai v. Krishnaswami Pillai,* AIR 1960 Mad 1, the Apex Court bench observed that the expression "any person" in Section 31 does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. Further, a reading of section 31(1) then shows that when a written instrument is adjudged void or voidable, the Court may then order it to be delivered up to the plaintiff and cancelled – in exactly the same way as a suit for rescission of a contract under section 29. The action under section 31(1) is strictly an action inter parties or by persons who obtained derivative title from the parties, and is thus in personam. Further explained that when it comes to cancellation of a deed by an executant to the document, such person can approach the Court under section 31, but when it comes to cancellation of a deed by a non-executant, the non-executant must approach the Court under section 34 of the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action in personam since a suit has to be filed under section 34. However, cancellation of the same deed by an executant of the deed, being under section 31, would somehow convert the suit into a suit being in rem**. All these anomalies only highlight the impossibility of holding that an action instituted under section 31 of the Specific Relief Act, 1963 is an action in rem**.

LATEST CASES : CRIMINAL

"Criminal jurisprudence mandates balancing the rights of the accused and the prosecution."

— Navin Sinha, J. in Varinder Kumar v. State of H.P., (2020) 3 SCC 321, para 15

Shor V. State of UP & Anr.: Writ Petition (Criminal) No. 58 Of 2020 d.o.d 06.08.2020 :Mere Fact That Crime Is Heinous And That Release Of Prisoner Would Send A Negative Message. Not Relevant Factors To Deny Probation :SC-HELD-The Supreme Court has freed a murder convict who served 28 years 08 months and 21 days in prison. The Uttar Pradesh Government had rejected Shor's plea for premature release on the ground that he along with 20 co-accused committed the murder of 11 persons with deadly weapons and injured others. The order passed by the Joint Secretary to the UP Government further stated that "premature release of this kind of prisoner would send a negative message against the justice system in the society". Taking note of Section 2 of the United Provinces Prisoners Release on Probation Act, 1938, the Court observed that the factors that to be taken into account are

(i) antecedents
(ii) conduct in the prison and
(iii) the person, if released, is likely to abstain from crime and lead a peaceable life.

Referring to the reasons stated in the order for refusing remission, the Supreme Court observed that the order has been passed mechanically and without application of mind to Section 2 of the U.P. Act.

Gangadhar Alias Gangaram Vs. State Of Madhya Pradesh : Criminal Appeal No. 504 Of 2020 D.O.D 05.08.2020:Stringent Provisions Of NDPS Act Does Not Dispense With The Requirement To Establish A Prima Facie Case Beyond Reasonable Doubt: SC-HELD-The stringent provisions of the Narcotics Drugs and Psychotropic Substances Act, Act do not dispense with the requirements of prosecution to establish a prima facie case beyond reasonable doubt, the Supreme Court has observed today while acquitting an accused. Gangadhar was convicted by the Special Court under Section 8C read with Section 20(b)(ii)(c) of the NDPS Act for recovery of 48 Kgs 200 gms. cannabis (ganja). He was sentenced to 10 years of rigorous imprisonment with a default stipulation. The appeal filed by him was dismissed by the Madhya Pradesh High Court. While considering his appeal, the Supreme Court bench noted that the presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable.

Ramvir V. State of NCT Delhi: Criminal Appeal No. 1172 Of 2010 D.O.D 03.08.2020 -SC Upholds Conviction Of Man Accused Of Raping Minor Girl; Rejects His Plea That It Was Consensual- HELD-The Supreme Court, in a judgment delivered last month, upheld the conviction of a man accused of raping a minor in the year 1992. The Supreme Court bench rejected his plea that no offence under Section 376 of the Indian Penal Code is made out since the victim was a consenting party. The Court took note of the documents produced by the prosecution and observed that she was a minor during the said incident.

Kalyani Badola & Anr. V. State of Bihar &Ors: Writ Petition(s)(Criminal) No(s). 210/2020d.o.d 04.08.2020-'Totally Impermissible': SC On Custody Of Social Activists Who Supported Bihar Gangrape Survivor; Directs Release-HELD-The Supreme Court issued notice and directed the release of two women social activists who had been sent to judicial custody in Araria district of Bihar on July 10, for allegedly misbehaving and indulging in a verbal argument with the Magistrate of the Araria court, in support of a gangrape survivor. It heard the matter and issued notice in the same. While directing for the release of the Petitioners on bail on furnishing personal bond for a sum of Rs. 10,000, and further orally observed that the order by way of which they had been sent to custody was "totally impermissible".

Satyabrat Gupta V. The State of Jharkhand: Special Leave to Appeal (Crl.) No(s). 2787/2020d.o.d 27.07.2020-Charge Under IPC Can Continue Even If Sanction In Respect Of Offence Under Prevention Of Corruption Act Is Not Forthcoming: SC-HELD-The Supreme Court has observed that the charge against an accused for offence punishable under the Indian Penal Code can continue irrespective of the fact that sanction in respect of offence punishable under Prevention of Corruption Act, is not forthcoming. The Supreme Court bench agreed with the view taken by Jharkhand High Court

while dismissing a petition filed an employee of BPCL (Bharat Petroleum Corporation Ltd.).

ParminderKaur @ PP Kaur @ Soni Vs . State of Punjabi: CRIMINAL APPEAL NO.283 of 2011 d.o.d 28.07.2020 -Once Accused Makes A Plausible Defence In His 313 CrPC Statement, Burden Is On The Prosecution To Negate It: SC-HELD-The Supreme Court has held that once a plausible version has been put forth by the defence at the examination stage of Section 313 of the CRPC, then it is for the prosecution to negate such a defense plea. It further reiterated that failure of the trial court to fairly trial apply its mind and consider the defence could endanger the conviction itself.

Re Prashant Bhushan: SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020, decided on 14.08.2020:Prashant Bhushan's tweets not "fair criticism" of judiciary; SC finds him guilty of criminal contempt-HELD- The 3-judge bench of the Supreme Court, **in a 108-pages long verdict**, held advocate Prashant guilty of criminal contempt in the suomotu contempt petition initiated against him after he criticised the Supreme Court and the sitting and former CJIs **in a couple of tweets**. It held, **"The tweets which are based on the distorted facts, in our considered view, amount to committing of 'criminal contempt'.**

Stating that in order to protect the larger public interest, such attempts of attack on the highest judiciary of the country should be dealt with firmly, the Court noticed that Advocate Bhushan has been practicing for last 30 years in the Supreme Court and the Delhi High Court and has consistently taken up many issues of public interest concerning the health of our democracy and its institutions and in particular the functioning of our judiciary and especially its accountability. **Bhushan being part of the institution of administration of justice, instead of protecting the majesty of law has indulged into an act, which tends to bring disrepute to the institution of administration of justice**. He is expected to act as a responsible officer of this Court.

The Court refused to accept the contention that the said statement was a bona fide criticism made by him on account of his anguish of non-functioning of the courts physically. His contention, that on account of non-physical functioning of the Supreme Court for the last more than three months, the fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent grievances were not being addressed or taken up for redressal, as stated herein above, is false to his own knowledge. The Court further said that **"He has made such a scandalous and malicious statement having himself availed the right of an access to justice during the said period, not only as a lawyer but also as a litigant."**

Rakesh Kumar v. Jasbir Singh, Crl. Revision No. 3004 of 2019, decided on 11-08-2020- [S.138 NI Act] Do sympathetic consideration have any role to play in the matter of sentencing? -HELD-The Punjab and Haryana High Court while addressing an issue with regard to the dishonour of cheque held that, "Offence under Section 138 NI Act is quasi-criminal in nature and it is not an offence against society, hence an accused can escape punishment by settling with the complainant."

Sentencing is primarily a matter of discretion as there are no statutory provisions governing the matter. The Bench while citing the decision of the Supreme Court in *State of Himachal Pardesh v. Nirmala Devi,* 2017 (2) RCR (Criminal) 613, stated that the sentence imposed must be commensurate with the crime committed and in accordance with jurisprudential justification such as deterrence, retribution or restoration. Mitigating and aggravating circumstances, both should be kept in mind.

Court added that *the provisions inserted for inculcating greater faith in banking transactions needed more teeth so that cases involving dishonour of cheques reduced.*

Therefore, it is apparent that deterrence and restoration are the principles to be kept in mind for sentencing.

Gurpreet Singh v. State of Punjab: CRM-M-16233-2020 (O & M) decided on 01-07-2020: It is imperative to sternly deal with rising cases of assault and use of criminal force to obstruct a public servant from discharging their duties -HELD-The Punjab and Haryana High Court while deciding the instant petition filed under Section 438 of CrPC for grant of anticipatory bail, observed that there has been rise in the cases of assault and use of criminal force to obstruct a public servant from discharging their duties, thus it is imperative to sternly deal with such cases. The Court further stated that, **"To curb the tendency of assaulting or using criminal force to public servants, the protective shield of law has to be extended to such public servants to enable them to effectively discharge their duties without any fear."**

LATEST CASES : ARBITRATION

"A decision which curtails fundamental rights without appropriate justification will be classified as disproportionate. The concept of proportionality requires a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed. "
- N.V. Ramana, J. in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, para 80

Golden Edge Engineering P. Ltd. v Bharat Heavy Electricals Ltd.: A.P. No. 191 /2020 decided on 18th June 2020-HELD- The High Court was considering a clause in the contract which provided that "the seat of arbitration shall be Kolkatta (the place from where the contract is issued)". The Court held that the seat would have to be determined taking into account the bracketed portion and the tender being issued from Salt Lake and not Kolkatta (albeit electronically but the Court relied on S. 13(3) of the Information Technology Act), the High Court of Calcutta would not be the competent court for entertaining an application under S. 9 of the Act.

Goodwill Non-woven P. Ltd. v XCoal Energy & Resources LLC: OMP (I) (COMM) 120/2020 decided on 9th June 2020-HELD-The High Court rejected the contention that in case of an international commercial arbitration, the jurisdiction vested in an Indian Court under proviso to S. 2(2) of the Act for entertaining an application under S. 9 is an asset based jurisdiction, which can be exercised only when the asset(s) of the counter party against which, the order is sought to be enforced are situated in India. It held that the word used in S. 9 is 'a party' which denotes any party can file an application and further held that for the purpose of passing an order/interim measure, the availability of asset in India is irrelevant and sub-sections (a), (b) & (c) of S. 9 contemplate passing of orders for interim measure of protection which do not pre-suppose the existence of asset(s) of a foreign party in India. However, on the facts of the case, the Court declined to pass an interim measure of protection holding that no prima facie case was made out and it is not an exceptional case where there is adequate material on record leading to a definite conclusion that the respondent is likely to render the entire arbitration proceedings infructuous by frittering away the properties or funds.

Quick heal Technologies Ltd. v NCS Computech P. Ltd: Arb P. 43/2018 decided on 5th June 2020-HELD-High Court held that the use of the word 'may' in the arbitration clause shows that there was no consensus between the parties with regard to arbitration and they only agreed to provide fresh consent (by use of the word "may") in order to proceed with the arbitration and as no fresh consent to proceed with any arbitration has been provided by any of the Respondents, there is no valid arbitration clause under which any Arbitrator can be appointed.

Bhubaneshwar Expressways P. Ltd. v National Highways Authority of India: OMP(I) (COMM.) 218/2019 decided on 03rd June 2020-HELD-The short question before the High Court was that could a bank guarantee, which had been directed by the Court to be submitted by the petitioner to secure the claim in arbitration, be furnished by a third party on the Petitioner's behalf, which third party had no connection with the contract with the parties. The Court answered the said question in the affirmative and held that a bank guarantee being a contract between the bankers and the beneficiaries, the Respondent for the purpose of the bank guarantee has to deal with the guarantor, namely, the bankers and not the party, at the instance of whom, the bank guarantee has been given.

Suzlon Energy Ltd. v Zemira Renewable Energy Ltd. &Anr.: OMP(I) COMM No. 340/2019 decided on 4th June 2020-HELD- The High Court reiterated the position of law that merely because invocation of bank guarantee would cause financial distress to the Petitioner therein, who was stated to be undergoing Corporate Debt Restructuring Process, cannot be a ground to invoke the exception of irretrievable injury to be entitled for a stay on invocation/encashment of bank guarantee nor could any serious disputes on the merits of respective claims be urged as grounds to seek injunction against invocation.

Overnite Express Limited v Delhi Metro Rail Corporation :OMP(I) (COMM)254/2019 decided on 12th June 2020-HELD- The High Court was considering a petition filed under Section 9, inter alia, seeking restraint against taking of coercive steps under a License Agreement and raising of invoices for license fees. The Court, upon consideration of the terms of the license agreements, held that the same are by their nature very determinable and thus no injunction against termination of the

agreements can be granted as sought by petitioner as the same would be statutorily barred in view of Section 14(1)(c) r/w S. 41(e) of the Specific Relief Act, 1963 and similarly no injunction against raising of invoices can be granted as that would also indirectly amount to enforcement of the agreements and thus also statutorily prohibited. It further held that the contentions of parties touching upon the merits of the claims including alleged breaches and invoices towards License Fee, as well as the interpretation of the Term 'as is where is basis' will be decided by the Arbitral Tribunal as and when constituted.

Blue Coast Infrastructure Development P. Ltd. v Blue Coast Hotels Ltd. &Anr: OMP(I) (COMM) 35/2020 decided on 10th June 2020 -HELD- The High Court held that a Court in a Section 9 petition, unlike an Arbitrator under S 17 petition, can pass interim measure against non-parties to the arbitration including a third party who holds possession of a property for one of the parties to arbitration applying the principles of Order 38 Rule 6 CPC. However, on the facts of the case, it held, that no interim measures can be passed against the third party as the property in the form of monies that was being held by the said party was itself subject to certain other orders of the Court passed in a separate proceeding.

Rashmi Cement Ltd. v World Metals & Alloys (FZC) &Anr.:OMP(I)(COMM) 117/2020 decided on 18th June 2020-HELD-The High Court while dealing with a S. 9 Petition seeking certain interim measures in the nature of mandatory injunction relying on the force majeure clause in the contract between parties, held that while ambit of interim protections that can be granted under S 9 is broad and would include mandatory injunctions, there is the three pronged test for grant of same, viz., prima facie case in its favour, balance of convenience in its favour and, most importantly, evidence of irretrievable injury that would be suffered in case protection is not granted. Applying the said test, it held, on the facts of the case, that the Petitioner has not been able to establish a prima facie case or balance of convenience in its favour, however clarified that the question whether the force majeure clause in the case stood attracted or not would have to be decided by the Arbitral Tribunal in the final analysis. The Court also observed that the government circulars on force majeure may not be binding on private parties governed by a private contract.

Aakash Educational Services Ltd. v Sahib Sital Singh Bajwa & Ors: OMP(I)(COMM) 121/2020 decided on 29th June 2020-HELD- The High Court refused to grant interim protection in the form of enforcement of a negative covenant contained in the agreement between the parties which prevented the Respondent, who had been a franchisee of the Petitioner, from running a similar coaching centre for a period of two years after termination of the franchise agreement. The High Court accepted the Respondent's contention that the negative covenant to restrict trade, busines or profession of the respondents after termination of the agreement would be hit by Section 27 of the Indian Contract Act, 1872.

DSC Venture P. Ltd. v Ministry of Road Transport and Highways, UOI: Arb P. 203/2020 decided on 29th June 2020-HELD- the High Court of Delhi was dealing with the question that whether the time period of 30 days provided in S. 11(6) would apply to appointment of a substitute arbitrator under S 15(2) and whether a party who did not appoint the substitute arbitrator within such period of 30 days and even till date of filing of petition under S. 11 by the other party, had lost the right to appoint a substitute arbitrator and appointment made post the said period of 30 days was void ab initio. The High Court held that appointment of a substitute arbitrator would have to be as per the rules that were applicable for appointment of the arbitrator sought to be substituted namely the arbitration clause between the parties providing for manner of appointment and as the clause in the case at hand did not provide any time period and on the contrary required the Petitioner to call upon Respondent to appoint its nominee arbitrator, then in the absence of such notice/demand, no time period for appointment of substitute arbitrator had starting running and the right of the Respondent appoint arbitrator did not get extinguished. The Court further held that there can be no deemed failure, on the part of either party, to comply with the procedure, stipulated in the contract, for appointment of arbitrator. It is only if the party defaults in doing so, in violation either of the arbitration clause, or of any mandatory statutory prescription – or proscription –that the autonomy, of the party, to appoint an arbitrator, becomes imperilled, and not otherwise.

Afcons Infrastructure Limited v Konkan Railway Corporation Ltd.: Arb. P. 10/2019 decided on 2nd June 2020-HELD-The High Court held that as per Section 21 of the Act, the arbitration would be treated to have commenced on the date request for reference to arbitration is received and on the said basis

held that the standing arbitral Tribunal constituted, for an earlier dispute between the same parties, and constituted prior to coming into force of the Amendment Act, 2015 certainly would not clear the test of law when the arbitration in case of the present dispute itself commenced after the Amendment Act, 2015 came into force and when the constitution of the said Standing Tribunal is hit by the provisions of the Amendment Act and the subsequent judicial pronouncements in *Perkins Eastman Architects DPC &Anr. v HSCC (India) Ltd,2019 SCC Online SC 1517***.**

Reliance Infrastructure Ltd. v State of Haryana &Anr.: Civil Revision No. 7191/2019 (O & M) decided on 3rd June 2020-HELD- **The** High Court, while dealing with an arbitration clause which empowered the State of Haryana to appoint the arbitrator in a dispute involving a government PSU and a contractor, held that admittedly the appointing authority was not a party to the contract and merely because of State of Haryana has some financial interest in setting up of the PSU or has a nominee in its Board would not ipso facto mean that it has any interest in the arbitral proceedings and held that if the same was to be treated as a disqualification from exercising power to appoint arbitrator, then in every dispute involving a State Board, Corporation , organization etc , the State Governments would not be in a position to appoint arbitrator and held the appointment so made was not against the ratio of the judgments of the Hon'ble Supreme Court in *M/s. TRF Limited v Energo Engineering Project Ltd*,*AIR 2017SC3889* and Perkins Eastman Architects DPC & Anr. v HSCC (India) Ltd. Further, while rejecting the Petitioner's objection that the State of Haryana has appointed the same arbitrator as suggested by the PSU in an internal noting, held that the same is not proof of the fact that the Government did not independently apply its mind before selecting the arbitrator or that the PSU had a role in the appointment.

Entertainment City Ltd. V Aspek Media P. Ltd.: OMP(T) (COMM.) 24/2020 Decided On 03rd June 2020-HELD-The High Court was considering a petition for termination of mandate of the Arbitrator on the ground that the fees sought to be charged by the Arbitrator was in violation of S. 11(14) and the Fourth Schedule of the Arbitration & Conciliation Act and the same would be covered under S. 12(4) of the Act as being a ground for challenging the appointment of the arbitrator or in the alternative by S. 14(1)(a). The Court held that S. 12(4) cannot be read as a standalone provision and has to be read in conjunction with S. 12(3). On the alternative argument, the Court held that while there is no doubt that if the fees charged by the arbitrator were in contravention of the provisions of the Act, then the same may be regarded as de jure inability to attract the provisions of S. 14(1), however, held, that on facts of the case there was no such violation as no rules have been framed under S. 11(14) of the Act by the High Court, whereby fees of Arbitrators, directly appointed by the court, could be governed and thus no ground for termination of mandate of Arbitrator is made out.

M/s Chintels India Ltd. v M/S. Bhayana Builders P. Ltd.: OMP(COMM) 444/2019 decided on 4th June 2020-HELD- The High Court held that engagement of a new counsel or clarification in case number of a connected award are not grounds that would constitute 'sufficient cause' to merit condonation of delay in filing under Section 34 (3) of the Act and refused to condone delay of 28 days in filing the petition.

Indira Gandhi National Open University v M/s. Sharat Das & Associates P. Ltd. :OMP(COMM) 26/2019 decided on 4th June 2020-HELD-The High Court reiterated the legal position that when a petition is filed under Section 34(3) of the Act, it must not be a mere bunch of papers but must fulfil vital parameters, to qualify as valid filing. The Court held that filing of Vakalatnama, Statement of Truth and signing of the petition are vital for any petition to be termed as proper filing and a petition filed without them would be a non est filing and it is the date when the defects are cured in such a case which will be treated as the date of fresh filing and not re-filing. Since in the present case, the said date goes beyond the 120th day, petition would be treated as having been initially filed beyond the limitation period and the extended period of 30 days. It further held that the CPC and its Amendments would apply to petitions under Section 34 of the Act being heard by the Commercial Division of this Court. The Court further rejected the contention that the defects in Vakalatnama /Statement of Truth, being curable, under Rule 15A can be can be permitted to be cured after the period of limitation or the extended period of 30 days under Section 34(3) of the Act expires. The Court held that if the Court was to hold that non-filing of Vakalatnama, Statement of Truth is a curable defect and it is open to an Objector to file a petition, lacking the vital documents and then cure the defects at his

will, it would clearly be against the principles laid down in several judgments which mandate the filing of these vital documents within the period of limitation and this is in keeping with the strict timelines under Section 34(3) of the Act, so that the purpose of expeditious disposal under a special dispute resolution mechanism, is not defeated.

Sharma Kalypso P. Ltd. v Engineers India Ltd.:OMP(COMM) 363/2019 decided on 17th June 2020-HELD-The High Court rejected the contention that filing of a defective vakalatnama at the time of initial filing of the objection petition would make the said filing non est and the date of re-filing would have to be considered as date of fresh filing. The Court held that once a Vakalatnama was initially filed, though with certain defects, a filing of a fresh Vakalatnama, without any defect, cannot be treated as a deficiency of a threshold which could lead to dismissal of a petition as 'non-est'. It further held that once the initial filing is within the 3 months limitation period or the extended 30 days, and is a valid filing, then refilling has to be looked at with a liberal approach and secondly, even if the re-filing is beyond the period specified under Section 34(3) of the Act, it can be condoned.

NHPC Limited v BHS-SGS Soma JV: OMP(COMM) 23/2020 decided on 17th June 2020-HELD-The High Court held that the question whether petition upon filing in correct forum/court after being returned ought to be treated as an entirely fresh petition and not a re-presentation of the original petition as returned, is not a consideration to deprive the petitioner of the benefit of Section 14 of the Limitation Act. The Court further held that assessing whether an action of filing a petition in a wrong forum/court was carried out in good faith and was with due diligence, cannot be carried out in abstract and would depend on a careful and thorough analysis of the facts of each case and on the facts of the case held that Petitioner satisfied both the tests to be entitled to get benefit under S. 14 of the Limitation Act. It further held that while a party cannot seek exclusion of period before initiation of proceedings before a wrong forum, however once proceedings are initiated time spent in taking preparatory steps for filing the appeal ought to be excluded.

Union of India v Great Eastern Energy Corporation Limited: OMP(COMM) 430/2020 decided on12th June 2020-HELD-The High Court held that an order of Arbitral Tribunal directing payment of costs to the opposite party, on account of delay in placing on record expert evidence, during pending of arbitral proceedings is not an interim award and to qualify as an interim award amenable to challenge under S. 34, the subject matter of arbitration and rights of the parties in respect thereof have to be finally decided.

NTPC Ltd. v Sri Avantika Contractors (I) (Ltd.): OMP (COMM.) 370/2017 decided on 8th June 2020-HELD-The High Court, while refusing to interfere with an arbitral award on the ground that the Arbitral Tribunal has exceeded its jurisdiction by adjudicating on excepted matters, held that the Tribunal has arrived at a finding as to how the claim before it was not an excepted matter, based on the interpretation of the contractual clauses as well as the technical interpretation and it is not open to the Court at the stage of S. 34 petition to substitute the said findings, more particularly, when as per settled law, the Arbitrator is the master of quality and quantity of evidence before it. The Court further held that Manner and methodology of calculation, application of formulas and interpretation of contractual clauses is purely the domain of the Tribunal and must pass muster. The Court, however, set aside the award with regards to loss of profit on the ground that the same was without any actual proof.

Slum Rehabilitation Authority v M.M. Project Consultants Private Limited: Commercial Arbitration Petition no. 557/2018 decided on 16th June 2020-HELD-The High Court while setting aside the arbitral award, inter alia, held that reasoning given by the Tribunal would amount to observing something contrary to clause of the contract or putting the parties in a position contrary to the relevant contractual condition and the said reasoning was thus a perversity. It held that although it would be in the domain of the arbitral tribunal to interpret contractual clauses and appreciate evidence, it has to be a reasonable and prudent interpretation and appreciation of evidence and not something which is impossible to be conceived by any reasonable standards leading to an absurdity. The Court also held that a claim for damages cannot be made by a party to have any unjust enrichment or it should not confer a windfall on the claimant and cannot exceed the loss actually suffered or likely to be suffered and the damages awarded have to be compensatory and not punitive or retributory.

Gammon India Ltd &Anr. v NHAI: OMP 680/2011 (New No. O.M.P. (COMM)392/2020) decided on 23rd June 2020-HELD-The High Court held that while a perusal of S. 7(1),8(3) &

21 of the Act makes it clear that multiple references and arbitrations are permissible at multiple stages of a contract/project but multiplicity should be avoided to prevent misuse of remedy of arbitration and the Court laid down the following principles to be followed in such cases (i) for a particular contract/series of contracts, endeavour always ought to be to make one reference to one Arbitral Tribunal (ii) party invoking arbitration ought to raise all claims that have already arisen on the date of invocation for reference to arbitration. A claim arisen on the date of invocation and is not mentioned, either in the invocation letter or in the terms of reference, such claim ought to be held as being barred/waived, unless permitted to be raised by Arbitral Tribunal for any legally justifiable/sustainable reasons (iii) in case an Arbitral Tribunal stands constituted, future reference should ordinarily be made to same Arbitral Tribunal to avoid contradictory findings and if same is not possible at least challenges to the Awards ought to be heard together (iv) while filing S. 11 or 34 petitions, party to disclose the number of arbitration references, Arbitral Tribunals or court proceedings pending or adjudicated in respect of the same contract and if so, the stage of the said proceedings.

Prakash Industries Limited v Bengal Energy Ltd &Anr.: G.A. 394/2020 in A.P. 684/2017 – order dated 11th June 2020-HELD-The High Court rejected the application for amendment of S. 34 petition holding that while amplification or elaboration of existing grounds may be permitted by way of amendment but bringing on record new grounds, which do not have foundational basis in the existing petition, was not permissible and the test to be applied is whether the proposed grounds would necessitate the filing of a fresh application for seeking setting aside of the award.

Steel Authority of India Ltd., India v Tata Projects Ltd., India & Anr: OMP(COMM) 418/2020 – order dated 01st June 2020-HELD-The High Court while dealing the plea of the Petitioner that in light of the economic impact of COVID 19 Pandemic, deposit of awarded amount as pre-condition of stay of execution be waived in lieu of furnishing bank guarantee. The High Court held that economic impact of Covid 19 cannot be ignored but the same would have impacted both parties and Respondent can also not be deprived of the money in the prevailing situation and thus directed 50% of the awarded amount to be deposited in Court and bank guarantee be furnished of the balance 50%.

Starcon India Ltd & Anr. v Prasar Bharti: OMP(ENF)(COMM) 232/2018 decided on 15th June 2020-HELD-The High Court recognised and applied the principle of severability and allowed enforcement of the part of the arbitral award which had not been set aside in S. 34 proceedings.

M/s. JanapriyaEngineerss Syndicate P. Ltd. v Union of India: OMP (MISC.) (COMM.) 377/2019 decided on 05th June 2020-HELD-The High Courtheld that an application under S. 39(2) will only be maintainable when the Award is made, but not delivered to the parties as a party has not paid the fees demanded by the arbitrator. The Court held that there is a purpose for delivery of the Award as the delivery of Award shall entitle a party to either challenge the Award or seek execution of the same. It is in such a situation a party can invoke the provision of S. 39(2) of the Act. In the facts of the case, the Court held that as the Award had not yet been made, the petition was premature and consequently not maintainable.

M/s. Centrotrade Minerals and Metals Inc. v Hindustan Copper Ltd.:Civil Appeal No. 2562/2006 decided on 02nd June 2020-HELD-Supreme Court of India held that the word "otherwise" occurring in S. 48 (1) (b) of the Act being susceptible to two meanings, the narrower meaning has been preferred, which is in consonance with the pro-enforcement bias with respect to awards. On the facts of the case, it was held that it was not a case where party has been unable to present its case before the Arbitrator and ample opportunity was given by the Arbitrator to the party to present its case.

Glencore International AG v Hindustan Zinc Limited: OMP(EFA)(COMM.) 9/2019 decided on 8th June 2020-HELD-The High Courtwhile deciding which Court would have territorial jurisdiction to entertain a petition for enforcement of a foreign award, held that there is a distinction between subject matter of arbitration as envisaged in Section 2(1)(e) and subject matter of award as envisaged in Section 47. It held that a petition under Section 47 would be maintainable only where the properties/assets of the Judgment Debtor are located, which may or may not be the chosen place of the parties for subject matter of arbitration. On the facts of the case, it held that as the Judgment Debtor's administrative office, albeit stated to be on lease, as also Bank accounts and certain movables are located in Delhi, the petition filed in High Court of Delhi is maintainable and the pendency of a composite petition under Section 34 and 48 before High Court of Rajasthan would not be a ground to hold that the High Court of Delhi does not have territorial jurisdiction to entertain the petition for enforcement.

NOTIFICATION

1. President Promulgates Banking Regulation (Amendment) Ordinance, 2020: In pursuance of the commitment to ensure safety of depositors across banks, the President has promulgated the **Banking Regulation (Amendment) Ordinance, 2020**.

The Ordinance amends the Banking Regulation Act, 1949 as applicable to Cooperative Banks. The Ordinance seeks to protect the interests of depositors and strengthen cooperative banks by improving governance and oversight by extending powers already available with RBI in respect of other banks to Co-operative Banks as well for sound banking regulation, and by ensuring professionalism and enabling their access to capital. The amendments do not affect existing powers of the State Registrars of Co-operative Societies under state co-operative laws. The amendments do not apply to Primary Agricultural Credit Societies (PACS) or co-operative societies whose primary object and principal business is long-term finance for agricultural development, and which do not use the word "bank" or "banker" or "banking" and do not act as drawees of cheques.

The Ordinance also amends Section 45 of the Banking Regulation Act, to enable making of a scheme of reconstruction or amalgamation of a banking company for protecting the interest of the public, depositors and the banking system and for securing its proper management, even without making an order of moratorium, so as to avoid disruption of the financial system.[1]

2. **Parliament receives President's assent for — Insolvency and Bankruptcy Code (Amendment) Act, 2020:** Parliament received President's assent for the Insolvency and Bankruptcy Code (Amendment) Act, 2020 on 13-03-2020. This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2020.The various amendments are as follows:

In Section 5 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as the principal Act),—

(i) in clause (12), the proviso shall be omitted;

(ii) in clause (15), after the words "during the insolvency resolution process period" occurring at the end, the words "and such other debt as may be notified" shall be inserted.

In section 7 of the principal Act, in sub-section (1), before the Explanation, the following provisos shall be inserted, namely:—

"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be

[1] https://pibcms.nic.in/WriteReadData/userfiles/PIB%20Delhi/cooperative%20bank%20(2).pdf

filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.".

In section 11 of the principal Act, the Explanation shall be numbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—

"*Explanation* II.—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor."

In section 14 of the principal Act,—

(a) in sub-section (1), the following Explanation shall be inserted, namely—

"*Explanation*.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"*(2A)* Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."; (c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:— "(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;".[2]

[2] http://egazette.nic.in/WriteReadData/2020/218654.pdf

EVENTS OF THE MONTH

1. **50 newly selected judicial officers from the states of Haryana and Punjab (25 each)** joined the respective judicial service. Foundation Training online was started on August 10, 2020. The Inaugural Address was delivered by HMJ Rajan Gupta, Judge, Punjab & Haryana High Court, President, BOG, CJA. It was made clear that the judicial office is not a regular service. It is the blessed who get the opportunity to dispense justice. It requires lot of discipline, integrity, commitment and continuous perseverance to match the demands of a judicial office. He added : the real training to inculcate and cultivate the qualities required of a judge shall commence now. He urged the young judicial officers to make the best of the opportunity which the almighty has given to them and aspire to deliver the best to the society. The full inaugural address has been included in this e-Newsletter. Dr. Balram K Gupta, Director (Academics) compared the judicial service with military service. In both services, sacrifices are required to be made. Both services required discipline. The purpose of this training is to nurture and cultivate good human beings in order to be good judges. Ms.Shalini Singh Nagpal, Director (Administration) shared with the young judicial officers general instructions which are required to be followed by them during the online training.

2. **WEBINARS :**

S. No.	Date	Topic	Speaker
1	6th August	Law on Sentencing	Mr.H.S.Bhangoo, Faculty Member
2	7th August	Defences of Insurance & Related Issues in Accident Cases	Dr. Gopal Arora, Faculty Member
3	22nd August	Sentencing with reference to Concurrence; Suspension; and Bail on the ground of Custody	HMJ Ajay Tewari, Judge, Punjab & Haryana High Court