



Workshop on
Board Compliance
14th December 2017

Index of Contents

| Sr. No. | Particulars | Page No. |
|---------|---|----------|
| 1. | Role of Directors <ul style="list-style-type: none">• The Companies Act, 2013• SEBI (Listing Obligations and Disclosure) Regulations, 2015• Secretarial Standards• Other Corporate Laws• Compliance Under ALL Laws | 1 |
| 2. | Analysis of Disclaimers present in the Director's Responsibility Statement in Listed Companies | 16 |
| 3. | Single Integrated Return and Online Expulsion in Indian Labour Laws | 25 |
| 4. | Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017 | 31 |
| 5. | Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 | 44 |
| 6. | Rajasthan Government Order dated 9th June, 2016 | 51 |
| 7. | Order of the Supreme Court dated 22nd November, 2017 in the matter of Chitra Sharma & Ors. Vs. Union Of India & Ors. | 52 |
| 8. | NCLT Order dated 9th August, 2017 in the matter of IDBI V. Jaypee Infratech Ltd | 62 |
| 9. | Extract of the Kotak Committee Report | 66 |

ROLE OF DIRECTORS

DUTIES AND RESPONSIBILITIES INDIVIDUAL DIRECTORS:

Section 166: Duties:

1. Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
2. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
3. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
4. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
5. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
6. A director of a company shall not assign his office and any assignment so made shall be void.

SEBI (LODR)

2(f): The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

- (1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
- (2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(iii) Other responsibilities:

1. Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
2. The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the Board.
3. Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

26 (3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.

DUTIES AND RESPONSIBILITIES OF THE BOARD AS A WHOLE:

SEBI LODR:

(ii) Key functions of the board of directors-

1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
2. Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.
3. Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
4. Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.
5. Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
6. Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
7. Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
8. Overseeing the process of disclosure and communications.
9. Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

1. In order to fulfil their responsibilities, the board of directors shall have access to accurate, relevant and timely information.
2. The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.
3. The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
4. The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

5. Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
 6. The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
 7. The board of directors shall exercise objective independent judgement on corporate affairs.
 8. The board of directors shall consider assigning a sufficient number of nonexecutive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
 9. The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
 10. The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
 11. When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
- 17 (3)** The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.
- (4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.
- (5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.
- (b) The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.
- (6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.
- 17 (b)** The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

INDEPENDENT DIRECTOR:

An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Schedule IV: Guidelines of professional conduct:

An independent director shall:

1. uphold ethical standards of integrity and probity;
2. act objectively and constructively while exercising his duties;
3. exercise his responsibilities in a bona fide manner in the interest of the company;
4. devote sufficient time and attention to his professional obligations for informed and balanced decision making;
5. not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
6. not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
7. refrain from any action that would lead to loss of his independence;
8. where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
9. assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties:

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

VII. Separate meetings:

1. The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
2. All the independent directors of the company shall strive to be present at such meeting;
3. The meeting shall:
 - a. review the performance of non-independent directors and the Board as a whole;

- b. review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- c. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

SEBI (LODR) 5(4) The independent directors in the meeting referred in sub-regulation (3) shall, interalia-

- a) review the performance of non-independent directors and the board of directors as a whole;
- b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

COMPOSITION OF VARIOUS COMMITTEES:

135: CSR Committee:

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

177: Audit Committee:

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

SEBI LODR: 18

The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

178: Nomination and Remuneration Committee:

It shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors. The chairperson of the company (whether executive or non-

executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

SEBI LODR: 19

The committee shall comprise of atleast three directors, all directors of the committee shall be non-executive directors and at least fifty percent of the directors shall be independent directors.

The Chairperson of the nomination and remuneration committee shall be an independent director.

178 and SEBI LODR 20: Stakeholders Relationship Committee:

The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

Risk Management Committee:

SEBI LODR 21: The majority of members of Risk Management Committee shall consist of members of the board of directors. The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

MEETINGS OF COMMITTEES:

SS1: 2.2: Committees shall meet as often as necessary subject to the minimum number and frequency stipulated by the Board or as prescribed by any law or authority.

SS 1: 3.5: The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.

ROLES AND RESPONSIBILITIES OF THE COMMITTEES:

Nomination and Remuneration Committee:

178.

[(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

- a. the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- b. relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- c. remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

SEBI LODR Part D

A. Role of Nomination and Remuneration Committee:

1. formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;
2. formulation of criteria for evaluation of performance of independent directors and the board of directors;
3. devising a policy on diversity of board of directors;
4. identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
5. whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Stakeholders Relationship Committee:

178 (6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

SEBI (LODR) Part D: B. Stakeholders Relationship Committee: The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

Audit Committee:

177 (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, —

- a. the recommendation for appointment, remuneration and terms of appointment of auditors of the company;]
- b. review and monitor the auditor's independence and performance, and effectiveness of audit process;
- c. examination of the financial statement and the auditors' report thereon;
- d. approval or any subsequent modification of transactions of the company with related parties;

[Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;]

- e. scrutiny of inter-corporate loans and investments;
- f. valuation of undertakings or assets of the company, wherever it is necessary;
- g. evaluation of internal financial controls and risk management systems;
- h. monitoring the end use of funds raised through public offers and related matters.

(5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

The Companies (Meetings of Board and its Powers) Rules, 2014 Rule 7:

Audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

SEBI (LODR):

18 (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. "financially literate" shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

23 (3) (d) the audit committee shall review, atleast on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Schedule II Part C:

A. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

- a. matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
- b. changes, if any, in accounting policies and practices and reasons for the same;
- c. major accounting entries involving estimates based on the exercise of judgment by management;
- d. significant adjustments made in the financial statements arising out of audit findings;
- e. compliance with listing and other legal requirements relating to financial statements;
- f. disclosure of any related party transactions;
- g. modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

(6) reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;

- (7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
- (8) approval or any subsequent modification of transactions of the listed entity with related parties;
- (9) scrutiny of inter-corporate loans and investments;
- (10) valuation of undertakings or assets of the listed entity, wherever it is necessary;
- (11) evaluation of internal financial controls and risk management systems;
- (12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
- (13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
- (14) discussion with internal auditors of any significant findings and follow up there on;
- (15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
- (16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
- (17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
- (18) to review the functioning of the whistle blower mechanism;
- (19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;
- (20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.

B. The audit committee shall mandatorily review the following information:

- (1) management discussion and analysis of financial condition and results of operations;
- (2) statement of significant related party transactions (as defined by the audit committee), submitted by management;
- (3) management letters / letters of internal control weaknesses issued by the statutory auditors;

- (4) internal audit reports relating to internal control weaknesses; and
- (5) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
- (6) statement of deviations:
 - a. quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).
 - b. annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

CSR Committee:

135. 3) The Corporate Social Responsibility Committee shall, —
- a. formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in 1,2 Schedule VII;
 - b. recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - c. monitor the Corporate Social Responsibility Policy of the company from time to time.

Risk Management Committee:

SEBI (LODR):

The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

Please note: Constituting Risk Management Committee shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

CHAIRMAN:

1. It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business.
2. The Chairman shall conduct the Meetings of the Board and shareholders.
3. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.
4. The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the General Meeting

5. In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures.
6. Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.
7. Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him.
8. The poll may be taken by the Chairman, on his own motion also.
9. The Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.
10. Based on the scrutiniser's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.
11. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.
12. The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5) of Section 118. The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.
13. The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.
14. Minutes of proceedings of a meeting of the Board, shall be initialled, signed and dated by the chairman of the said meeting.

EVALUATION PROVISIONS:

The Evaluation of the Board and its committees has become mandatory pursuant to the following sections of the Companies Act, 2013:

Currently pursuant to Section 134(3)(p) of the Companies Act 2013, **every listed company and other Public company with paid up capital of 25 crore Rupees or more** calculated at the end of the preceding Financial year shall indicate the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual Directors in the Board's Report.

Code for Independent Directors & Evaluation Mechanism: Pursuant to Section 149(8) & Schedule IV, the independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and this meeting shall-

- Review the performance of non-independent directors and the Board as a whole
- Review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- Assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties

The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Evaluation by Nomination and Remuneration Committee: Pursuant to Section 178 the Nomination and Remuneration Committee shall carry out evaluation of every Directors performance.

The above Section 149(8) & Schedule IV and Section 178 of the Companies Act, 2013 shall mandatorily apply to the following companies:

Every Listed Company and the following companies:

1. **Public companies having Paid Up Share Capital of Ten crore Rupees or more;**
2. **Public companies having Turnover of One Hundred crore Rupees or more; or**
3. **Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees;**

Main provisions under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with respect to Board Evaluation which is **applicable to all Listed companies:**

CHAPTER II:

4(2)(f)(ii): Key functions of the board of directors- (9) Monitoring and reviewing board of director's evaluation framework.

Chapter IV:

17(10): The performance evaluation of independent directors shall be done by the entire board of directors: Provided that in the above evaluation the directors who are subject to evaluation shall not participate.

25: (3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, interalia- (a) review the performance of non-independent directors and the board of directors as a whole; (b) review the performance of the chairperson of the listed entity, taking into

account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Schedule II (PART D)

(A) ROLE OF NOMINATION AND REMUNERATION COMMITTEE:

Role of committee shall, inter-alia, include the following:

- (2) formulation of criteria for evaluation of performance of independent directors and the board of directors;
- (4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
- (5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Schedule V: Corporate Governance Report.

The following disclosures shall be made in the section on the corporate governance of the annual report.

- (4) Nomination and Remuneration Committee: (d) performance evaluation criteria for independent directors.

Analysis of Disclaimers present in the Director’s Responsibility Statement in Listed Companies

Section 134(5)(e) of the Companies Act 2013 mandates Directors of Listed Companies to certify that the Board had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively

Section 134(5)(f) of the Companies Act 2013 mandates Directors of all companies to certify and affirm that proper systems had been devised to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

We have done a deep dive below to analyze whether the Board of Companies have signed off directly to such a blanket liability or whether disclaimers have been introduced appropriately for protection of liability:

| Sr No | Particulars | Details |
|-------|------------------------------------|---|
| 1. | Company name | Tata Consultancy Services Limited |
| | Disclaimer Clause | Yes |
| | Observation | Based on the framework of internal financial controls and compliance systems established and maintained by the Company, work performed by the internal, statutory and secretarial auditors and external consultants and the reviews performed by management and the relevant board committees, including the audit committee, the board is of the opinion that the Company’s internal financial controls were adequate and effective during the financial year 2014-15 |
| | Link for the annual Report 2014-15 | http://www.tcs.com/investors/Documents/Annual%20Reports/TCS_Annual_Report_2014-2015.pdf |
| 2. | Company name | Dabur India Limited |
| | Disclaimer Clause | Yes |
| | Observation | In accordance of Section 134(5)(e) of the Companies Act, 2013 the Company has a well placed, proper and adequate internal financial control system which ensures that all assets are safeguarded and protected and that the transactions are authorised, recorded and reported correctly. The Company’s internal financial control system also comprises due compliances with Company’s policies and Standard Operating Procedures (SOPs) and audit and compliance by in-house Internal Audit Division, supplemented by internal audit checks from Price Waterhouse Coopers Private Limited/ Price Waterhouse & Co., LLP, the Internal Auditors and various transaction auditors. To further strengthen the internal control process, the Company has developed a very comprehensive legal compliance manual called `e-nforce` which drills down from the CEO to the executive level person who is responsible for compliance. This process is fully automated and generates alerts for proper and timely compliance. |
| | Link for the annual | http://www.dabur.com/en/investors1/Annual_reports/2014-15/DIL- |

| Sr No | Particulars | Details |
|-------|------------------------------------|--|
| | Report 2014-15 | AR-2014-15.pdf |
| 3. | Company name | Infosys Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only states in its Directors Report that 'proper system to ensure compliance with the provisions of all applicable laws was in place and the same were adequate and operating effectively |
| | Link for the annual Report 2014-15 | http://www.infosys.com/investors/reports-filings/annual-report/annual/Documents/infosys-AR-15.pdf |
| 4. | Company name | Reliance Industries Limited |
| | Disclaimer Clause | No |
| | Observation | The Company states in its DRS that: The Directors have laid down internal financial controls to be followed by the Company and that such internal financial controls are adequate and are operating effectively; and the Directors have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively. |
| | Link for the annual Report 2014-15 | http://www.ril.com/ar2014-15/RIL%20AR%202014%20-15.pdf http://www.ril.com/ar2014-15/RIL%20AR%202014%20-15.pdf |
| 5. | Company name | Titan Company Limited |
| | Disclaimer Clause | Yes |
| | Observation | Adequacy of internal controls and compliance with laws: The Management of the Company has over the years set up internal control mechanisms to cater to the growing needs of the businesses. The Company has invested significantly in computerization of processes across the network and has implemented ERP systems to automate and control transactions in all its businesses. The Company has also established various back office desktop audits to detect frauds across the network, be they from employees, business associates or even customers. The Company is currently working on implementation of Internal Financial Controls as per the Committee of Sponsoring Organisation 2013 framework. The Company has an internal audit department for reviewing the internal control systems. Based on the foregoing, the Board of Directors, after making all reasonable enquiries and to the best of its knowledge and belief, with the concurrence of the Board Audit Committee, is of the opinion that the internal controls of the Company are adequate to address the financial, operational and compliance risks of the Company. |
| | Link for the annual Report 2014-15 | http://titan.co.in/TitanEcom/corporate/pdflinks/performance/2014-15/Annual%20Report%20-%20Titan%20Company%20Limited.pdf |
| 6. | Company name | Voith Paper Fabrics India Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company has adequate internal control systems commensurate with its size. The Audit Committee of its Board of Directors, comprising of Independent Directors, also reviews the systems at regular |

| Sr No | Particulars | Details |
|-------|---|---|
| | | intervals. Moreover, the Company has appointed M/s Lodha & Co., Chartered Accountants, New Delhi, as its Internal Auditors and they periodically test the efficacy of the prevailing internal control systems |
| | Link for the annual Report 2014-15 2015 | http://india.voithpaper.com/media/Voith-AR-2015.pdf |
| 7. | Company name | Thermax Limited |
| | Disclaimer Clause | Yes |
| | Observation | In order to strengthen its internal control system, the company has automated a number of controls and is also reinforcing its existing system. Also the Company only states in its Directors Report that 'proper system to ensure compliance with the provisions of all applicable laws was in place and the same were adequate and operating effectively. |
| | Link for the annual Report 2014-15 | http://www.thermaxglobal.com/investor-relations/pdf/thermax-34th-annual-report.pdf |
| 8. | Company name | Novartis India Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company maintains appropriate systems of internal control, including monitoring procedures, to ensure that all assets are safeguarded against loss from unauthorized use or disposition. Company policies, guidelines and procedures provide for adequate checks and balances and are meant to ensure that all transactions are authorized, recorded and reported correctly. The Head of Internal Audit together with external audit consultants review the effectiveness and efficiency of these systems and procedures to ensure that all assets are protected against loss and that the financial and operational information is accurate and complete in all respects. |
| | Link for the annual Report 2014-15 | http://www.novartis.in/pdf/Novartis_India_Limited_Annual_Report_-_2014-2015.pdf |
| 9. | Company name | HDFC Bank Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Bank has Internal Audit and Compliance functions which are responsible for independently evaluating the adequacy of all internal controls and ensuring operating and business units adhere to internal processes and procedures as well as to regulatory and legal requirements. The audit function also proactively recommends improvements in operational processes and service quality. To mitigate operational risks, the Bank has put in place extensive internal controls including audit trails, appropriate segregation of front and back office operations, post transaction monitoring processes at the back end to ensure independent checks and balances, adherence to the laid down policies and procedures of the Bank and to all applicable regulatory guidelines. |

| Sr No | Particulars | Details |
|-------|------------------------------------|---|
| | Link for the annual Report 2014-15 | http://www.hdfcbank.com/htdocs/common/pdf/corporate/HDFC-Bank-AnnualReport-2014-15.pdf |
| 10. | Company name | ITC Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only states in its Directors Report that 'proper system to ensure compliance with the provisions of all applicable laws was in place and the same were adequate and operating effectively |
| | Link for the annual Report 2014-15 | http://www.itcportal.com/about-itc/shareholder-value/annual-reports/itc-annual-report-2015/pdf/report-accounts-2015.pdf |
| 11. | Company name | Hindustan Unilever Limited |
| | Disclaimer Clause | Yes |
| | Observation | <p>The Company has robust systems for internal audit and corporate risk assessment and mitigation. The Company has an independent Control Assurance Department (CAD) assisted by dedicated outsourced audit teams.</p> <p>The Company's internal control systems are commensurate with the nature of its business and the size and complexity of operations. These systems are routinely tested and certified by Statutory as well as Internal Auditor and cover all offices, factories and key business areas. Significant audit observations and follow up actions thereon are reported to the Audit Committee. The Audit Committee reviews adequacy and effectiveness of the Company's internal control environment and monitors the implementation of audit recommendations, including those relating to strengthening of the Company's risk management policies and systems.</p> |
| | Link for the annual Report 2014-15 | http://www.hul.co.in/Images/HUL-Annual-Report-2014-15_tcm114-428112.pdf |
| 12. | Company name | AXIS Bank Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only states in its Directors Report that 'proper system to ensure compliance with the provisions of all applicable laws was in place and the same were adequate and operating effectively. |
| | Link for the annual Report 2014-15 | http://www.axisbank.com/download/Annual-%20Report-2014-2015.pdf |
| 13. | Company name | Kotak Mahindra Bank Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only lays down a statement in its Directors Report saying that : 'The Company have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively'. The Board of Directors also confirms that there are internal controls in place with reference to the Financial Statements and that such controls are operating effectively. |

| Sr No | Particulars | Details |
|-------|------------------------------------|---|
| | Link for the annual Report 2014-15 | http://ir.kotak.com/downloads/annual-reports-2014-15/pdf/Directors%20Report.pdf |
| 14. | Company name | Bajaj Auto Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only lays down a statement in its Directors Report saying that: The Company had laid down internal financial controls and the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. |
| | Link for the annual Report 2014-15 | http://www.bajajauto.com/report/bajaj-auto-annual-report2014-15.pdf |
| 15. | Company name | Tech Mahindra Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company has internal financial controls which are adequate and were operating effectively. The controls are adequate for ensuring the orderly & efficient conduct of the business, including adherence to the company's policies, the safe guarding of assets, the prevention & detection of frauds & errors, the accuracy & completeness of accounting records and timely preparation of reliable financial information. |
| | Link for the annual Report 2014-15 | http://www.techmahindra.com/sites/resourceCenter/Financial%20Reports/Annual-Report-FY14-15.pdf |
| 16. | Company name | Hero MotoCorp Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company has a proper and adequate system of internal controls. This ensures that all assets are safeguarded and protected against loss from unauthorized use or disposition and those transactions are authorized, recorded and reported correctly. An extensive programme of internal audits and management reviews supplements the process of internal control. Properly documented policies, guidelines and procedures are laid down for this purpose. The Internal Control System has been designed to ensure that the financial and other records are reliable for preparing financial and other statements and for maintaining accountability of assets. The Company has in place adequate internal financial controls with reference to financial statements. During the year, such controls were tested and no reportable material weakness in the design or operation was observed. |
| | Link for the annual Report 2014-15 | http://www.heromotocorp.com/en-in/uploads/Annual_Reports/pdf/20150729114321-pdf-13.pdf |
| 17. | Company name | Cummins India Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company has established adequate internal control procedures, |

| Sr No | Particulars | Details |
|-------|------------------------------------|--|
| | | commensurate with the nature of its business and size of its operations. To provide reasonable assurance that assets are safeguarded against loss or damage and that accounting records are reliable for preparing financial statements, Management maintains a system of accounting and controls, including an internal audit process. Internal controls are evaluated by the Internal Audit department and supported by Management reviews. All audit observations and follow up actions thereon are tracked for resolution by the Internal Audit and Business Control function and reported to the Audit and Risk Management Committee. |
| | Link for the annual Report 2014-15 | http://www.cumminsindia.com/documents/annual_reports/54th%20Annual%20Report%202014-2015.pdf |
| 18. | Company name | Tata Steel Limited |
| | Disclaimer Clause | Yes |
| | Observation | Based on the framework of internal financial controls established and maintained by the Company, work performed by the internal, statutory, cost and secretarial auditors and external agencies, the reviews performed by Management and the relevant Board Committees, the Board, with the concurrence of the Audit Committee, is of the opinion that the Company's internal financial controls were adequate and effective as on 31 March, 2015. |
| | Link for the annual Report 2014-15 | http://www.tatasteel.com/investors/annual-report-2014-15/annual-report-2014-15.pdf |
| 19. | Company name | Mindtree Limited |
| | Disclaimer Clause | Yes |
| | Observation | The financial statements have been audited by BSR & Co., LLP, Chartered Accountants, the Company's Auditors. The Audit Committee meets periodically with the Internal Auditors and the Statutory Auditors to review the manner in which the Auditors are discharging their responsibilities and to discuss audit, internal control and financial reporting issues. To ensure complete independence, the Financial Auditors and the Internal Auditors have full and free access to the Members of the Audit Committee to discuss any matter of substance. |
| | Link for the annual Report 2014-15 | http://www.mindtree.com/sites/default/files/mindtree-annual-report-2014-2015.pdf |
| 20. | Company name | Cairn India Limited |
| | Disclaimer Clause | Yes |
| | Observation | Internal Financial Controls And Its Adequacy: Cairn India continuously invests in strengthening its internal control processes. The Company has put in place an adequate system of internal financial control commensurate with its size and nature of business which helps in ensuring the orderly and efficient conduct of |

| Sr No | Particulars | Details |
|-------|------------------------------------|--|
| | | <p>its business. As a means to further strengthen they control environment, during the year, the processes were benchmarked with industry practices to identify the gaps, if any and remedial measures were taken. Financial policies, standards and delegations of authority have been disseminated to senior management to cascade within their departments. Procedures to ensure conformance with the policies, standards and delegations of authority have been put in place covering all activities. The Audit Committee reviews adherence to internal control systems and internal audit reports. Further, the Board annually reviews the effectiveness of the Company's internal control system.</p> |
| | Link for the annual Report 2014-15 | https://www.cairnindia.com/sites/default/files/annual_reports/Annual-Report-2014-15 |
| 21. | Company name | Ashok Leyland Limited |
| | Disclaimer Clause | Yes |
| | Observation | <p>Internal Control Systems And Their Adequacy: Given the nature of business and size of operations, Your Company's Internal Control System has been designed to provide for:</p> <ul style="list-style-type: none"> • Accurate recording of transactions with internal checks and prompt reporting. • Adherence to applicable Accounting Standards and Policies. • Compliance with applicable statutes, policies and management policies and procedures. • Effective use of resources and safeguarding of assets. <p>The Internal Control System provides for well documented policies/guidelines, authorisations and approval procedures. Your Company, through its own Internal Audit Department, carried out periodic audits at all locations and functions based on the plan approved by the Audit Committee and brought out any deviation to Internal Control procedures. The observations arising out of the audit are periodically reviewed and compliance ensured. The summary of the Internal Audit observations and status of implementation are submitted to the Audit Committee. The status of implementation of the recommendations is reviewed by the Audit Committee on a regular basis and concerns, if any, are reported to the Board</p> |
| | Link for the annual Report 2014-15 | http://www.ashokleyland.com/sites/default/files/annual_report/Ashok_Leyland_Annual_Report_2014_15.pdf |
| 22. | Company name | Chemfab Alkalis Limited |
| | Disclaimer Clause | Yes |
| | Observation | <p>Internal Financial Control The Company has well defined and adequate internal controls and procedures, commensurate with its size and nature of its operations. This is further strengthened by the Internal Audit done concurrently. During the year, the Company got its internal controls over financial reporting and risk management process evaluated by independent</p> |

| Sr No | Particulars | Details |
|-------|------------------------------------|---|
| | | Consultants. Besides, the Company has an Audit Committee, comprising Non Executive Directors, which monitors systems, control, financial management and operations of the Company. The Audit committee at its meeting held on 27.04.2015 has evaluated the internal financial controls and risk management system accordingly. |
| | Link for the annual Report 2014-15 | http://www.chemfabalkalis.com/pdf/Chemfab-Annual-Report-2014-15.pdf |
| 23. | Company name | Pidilite Industries Limited |
| | Disclaimer Clause | Yes |
| | Observation | The Company has adequate internal financial control procedures commensurate with its size and nature of business. The Company has appointed Internal Auditors who periodically audit the adequacy and effectiveness of the internal controls laid down by the management and suggest improvements. The Audit Committee of the Board of Directors periodically reviews the audit plans, internal audit reports, adequacy of internal controls and risks management plan. |
| | Link for the annual Report 2014-15 | http://www.pidilite.com/company/financial_reports/pdf/annual_report_47_1.pdf |
| 24. | Company name | Apollo Tyres Limited |
| | Disclaimer Clause | No |
| | Observation | The Company only lays down a statement in its Directors Report saying that : The Company had laid down internal financial controls and the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. |
| | Link for the annual Report 2014-15 | http://www.apollotyres.com/en-in/annual-reports |
| 24. | Company name | Pfizer Limited |
| | Disclaimer Clause | Yes |
| | Observation | Has constituted a separate CCR team which stands for Compliance, Controls and Risk (CCR) which is responsible for: Monitoring adequacy and effectiveness of internal financial controls and reporting to the Senior Management Company has well defined SOP's for monitoring risks across various functions, prioritizing the major ones and developing appropriate plans for mitigation Company has created dedicated team for supporting employees in ensuring compliance while interacting with Healthcare and Government officials Company has identified 100 employees as "Compliance Champions". |
| | Link for the annual Report 2014-15 | http://www.pfizerindia.com/eNewsWebsite/investor/pdf/FinancialReports/Pfizer%20Limited%20Annual%20report%202014-15.pdf |
| 26. | Company name | Cipla Limited |
| | Disclaimer Clause | Yes |

| Sr No | Particulars | Details |
|-------|------------------------------------|--|
| | Observation | <p>The Company's internal control procedures are adequate to ensure compliance with various policies, practices and statutes in keeping with the organisation's pace of growth and increasing complexity of operations. Cipla's internal audit team supplemented by various internal auditors carries out extensive audits throughout the year across all functional areas, and submits its reports to the Audit Committee of the Board of Directors. During the year under review, no fraud was reported by the auditors to the Audit Committee/Board of Directors.</p> |
| | Link for the annual Report 2014-15 | <p>http://www.cipla.com/CiplaSite/Media/PDF/Annual-Reports/2015/Cipla_Annual_Report.pdf</p> |

Single Integrated Return and Online Explosion in Indian Labour Laws

Introduction:

There is hardly any industry that has remained untouched by the benefits of digitisation. Digitisation brings in transparency and secures record-keeping, both the aspects being attempted to be well adopted by the Indian Government in the interest and betterment of Indian legal system. Embracing digitisation is an attempt of the Government to reform and simplify certain heavily regulated areas of laws. The regulating authorities have been directed to bring about this simplification by developing online platforms and integrating them for several agencies. Labour laws being one such area of law, the Ministry of Labour and Employment, with the help of digitisation, has taken a number of initiatives to bring transparency and accountability in enforcement of Labour Laws and also in reducing complexity in compliance due to multiplicity of Labour Laws and enforcement agencies.

Need for Digitised and Simplified Reforms such as Online Integration:

Considering the socio-economic evolution in India, Labour Laws indeed needed to shape up to revisit the provisions and remove redundancies. One such effort taken can be strongly seen as the state governments have been adopting technological approach to not only simplify the long-established tedious procedures of filing forms under various labour laws but also have an integrated systems using technological advancements. As per the provisions under various Central Labour legislations and the Rules made thereunder, establishments/business units have to maintain various registers and documents. In the proposition made by the Ministry of Labour and Employment about Digitisation of Labour related records/registers by establishments / business units for ease in compliance, the Ministry clarifies on its objective of bringing in digitisation in labour laws by stating that:

“...With introduction of Information Technology Act 2000, the maintenance of such registers is also being accepted in electronic format. Section 4 of the Information Technology Act, 2000 provides that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference. In view of the above, Ministry of Labour & Employment has envisaged digitization of these labour related records and to move towards a regime of online maintenance of all labour-related records by establishments and integrate the same with Shram Suvidha Portal, to lessen the burden of avoidable compliance.... digitization of these Registers and other related documents has the potential to achieve economy and efficiency in working environment...”

With a view to implement these objectives, the Unified Shram Suvidha Portal was launched by the Ministry of Labour & Employment on October 16, 2014 in order to facilitate transparent risk-based inspections, their timely reporting and submission of returns etc.



www.shutterstock.com · 613555196

Integrated Returns through Shrama Suvidha:

The Ministry of Labour & Employment, Government of India and the State Governments together enforce more than 44 labour laws in their respective spheres. There have been requests from various stakeholders for ensuring simplification of formats, ease of compliance, transparency in inspections and speedy redressal of grievances. In order to address these concerns, the Ministry of Labour & Employment has developed Shrama Suvidha, a single unified Web Portal for online registration of units, reporting of inspections and submissions of Annual Returns. The Shram Suvidha Portal caters to four major Organisations - Office of Chief Labour Commissioner (Central), Directorate General of Mines Safety, Employees' Provident Fund Organization and Employees' State Insurance Corporation.

The unified Shram Suvidha Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions. For integration of data among various enforcement agencies, each inspectable unit under any Labour Law has been assigned one Labour Identification Number (LIN).

For the entrepreneurs, filing of separate individual returns under different laws & Acts is quite cumbersome and proves to be a gruelling activity. Further, there is redundancy of data/information as most of the information required is common under different acts/laws. Keeping above points in mind, a "Single Integrated Returns" facility has been envisaged and introduced by many States, for example Rajasthan in the Rajasthan Labour Department Management System ("LDMS system"). It

enables the citizen/entrepreneur to file returns under different laws/acts by providing information through a single form only. All the mandatory documents may be scanned and uploaded along with this form and the form may be submitted for department's perusal. Special attention has been given to make this form simple and precise. At the Department level, the submitted information is made visible to all the stakeholders and they may review the supplied information for its correctness and further action. A proper work-flow with audit trail (tracking of timestamps & identity of user) keeps a tab on the activity and maintains the accountability of each stake-holder.

In furtherance of these requirements, a provision was made for the filing of the Single Integrated Return or Labour and Factories & Boiler Inspection Departments of Rajasthan on the 'LDMS' and 'RajFab' web portals in the state of Rajasthan, vide an order dated June 9, 2016 ("Order") (available at http://www.rajfab.nic.in/Documents/pdf/order_09-06-2016.pdf). This order specified that if any factory, industry or commercial establishment files the Single Integrated Return for Labour and Factories & Boiler Inspection Departments on the 'LDMS' (Labour Department Management System) and 'RajFab' web portals, then that return will be valid for both the departments, under all the applicable labour laws.

The Office of the Secretary, Skills, Employment & Entrepreneurship, Rajasthan, vide an Office Order dated October 11, 2017, has issued a clarification in respect of the Order dated June 9, 2016. According to this Office Order, if any factory, industry or commercial establishment files the Single Integrated Return for Labour and Factories & Boiler Inspection Departments on the 'LDMS' and 'RajFab' web portals, then that return will be valid for both the departments, provided that the returns are paid for the following labour laws:

1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Factories Act, 1948
4. The Working Journalists and other newspaper Employment (Conditions of Service) and Miscellaneous Provisions Act, 1961
5. The Motor Transport Workers Act, 1961
6. The Payment of Bonus Act, 1965
7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
8. The Contract Labour Act, 1970;
9. The Sales Promotion Employees (Conditions of Service) Act, 1976
10. The Equal Remuneration Act, 1976

11. The Inter-State Migrant Workmen (Regulation and Employment and Conditions of Service) Act, 1997
12. The Child and Adolescent Labour (Prohibition and Regulation) Act, 198
13. The Building and other Construction Workers (Employment and Conditions of Services) Act, 1996;
14. The Rajasthan Shops and Commercial Establishment Act, 1958
15. The Payment of Gratuity Act, 1972.

This Office Order implies that if an employer has filed the Single Integrated Return for Labour and Factories & Boiler Inspection Departments on the 'LDMS' and 'RajFab' web portals, then that return will be valid for both the departments, i.e. the Labour Department as well as the Factories and Boiler Inspection Department. Moreover, the employer will not be required to file separate returns in the two departments. However, the returns must be paid for the abovementioned labour laws only. The detailed procedure for filing returns is available on the Rajasthan LDMS portal at <https://ldms.rajasthan.gov.in/UserManual/Return.pdf>

Similar facilities are available on the websites of the labour departments of Delhi, Gujarat, Haryana, Madhya Pradesh and Maharashtra. Discussions for the same are going on between many other states and the Ministry of Labour and Employment.

Filing of Integrated Returns by Occupier/Managers of Factories:

Section 110 of the Factories Act empowers State Governments to determine whether the owners, occupiers or managers are to submit occasional or periodic returns. Single Integrated Forms in case of Factories require Manager to sign the Annual Return certifying that the information required in the Form is provided correctly and to the best of his knowledge and belief. The Occupier, the person who has ultimate control over the affairs of the factory as defined under the Factories Act, 1948, is nonetheless equally liable for any non-compliance with the Factories Act and the allied Rules along with the Manager as per Section 92 of the Factories Act. Moreover, in the decision by the Supreme Court in the case of JK Industries Ltd and Others Vs Chief Inspector of Factories and Boilers and Others (Supreme Court, 1996), the liability of Occupier in the purview of ultimate control was explicitly clarified and company and its occupier director were remanded of the stricter sense of liability for non-compliance under the Factories Act. Neither the Act nor the Notifications issued by the State Governments in relation to Filing of Single Integrated Returns talk about any shield being offered to occupiers on the liability front for non-compliance in this area.

Whether a Boon or a Bane?

Utilising technological progressions is the only way in which such reforms can be adopted and further simplification can be achieved by governments in their attempt at ease of compliance. While such reforms are the need of an hour in the heavily regulated areas of laws such as labour, its

implementation could be questioned in the remote areas of Indian states. India is one of those developing countries where electricity is still a fundamental problem in tier-2 and tier-3 cities. In such scenario, facilitating online platform to file returns for those who may access internet proves to be a boon whereas mandating the filing of returns only through online platforms may prove to be a bane.



www.shutterstock.com · 562588744

The statistics shown at <https://shramsuvudha.gov.in/stateIntegration> with respect to state governments who have adopted on-boarding of Shram Suvidha Portal provide interesting analysis of feasibility of implementation of online platforms in these states. The number of entities who have obtained the LIN so far varies in different states which could be very evidently associated to the prima facie status of development of these states. The number of entities who have obtained the LIN is as high as 477485 and 203908 for Delhi and Maharashtra respectively whereas it is as low as 2117 for Rajasthan. Having said this, such reforms can only be seen as a step forward towards facilitating compliances although the state government should equally focus on resolving the implementation difficulties in order for it to be a facility for employers in its real sense.

Moreover, so far, the collation and dissemination of labour statistics data has been the function of the Central Agency - Labour Bureau in the Union Ministry of Labour, the process of which has undergone a lot of review multiple times. Currently, the agencies involved in the collection of Labour and Employment statistics include various affiliates of the Ministry of Labour as well as their State level equivalents. As per the latest reports published by the Ministry of Statistics and Programme Implementation, the Ministry concluded that:

“... the Labour Statistics compiled by the Labour Bureau are of poor quality on account of low response from the primary units and time lag in submission of returns, leading to delay in submission of State level information to the Labour Bureau by the States.... The

statutory returns submitted by the units under different labour laws are the major source of information. The adequacy and quality of data aggregated at State and all-India level, therefore, are determined by the extent of response by the employers of the various industrial establishments. The response has generally been very low rendering the macro data practically useless for statistical analysis and inference and framing of policies.... One of the major irritants in data collection and compilation is the requirement on the part of an industrial enterprise to submit a large number of returns under different Labour enactments....”

Although this problem is expected to be resolved in due course of time by the launch of Shrama Suvidha and integration of returns, the uniformity of labour laws still remains an obstacle to implement this effectively. For example, variety of definitions of ‘child’, ‘family’, ‘wages’ are defined different under different labour laws and hence, the returns filed under these various Acts, although have been integrated, may not necessarily serve the purpose of integration to the extent expected until there is uniformity in these definitions or prevalence of the terms is explicitly clarified. Moreover, reconciliation of data by the various enforcing agencies, which was a complex manual process until now, will take its own sweet time to coordinate and produce the required reports and statistics and may not be able to give immediate results in view of the bureaucratic and red tapism issues being faced by the country over decades. Having said this, this will help towards curbing corruption practices such as brushing non-compliances under the carpet by labour inspectors for consideration and increase transparency in inspection records to be produced by them.

Conclusion:

The recent notch of 100 in the rank of Ease of Doing Business as issued by the World Bank, shows that India has really been adopting the ease of compliance by bringing in reforms in all spheres. Online filing of integrated single return will reduce the administrative burden of industrial units and employers and allow them to dedicate their time and focus towards business operations and its growth. This can be majorly called as an administrative reform only as, for it to be called a legislative reform, the primary laws need to undergo a lot of changes towards bringing uniformity and thereby reducing complexities. Considering the Indian labour legal system wherein the parent laws are enacted by the Central Government and the States only being empowered by way of delegation of legislative authority to have its own rules of implementation, the real legislative change should be expected at a central level. The new Codes of Labour, such as The Code on Wages Bill 2017 which has already been introduced in Loak Sabha, are expected to bring in the legislative reforms in its real sense and will be an essential catalyst in effective implementation of digitised and integrated systems such as Shrama Suvidha in Indian labour laws.

MINISTRY OF LABOUR AND EMPLOYMENT**NOTIFICATION**

New Delhi, the 21st February 2017

G.S.R. 154(E).—Whereas for the ease of, and for the expedient compliance of the requirement of the various labour related laws referred to herein and for the purpose of maintaining combined registers for all such laws, it has become essential to frame separate rules for the said purpose;

And whereas the intention to provide such combined register is to sub-serve the purposes, more specifically electronically, of the said labour related laws and the rules made there under, wherein provisions have been made for maintenance of such registers;

And whereas combined registers provided under the proposed rules will facilitate ease of compliance, maintenance and inspection, and will also make the information provided there under easily accessible to the public through electronic means thereby increasing transparency;

And whereas making separate rules for the aforementioned purpose will benefit making references of registers provided under different labour related laws simple, which will serve public purpose in a better way;

And whereas to achieve the aforementioned purposes, the draft rules, namely the Ease of Compliance to Maintain Registers under various Labour Law Rules, 2016 were published vide notification of the Government of India in the Ministry of Labour and Employment, number G.S.R. 1048(E), dated, the 4th November 2016, in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), inviting objections and suggestions from all persons likely to be affected thereby on or before the expiry of a period of three months from the date on which the copies of the Official Gazette containing the said notification were made available to the public;

And whereas, the copies of the said Gazette were made available to the public on the 4th November, 2016;

And whereas, the objections and suggestions received from the public on the said draft rules have been considered by the Central Government; Now, therefore, in exercise of the powers conferred by-

- (a) section 62 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996) and after consultation with the expert committee;
- (b) section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970);
- (c) section 13 of the Equal Remuneration Act, 1976 (25 of 1976);
- (d) section 35 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979);
- (e) section 58 read with section 59 of the Mines Act, 1952 (35 of 1952) and after complying with the requirements of sub-section (4) of said section 59;
- (f) section 29 and section 30 of the Minimum Wages Act, 1948 (11 of 1948);
- (g) section 26 of the Payment of Wages Act, 1936 (4 of 1936);
- (h) section 12 of the Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976); and
- (i) section 20 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955);

read with Chapter III of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.—(1) These rules may be called the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Maintenance of registers under certain labour related laws.—(1) Notwithstanding anything contained in any rules made under the,—

- (i) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996);
- (ii) Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970);
- (iii) Equal Remuneration Act, 1976 (25 of 1976);
- (iv) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979);
- (v) Mines Act, 1952 (35 of 1952)
- (vi) Minimum Wages Act, 1948 (11 of 1948);
- (vii) Payment of Wages Act, 1936 (4 of 1936);
- (viii) Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976); and
- (ix) Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955);

the combined registers in the Forms specified in the Schedule to these rules shall be maintained either electronically or otherwise and used for the purposes, of the aforesaid enactments and the rules made there under, as specified therein.

(2) If the combined register referred to in sub-rule (1) is required for inspection by the concerned Inspector appointed under any of the enactments referred to in the said sub-rule, the concerned persons shall make available the combined registers or provide the necessary particulars for the purposes of accessing the information, as the case may be.

(3) Where any register referred to in sub-rule (1) is maintained in electronic form, then, layout and presentation of the register may be adjusted without changing the integrity, serial number and contents of the columns of the register, but not otherwise.

3. Amendment of certain rules.—The following rules shall be amended, except as respects things done or omitted to be done before such amendment, in the manner specified below, namely:—

(i) in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998,—

(A) in rule 240, for the words and figures “Form XV, annexed to these rules”, the words, letter and figures “Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017 ” shall be substituted;

(B) in rule 241, in sub-rule (1),—

(a) in clause (a), for the words and figures “muster-roll and a register of wages in Form XVI and Form XVII, respectively, annexed to these rules”, the words, letters and figures, “register of wages and muster-roll in Form B and Form D respectively, specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(b) in clause (b), for the words and figures “in Form XIX, Form XX and Form XXI, respectively, annexed to these rules”, the words, letter and figures, “ in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

- (c) in clause (c), for the words and figures “in Form XXII annexed to these rules”, the words, letter and figures, “ in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (C) Form XV, Form XVI, Form XVII, Form XIX, Form XX, Form XXI and Form XXII shall be omitted;
- (ii) in the Contract Labour (Regulation and Abolition) Central Rules, 1971,—
- (A) in rule 75, for the words and figures “in Form XIII”, the words, letter and figures, “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) in rule 78, in clause (a),—
- (a) in sub-clause (i),—
- (A) for the words and figures “in Form XVI and Form XVII respectively”, the words, letters and figures, “in Form D and Form B, respectively, specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) the proviso shall be omitted;
- (b) in sub-clause (ii), for the words and figures “in Form XX, Form XXI and Form XXII respectively”, the words, letters and figures, “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (c) in sub-clause (iii), for the words and figures “in Form XXIII”, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (C) Form XIII, Form XVI, Form XVII, Form XVIII, Form XX, Form XXI, Form XXII and Form XXIII shall be omitted;
- (iii) in the Equal Remuneration Rules, 1976,—
- (A) in rule 6, for the words and letter, “in Form ‘D’”, the words, letter and figures, “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (B) Form D shall be omitted;
- (iv) in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980,-
- (A) in rule 49, for the words and figures “in Form XIII”, the words, letters and figures, “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) in rule 52, in sub-rule (2),—
- (a) in clause (a), for the words and figures “in Form XVII and XVIII respectively”, the words, letters and figures, “in Form D and Form B, respectively, specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (b) in clause (c), for the words and figures “in Forms XIX, XX and XXI respectively”, the words, letter and figures, “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (c) in clause (d), for the words and figures “in Form XXII”, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and

- (C) Form XIII, Form XVII, Form XVIII, Form XIX, Form XX, Form XXI and Form XXII shall be omitted;
- (v) in the Mines Rules, 1955,-
- (A) in rule 48, in sub-rule (3), for the words and letters “in Forms B, C, D and E”, the words, letters and figures, “in Form A and Form D, respectively, specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) in rule 49, in sub-rule (4), for the words and letter, “in Form F”, the words, letter and figures “in Form E specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (C) in rule 51, for the words and letter, “in Form B”, the words, letter and figures, “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (D) in rule 53, in sub-rule (1), for the words and letters “in Forms G and H” occurring at both the places, the words, letter and figures “in Form E specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall respectively be substituted;
- (E) in rule 59, for the words and letter “in Form I”, the words, letter and figures, “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (F) in rule 77, for the words and letter “in Form B”, the words, letter and figures, “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (G) in rule 77A, in sub-rule (2), for the words and letter, “in Form B”, the words, letter and figures “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (H) in rule 78,—
- (a) in sub-rule (1), for the words and letters “in Forms C, D and E respectively”, the words, letter and figures “in Form D specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (b) in sub-rule (2), for the words and letter “in Form C”, the words, letter and figures “in Form D specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (c) in sub-rule (3), for the words and letters “in Forms D and E”, the words, letter and figures “in Form D specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (I) Form B, Form C, Form D, Form E, Form F, Form G, Form H and Form I shall be omitted;
- (vi) in the Minimum Wages (Central) Rules, 1950,-
- (A) in rule 21, in sub-rule (4), for the words and figures “in Forms I and II, respectively”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) in rule 25, in sub-rule (2), for the words and figures “in Forms IV”, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (C) in rule 26,-
- (a) in sub-rule (1), for the words and figure “in Form X”, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(b) sub-rule (1A) shall be omitted;

(c) in sub-rule (5), for the words and figure “in Form V and the attendance of each person employed in the establishment shall be recorded daily in that Form”, the words, letter and figures “in Form D specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017 and the attendance of each person employed in the establishment shall be recorded daily in that Form” shall be substituted; and

(D) Form I, Form II, Form IV, Form V and Form X shall be omitted;

(vii) in the Payment of Wages (Air Transport Services) Rules, 1968,—

(A) in rule 4,-

(a) in sub-rule (2), for the words and figures “in Form II”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and

(b) in sub-rule (5), for the words and figures “Part II of Form II”, the words, brackets and figure “Register referred to in sub-rule (2)” shall be substituted;

(B) in rule 5, for the words and figures “in Form III”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(C) in rule 6, for the words and figures “in Form IV and V respectively”, the words, letters and figures “in Form D and Form B, respectively, specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(D) in rule 17, in sub-rule (3), for the words and figures “in Form IX”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall, respectively, be substituted;

(E) in rule 18, in sub-rule (3), for the words and figure “in Form X”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and

(F) Form II, Form III, Form IV, Form V, Form IX and Form X shall be omitted;

(viii) in the Payment of Wages (Mines) Rules, 1956,—

(A) in rule 3, in sub-rule (1), for the words and figure “in Form I”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(B) in rule 4, for the words and figures “in Form II”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(C) in rule 5, for the words and figures “in Form III”, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;

(D) in rule 17, in sub-rule (1), for the words, letter and figures “in Form IV-A” occurring at both the places, the words, letter and figures “in Form B specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted, respectively;

- (E) in rule 19, in sub-rule (3), for the words and figures “in Form VI”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (F) Form I, Form II, Form III, Form IV-A and Form VI shall be omitted;
- (ix) in the Payment of Wages (Railways) Rules, 1938,—
- (A) in rule 3, in sub-rule (1), for the words and figure “in Form I”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (B) in rule 4, in sub-rule (1), for the words and figures “in Form II”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (C) in rule 18, in sub-rule (3), for the words and figures “in Form V”, the words, letter and figures “in Form C specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (D) Form I, Form II and Form V shall be omitted;
- (x) in the Sales Promotion Employees (Conditions of Service) Rules, 1976,—
- (A) in rule 23,-
- (a) in clause (a), for the words and letter “in Form B”, the words, letter and figures “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (b) in clause (c), for the words and letter “in Form D”, the words, letter and figures “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (c) in clause (d), for the words and letter “in Form E”, the words, letter and figures “in Form E specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (B) Form B, Form D and Form E shall be omitted;
- (xi) in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957,—
- (A) in rule 37,—
- (a) in clause (i), for the words and letter “in Form D”, the words, letter and figures “in Form A specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (b) in clause (iii), for the words “in Form F”, the words, letter and figures “in Form E specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted;
- (c) in clause (iv), for the words “in Form G”, the words, letter and figures “in Form D specified in the Schedule to the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017” shall be substituted; and
- (B) Form D, Form F and Form G shall be omitted.

SCHEDULE

[See rule 2(1)]

FORM A**FORMAT OF EMPLOYEE REGISTER**

[Part-A: For all Establishments]

Name of the Establishment-----Name of Owner-----LIN-----

| Sl. No. | Employee Code | Name | Surname | Gender | Father's/Spouse Name | Date of Birth# | Nationality | Education Level | Date of Joining | Designation |
|---------|---------------|------|---------|--------|----------------------|----------------|-------------|-----------------|-----------------|-------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |

| Category Address *(HS/S/SS/US) | Type of Employment | Mobile | UAN | PAN | ESIC IP | LWF | AADHAAR | Bank A/c Number | Bank | Branch (IFSC) | Present Address | Permanent |
|-----------------------------------|--------------------|--------|-----|-----|---------|-----|---------|-----------------|------|---------------|-----------------|-----------|
| 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |

| Servie Book No. | Date of Exit | Reason for Exit | Mark of Identification | Photo | Specimen Signature/Thumb Impression | Remarks |
|-----------------|--------------|-----------------|------------------------|-------|-------------------------------------|---------|
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

*(Highly Skilled/Skilled/Semi Skilled/Un Skilled)

#Note: In case the age is between 14 to 18 years, mention the nature of work, daily hours of work and Intervals of rest in the remarks Column.

[PART B: FOR THE MINES ACT, 1952 (35 of 1952) ONLY]

| Sl. Number in Employee Register | Name | Token Number Issued | Date of First Appointment with present Owner | Certificate of age/fitness taken (for 14 to 18 Years) | Place of Employment (Underground/Open cast/Surface) | Certificate of Vocational Training | |
|---------------------------------|------|---------------------|--|---|---|------------------------------------|------|
| | | | | | | Number | Date |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

| Nominee | | Adult Person to be contacted in case of Emergency | | | Remarks | *Signature of Mines Manager |
|---------|---------|---|---------|--------|---------|-----------------------------|
| Name | Address | Name and Relationship | Address | Mobile | | |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |

* Not necessary in case digital form

FORM B
FORMAT FOR WAGE REGISTER

| Rate of Minimum Wages and since the date..... | | | | |
|---|----------------|---------|--------------|------------|
| | Highly Skilled | Skilled | Semi-Skilled | Un Skilled |
| Minimum Basic | | | | |
| DA | | | | |
| Overtime | | | | |

Name of the Establishment _____ Name of Owner _____ LIN _____

Wage period From _____ To _____ (Monthly/Fortnightly/Weekly/Daily/Piece Rated)

| Sl. No. in Employee register | Name | Rate of Wage | No. of Days worked | Overtime hours worked | Basic | Special Basic | DA | Payments Overtime | HRA | *Others | Total |
|------------------------------|------|--------------|--------------------|-----------------------|-------|---------------|----|-------------------|-----|---------|-------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| | | | | | | | | | | | |

| Deduction | | | | | | | | Net Payment | Employer Share PF Welfare Found |
|-----------|------|---------|------------|-----------|--------|------------|-------|-------------|---------------------------------|
| PF | ESIC | Society | Income Tax | Insurance | Others | Recoveries | Total | | |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| | | | | | | | | | |

| Receipt by Employee/Bank Transaction ID | Date of Payment | Remarks |
|---|-----------------|---------|
| 23 | 24 | 25 |
| | | |

* In case of Mines Act any Leave Wages paid should be shown in the Others Column and specifically mentioned in the Remarks column also.

FORM C

FORMAT OF REGISTER OF LOAN/ RECOVERIES

Name of Establishment _____ LIN _____

| Sl. Number In Employee register | Name | Recovery Type (Damage/loss/fine/advance/loans) | Particulars | Date of damage/Loss* | Amount |
|---------------------------------|------|---|-------------|----------------------|--------|
| 1 | 2 | 3 | 4 | 5 | 6 |

| Whether show cause issued* | Explanation heard in presence of* | Number of Instalments | First Month/Year | Last Month/Year | Date of Complete Recovery | Remarks |
|----------------------------|-----------------------------------|-----------------------|------------------|-----------------|---------------------------|---------|
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |

*Applicable only in case of damage/loss/fine

FORM D
FORMAT OF ATTENDANCE REGISTER

Name of Establishment _____ Name of Owner _____ LIN _____

For the Period From To

| Sl. Number in Employee register | Name | Relay# or set work | Place of work* | Date | | Summary No. of Days | Remarks No. of hours | **Signature of Register Keeper |
|------------------------------------|------|--------------------|----------------|----------------|-----|------------------------|-------------------------|-----------------------------------|
| | | | | 1 2 3 4.....31 | | | | |
| | | | | IN | | | | |
| | | | | OUT | | | | |
| 1 | 2 | 3 | 4 5 | | 6 7 | 8 | 9 | 10 |

#Relay and *Place of Work in case of Mines only (Underground/Opencast/Surface)

In case an employee is not present the following to be entered: (R for Rest/L for Paid Leave/A for absent/O for Weekly Off/C for Establishment Closed)

** Not necessary in case of E Form maintenance.

FORM E

FORMAT OF REGISTER OF REST/LEAVE/LEAVE WAGES UNDER

THE MINES ACT, 1952, THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT, 1976 AND THE WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1957

Name of Establishments _____ Name of Owner _____ LIN _____

For the Year

| Sl. Number in Employees Register | Name | No. of days worked in the Year | Details of Compensatory Rest | | | | |
|----------------------------------|------|--------------------------------|------------------------------|-------|------------------|--------------|-----------------|
| | | | Opening Balance | Added | Rest Not Allowed | Rest Availed | Closing Balance |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

| Details of Earned Leave | | | | Details of Medical Leave | | | |
|-------------------------|-------|---------------|-----------------|--------------------------|-------|---------------|-----------------|
| Opening Balance | Added | Leave Availed | Closing Balance | Opening Balance | Added | Leave Availed | Closing Balance |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |

| Details of Other Leave | | | | Remarks |
|------------------------|-------|---------------|-----------------|---------|
| Opening Balance | Added | Leave Availed | Closing Balance | |
| 17 | 18 | 19 | 20 | 21 |

Note: The Register for the month of January for the year will show the Leave Opening Balance for the year also and for the month December will show the Closing Balance for the year.

[F. No. Z-20025/27/2016-LRC]

R. K. GUPTA, Jt. Secy.

Note:

- (1) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998 were published in the Gazette of India vide G.S.R. 689(E), dated 19.11.1998 and was lastly amended by G.S.R. 47(E) dated 10.06.2015;
- (2) The Contract Labour (Regulation and Abolition) Central Rules, 1971 were published in the Gazette of India vide G.S.R. 191, dated 10.02.1971 and was lastly amended by G.S.R. 41(E), dated 21.01.1999;

- (3) The Equal Remuneration Rules, 1976 were published in the Gazette of India vide G.S.R.119(E), dated 11.03.1976 and was lastly amended by G.S.R. 514(E), dated 31.07.1991.
- (4) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 were published in the Gazette of India vide G.S.R. 513(E), dated 11.08.1980 and was lastly amended by S.O. 1614(E), dated 16.11.2015.
- (5) The Mines Rules, 1955 were published in the Gazette of India vide S.O. 1421, dated 02.07.1955 and were lastly amended by G.S.R.707, dated 21.07.1989.
- (6) The Minimum Wages (Central) Rules, 1950 were published in the Gazette of India vide S.R.O. 776, dated 14.10.1950 and were lastly amended by S.O. 182(E), dated 11.03.2015.
- (7) The Payment of Wages (Air Transport Services) Rules, 1968 was published in the Gazette of India vide S.O. 3036/PWA/A/Air Service Rules 68, dated 05.08.1968 and was lastly amended by G.S.R.352(E) dated 01.05.2015.
- (8) The Payment of Wages (Mines) Rules, 1956 were published in the Gazette of India vide S.R.O. 776, dated 30.11.1956 and were lastly amended by G.S.R.351(E), dated 01.05.2015.
- (9) The Payment of Wage (Railways) Rules, 1938 were published in the Gazette of India vide L-3070(1), dated 05.05.1938 and were lastly amended by G.S.R.353(E), dated 01.05.2015.
- (10) The Sales Promotion Employees (Conditions of Service) Rules, 1976 were published in the Gazette of India vide S.O. 113(E), dated 08.03.1976 and were lastly amended by S.O. 217(E), dated 24.02.2011; and
- (11) The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 were published in the Gazette of India vide S.R.O. 1737, dated 23.05.1957 and were lastly amended by S.O. 889(E), dated 11.11.1980.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 39] नई दिल्ली, बुधवार, दिसम्बर 10, 2014/ अग्रहायण 19, 1936 (शक)
No. 39] NEW DELHI, WEDNESDAY, DECEMBER 10, 2014/AGRAHAYANA 19, 1936 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 10th December, 2014/Agrahayana 19, 1936 (Saka)

The following Act of Parliament received the assent of the President on the 9th December, 2014, and is hereby published for general information:—

THE LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) AMENDMENT ACT, 2014 (No. 33 OF 2014)

[10th December, 2014.]

An Act to amend the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 (hereinafter referred to as the principal Act),

Amendment of long title.

for the long title, the following long title shall be substituted, namely:—

“An Act to provide for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws.”.

Amendment
of section 1.

3. In section 1 of the principal Act, in sub-section (I), for the words “Exemption from”, the words “Simplification of Procedure for” shall be substituted.

Amendment
of section 2.

4. In section 2 of the principal Act, in clause (e), for the word “nineteen”, the word “forty” shall be substituted.

Substitution of
new section
for section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

Exemption
from
furnishing or
maintaining of
returns and
registers
required under
certain labour
laws.

“4. (I) Notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act:

Provided that such employer—

(a) furnishes, in lieu of such returns, annual return in Form I; and

(b) maintains, in lieu of such registers,—

(i) registers in Form II and Form III, in the case of small establishments, and

(ii) a register in Form III, in the case of very small establishments,

at the work spot:

Provided further that every such employer shall continue to—

(a) issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and

(b) file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

11 of 1948.

4 of 1936.

63 of 1948.
69 of 1951.

(2) The annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (I), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media:

Provided that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

(3) The employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

(4) Save as provided in sub-section (I), all other provisions of a Scheduled Act, including, in particular, the inspection of the registers by, and furnishing of their

copies to, the authorities under that Act, shall apply to the returns and registers required to be furnished or maintained under this Act as they apply to the returns and registers under that Scheduled Act.

(5) Where an employer in respect of an establishment referred to in sub-section (1), to whom a Scheduled Act applies, furnishes returns or maintains the registers as provided in the proviso to sub-section (1), nothing contained in that Scheduled Act shall render him liable to any penalty for his failure to furnish any return or to maintain any register under that Scheduled Act."

6. For the First Schedule and Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution of
new Schedules
for First
Schedule and
Second
Schedule.

"THE FIRST SCHEDULE

[See section 2(d)]

1. The Payment of Wages Act, 1936 (4 of 1936).
2. The Weekly Holidays Act, 1942 (18 of 1942).
3. The Minimum Wages Act, 1948 (11 of 1948).
4. The Factories Act, 1948 (63 of 1948).
5. The Plantations Labour Act, 1951 (69 of 1951).
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955).
7. The Motor Transport Workers Act, 1961 (27 of 1961).
8. The Payment of Bonus Act, 1965 (21 of 1965).
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966).
10. The Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970).
11. The Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976).
12. The Equal Remuneration Act, 1976 (25 of 1976).
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979).
14. The Dock Workers (Safety, Health and Welfare) Act, 1986 (54 of 1986).
15. The Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986).
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996).

THE SECOND SCHEDULE

[See section 2 (c)]

FORM I

[See section 4 (1)]

ANNUAL RETURN

(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)

(ending 31st March _____)

1. Name of the establishment, its postal address, telephone number, FAX number, e-mail address and location _____

2. Name and postal address of the employer_____
-
3. Name and address of principal employer, if the employer is a contractor_____
-
4. Name of the Manager responsible for supervision and control_____
- (i) Name of business, industry, trade or occupation carried on by the employer—
-
- (ii) Date of commencement of the business, industry, trade or occupation_____
-
5. Employer's number under ESI/EPF/Welfare Fund/PAN No., if any_____
6. Maximum number of workers employed on any day during the year to which this return relates to:
- | Category | Highly Skilled | Skilled | Semi-skilled | Un-skilled |
|---|----------------|---------|--------------|------------|
| Male | | | | |
| Female | | | | |
| Children (those who have not completed 18 years of age) | | | | |
| Total | | | | |
7. Average number of workers employed during the year:
8. Total number of mandays worked during the year:
9. Number of workers during the year:
- (a) Retrenched :
- (b) Resigned :
- (c) Terminated :
10. Retrenchment compensation and terminal benefits paid (provide information completely in respect of each worker)_____
-
11. Mandays lost during the year on account of—
- (a) Strike :
- (b) Lockout :
- (c) Fatal accident :
- (d) Non-fatal accidents :
12. Reasons for strike or lockout :
13. Total wages paid (wages and overtime to be shown separately):
14. Total amount of deductions from wages made :

15. Number of accidents during the years :

| Reported to Inspector of Factories/Dock Safety | Reported to Employees' State Insurance Corporation | Reported to Workmen's Compensation Commissioner | Others |
|---|---|---|--------|
| Fatal | | | |
| Non-fatal | | | |

16. Compensation paid under the Workmen's Compensation Act, 1923 (8 of 1923) during the year _____

(i) Fatal accidents :

(ii) Non-fatal accidents :

17. Bonus*

(a) Number of employees eligible for bonus :

(b) Percentage of bonus declared and number of employees who were paid bonus:

(c) Amount payable as bonus :

(d) Total amount of bonus actually paid and date of payment :

Place: _____ Signature of the Manager/Employer
with full name in capital letters.

Date: _____

ANNEXURE I*

| Name and address of the Contractor | Period of contract From to | Nature of work | Maximum number of workers employed by each contractor | Number of days worked | Number of mandays worked |
|---|-------------------------------------|-------------------|---|--------------------------|--------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | |

ANNEXURE II

(See Item No. 6)

| Serial Number | Name of the employee/worker | Date of employment | Permanent address |
|---------------|--------------------------------|--------------------|-------------------|
| 1 | 2 | 3 | 4 |
| | | | |

*Delete, if not applicable.

FORM II

[See section 4(I)]

REGISTER OF PERSONS EMPLOYED-CUM-EMPLOYMENT CARD

Name of the establishment, address, telephone number, FAX number and e-mail address

Location of work

Name and address of principal employer if the employer is a contractor

1. Name of workman/employee
2. Father's/Husband's name
3. Address:
 - (i) Present
 - (ii) Permanent
4. Name and address of the nominee/next of kin
5. Designation/Category
6. Date of Birth/Age
7. Educational qualifications
8. Date of entry
9. Worker's ID No./ESI/EPF/L.W.F. No.
10. If the employed person is below 14 years, whether a certificate of age is maintained
11. Sex: Male or Female
12. Nationality
13. Date of termination of employment with reason
14. Signature/thumb impression of worker/employee
15. Signature of the employer/Authorised officer with designation

Signature of the contractor/
authorised representative
of the principal employer.

FORM III

[See section 4 (I)]

MUSTER ROLL-CUM-WAGE REGISTER

Name of the establishment and address _____

Location of work _____

Name and address of employer _____

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|--|---|--|---|---|----------------------------|--|---|
| Serial number | Name of the worker (ID No. if any) and father's/ husband's name | Designation/ category/nature of work performed | Attendance (Dates of the month 1, 2, ... to 31) | Leave due (Earned leave and other kind of admissible leave) | Leave availed (specify) | Wage rate/ pay or piece rate/wages per unit | Other allowances, e.g. (a) Dearness Allowance (b) House Rent Allowance (c) Night Allowances (d) Displacement Allowance (e) Outward Journey Allowance |
| | | | | | | | (a) (b) (c) (d) (e) |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| Overtime worked number of hours in the month | Amount of overtime wages | Amount of advance and purpose of advance | Total/gross earnings | Deduction e.g. (a) Provident Fund (b) Advance (c) Employees' State Insurance (d) Other amount | Net amount payable (12-13) | Signature/ receipt of wages/ allowances for column number 14 | Remarks |
| | | | | (a) (b) (c) (d) | | | |

Certificate by the principal employer if the employer is contractor.

This is to certify that the contractor has paid wages to workmen employed by him as shown in this register.

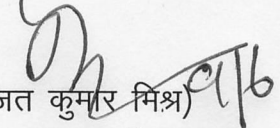
Signature of principal employer/
authorised representative of principal employer."DR. SANJAY SINGH,
Secretary to the Govt. of India.

आदेश

राज्य में कारखानों, उद्योगों एवं वाणिज्यिक संस्थानों के विकास एवं उन्हें विभिन्न श्रम कानूनों के अन्तर्गत भरे जाने वाली विवरणियों की बहुलता से उत्पन्न कठिनाइयों के निवारण हेतु तथा श्रमिकों के स्वास्थ्य, सुरक्षा, सामाजिक सुरक्षा व कल्याण प्रावधानों के साथ समझौता किए बगैर उद्यमियों/ नियोजकों द्वारा श्रम कानूनों का पालन करने के लिए प्रोत्साहित करने हेतु केन्द्रीय अधिनियम "The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014" के क्रम में श्रम विभाग व कारखाना एवं बायलर्स निरीक्षण विभाग से सम्बन्धित सभी श्रम कानूनों के अन्तर्गत एकीकृत एक ही रिटर्न भरे जाने का प्रावधान उक्त दोनों विभागों की ऑन लाइन वेब एप्लीकेशन क्रमशः LDMS व Rajfab पर किया जा कर लागू हो चुका है।

अतः किसी कारखाना, उद्योग एवं वाणिज्यिक संस्थान द्वारा ऑन लाइन वेब एप्लीकेशन LDMS पर सभी श्रम कानूनों के अन्तर्गत एकीकृत एक ही रिटर्न प्राप्त होने पर इसकी सूचना web service के द्वारा ऑन लाइन वेब एप्लीकेशन Rajfab पर उक्त कारखाने, उद्योग एवं वाणिज्यिक संस्थान से सम्बन्धित रिकॉर्ड में स्वतः ही दर्ज होने अथवा Rajfab पर सभी श्रम कानूनों के अन्तर्गत एकीकृत एक ही रिटर्न प्राप्त होने पर इसकी सूचना web service के द्वारा LDMS पर उक्त कारखाने, उद्योग एवं वाणिज्यिक संस्थान से सम्बन्धित रिकॉर्ड में स्वतः ही दर्ज होने की व्यवस्था तुरन्त प्रभाव से किए जाने के आदेश दिए जाते हैं।

किसी भी कारखाने, उद्योग एवं वाणिज्यिक संस्थान द्वारा उक्त दोनों ऑन लाइन वेब एप्लीकेशन LDMS व Rajfab में से किसी भी एक पर सभी श्रम कानूनों के अन्तर्गत एकीकृत एक ही रिटर्न प्रेषित किये जाने पर वह रिटर्न दोनों विभागों के लिये पूर्णतया वैध व मान्य होगी।


(रजत कुमार मिश्र)
शासन सचिव

ITEM NO.6

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 744/2017

CHITRA SHARMA & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With applications for intervention, clarification/direction, impleadment, appropriate orders/directions, Vakalatnama and Memo of Appearance, permission to file application for direction, exemption from filing O.T., and permission to appear and argue in person)

WITH

W.P. (C) No. 782/2017 (X)

W.P. (C) No. 783/2017 (X)

(FOR APPLICATION FOR INTERIM RELIEF ON IA 83314/2017)

SLP(C) No. 24001/2017 (XI)

(With applications for modification, appropriate orders/directions, and impleadment)

W.P. (C) No. 805/2017 (X)

(FOR STAY APPLICATION ON IA 84812/2017)

W.P. (C) No. 803/2017 (X)

SLP(C) No. 24002/2017 (XI)

(With applications for permission to file SLP/TP, filing additional documents, intervention/impleadment, and clarification /direction)

W.P. (C) No. 950/2017 (X)

W.P. (C) No. 860/2017 (X)

(FOR ADMISSION)

Diary No(s). 28701/2017 (XI)

(FOR ADMISSION and I.R. and with applications for exemption from filing C/C of the impugned judgment, impleadment, permission to file SLP/TP and permission to file additional documents)

Date : 22-11-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Petitioner(s)

Mr. Rana Mukherjee, Sr. Adv.

Ms. Kasturika Kaumudi, Adv.

Ms. Daisy Hannah, Adv.

Mr. Ramakant Rai, Adv.

Mr. Anurag Misra, Adv.

Ms. Ekta Pradhan, Adv.
Ms. Sreoshi Chatterjee, Adv.
Mr. Syed Jafar Alam, Adv.

Mr. Anvesh Verma, Adv.
Mr. Rakshit Thakur, Adv.
Mr. Shrinidhi Rao, Adv.

Mr. Wajeem Shafiq, Adv.

Mr. Manoj Goel, Adv.
Mr. Naman Kamboj, Adv.

Ms. Mohna, AOR
Ms. Geetali Talukdar, Adv.

Ms. Meenakshi Arora, Sr. Adv.
Mr. Arjun Garg, AOR
Mr. Abhinav Shrivastava, Adv.
Mr. Manish Yadav, Adv.
Ms. Priyanka, Adv.
Mr. Aakash Nandalia, Adv.

Dr. R.R. Kishore, Adv.
Mr. Karunakar Mahalik, AOR
Ms. Rumi Chanda, Adv.

Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Ashwarya Sinha, AOR
Ms. Priyanka Sinha, Adv.
Mr. Srijan Sinha, Adv.
Ms. Ajita Tandon, Adv.
Ms. Ameya Vikrama Thanvi, Adv.
Ms. Alankrita Sinha, Adv.
Ms. Mohini Priya, Adv.
Mr. Girik Bhalla, Adv.

Mr. Rajeev Kumar Bansal, Adv.
Mr. Anil Nag, Adv.
Mr. Arun Singh, Adv.
Mr. Abhilash Nag, Adv.
Mr. Prashant Kumar, Adv.
Mr. Akshay K. Ghai, Adv.

Mr. Arun Monga, Adv.
Ms. Divya Sharma, Adv.
Mr. Gopal Jha, AOR

Mr. Varinder Kumar Sharma, Adv.
Ms. Parul Sharma, Adv.
Mr. Yugal K. Prasad, Adv.

Mr. Suvesh Kumar, Adv.
Ms. Tajinder Viridi, Adv.
Mr. Syed Jafar Husain, Adv.
Mr. Praveen Swarup, Adv.
Ms. Sumit P.S., Adv.

Ms. Aanchal Tikmani, Adv.
Ms. Liz Mathew, Adv.

Mr. Shiv Sagar Tiwari, AOR

Mr. Shuvodeep Roy, AOR
Mr. Fuzail Ahmad Ayyubi, AOR
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Ambhoj Kumar Sinha, AOR
Ms. Praveena Gautam, AOR
Ms. Aparna Bhat, AOR
Mr. Tishampati Sen, AOR
Mr. Alok Shukla, AOR
Mr. Neeraj Kumar Gupta, AOR
Dr. Kailash Chand, AOR
Ms. Anne Mathew, AOR
Mr. Himanshu Shekhar, AOR
Mr. Amit Pawan, AOR
Ms. Rashmi Nandakumar, AOR
Ms. Anannya Ghosh, AOR
Mr. Shantanu Sagar, AOR
Mr. R.P. Gupta, AOR
Mr. Shovan Mishra, AOR

Mr. Pawanshree Agrawal, AC

Ms. Sujeeta Srivastava, AOR

**For Respondents/
Applicants**

Mr. K.K. Venugopal, AG
Mrs. V. Mohana, Sr. Adv.
Mr. Harish V. Shanker, Adv.
Mrs. Anil Katiyar, AOR

Mr. Ajay Sharma, Adv.
Mr. Sanjay Kumar Pathak, Adv.
Mr. Asha G. Nair, Adv.
Mr. R.K. Rathor, Adv.
Mr. G.S. Makker, AOR

Mrs. Madhavi Divan, Adv.
Ms. Nidhi Khanna, Adv.
Mr. Ayush Puri, Adv.

Mr. Kapil Sibal, Sr. Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Anupam Lal Das, AOR
Mr. Vishal Gupta, Adv.
Mr. Kumar Mihir, Adv.
Mr. Anirudh Singh, Adv.

Mr. Ranjit Kumar, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Sarvjit Pratap Singh, Adv.
Mr. Krishna Kanodia, Adv.

Mr. Kamal Singh, Adv.
Mr. Shashank Sekhar Singh, Adv.

Mr. Abhay Kumar, Adv.
Mr. Himanshu, Adv.
Ms. C.B. Shetty, Adv.

Mr. Ajay Jain, Adv.
Mr. Jinendra Jain, Adv.
Mr. Chiraj Aneja, Adv.

Mr. L. Vishwanathan, Adv.
Mr. Bishwajit Dubey, Adv.
Ms. Srideepa Bhattacharaya, Adv.
Mr. Aditya Marwah, Adv.
Mr. Avishkar Singhvi, Adv.
for M/s. Cyril Amarchand Mangaldas, AOR

Mr. Vishnu Sharma, Adv.
Mr. Anupama Sharma, Adv.
Ms. Sonali Negi, Adv.
Ms. Gautami Budhapriya, Adv.

Mr. Yadav Narender Singh, AOR
Mr. Vijay Kumar Sharma, Adv.

Mr. Sumant Batra, Adv.
Mr. Sanjay Bhatt, Adv.

Ms. Swarupama Chaturvedi, Adv.
Mr. B.N. Dubey, Adv.
Mr. Robin Khakhar, Adv.
Mr. Kumar Gaurav, Adv.

Mr. Ravindra Kumar, AOR
Mr. Sourav Kumar, Adv.

Mr. Neelesh Singh Rao, Adv.
Mr. A. Babu, Adv.

Mr. P.V. Dinesh, Adv.

Ms. Sindhu T.P., Adv.
Mr. Bineesh K., Adv.
Mr. Abhisekh Thakur, Adv.
Ms. Arushi Singh, Adv.
Mr. R. Beniwal, Adv.

Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Shodhika Sharma, Adv.

Mr. C.S. Gupta, Adv.
Mr. Shekhar Kumar, Adv.

Mr. Ashok Kumar Jain, Adv.
Mr. Pankaj Jain, Adv.
Mr. Bijoy Kumar Jain, Adv.

Ms. Praveena Gautam, Adv.
Mr. Jitesh P. Gupta, Adv.
Mr. Raja Ram, Adv.
Mr. K.K. Gautam, Adv.

Mr. Nakul Dewan, Adv.
Ms. Akriti Chaubey, Adv.
Ms. Tanya Shree, Adv.
Mr. Ejaz Maqbool, Adv.

Mr. R. Sudhinder, Adv.
Ms. Amrita Sarkar, Adv.
Ms. Nidhi Agarwal, Adv.

Mr. Kavita Jha, Adv.
Mr. Vaibhav Kulkarni, Adv.
Mr. Udit Naresh, Adv.

Ms. Manjeet Chawla, Adv.

Mr. Partha Sil, AOR
Mr. Tavish B. Prasad, Adv.
Mr. Subhoshree Sil, Adv.

Ms. Anne Mathew, Adv.
Mr. Nishant Anand, Adv.

Mr. Sandeep Devashish Das, AOR
Mr. Anand Prasad, Adv.

Mr. Rajiv Virmani, Adv.
Mr. Atul Malhotra, Adv.
Mr. Gaurav Jain, Adv.
Mr. Yadav Narendra Singh, Adv.

Mr. Ratish Kumar, Adv.
Dr. Sarvam Ritam Khare, Adv.
Ms. Urvi Kuthitata Malik, Adv.
Mr. Rahul Tomar, Adv.

Mrs. K. Enatoli Sema, Adv.
Mr. Edward Belho, Adv.
Mr. Amit Kumar Singh, Adv.
Mr. K. Luikang Michael, Adv.

Mr. Raghavendra M. Bajaj, Adv.
Ms. Garima Bajaj, AOR

Mr. Tishampati Sen, Adv.
Ms. Riddhi Sancheti, Adv.

Mr. Rajesh P., AOR
Mr. Prasanth Jain, Adv.

Mr. Ranjan Kumar Pandey, AOR
Mr. Sandeep Bisht, Adv.

Mr. V. Sudeer, Adv.
Mr. M.B.R.S. Raju, Adv.
Ms. Megha Khanna, Adv.
Mr. Balaji Srinivasan, AOR

Ms. Sujeeta Srivastava, Adv.

Mr. Abhimanyu Bhandari, Adv.
Mr. Rajiv Virmani, Adv.
Ms. Nattasha Garg, Adv.
Mr. Naveen Kumar, Adv.

Mr. C.U. Singh, Sr. Adv.
Ms. Anannya Ghosh, AOR
Mr. Priyank Ladoia, Adv.

Mr. Talha Abdul Rahman, Adv.
Ms. Seema Rao, Adv.

Mr. Wajeem Shafiq, Adv.
Mr. Vidur Kamra, Adv.

Mr. Avinesh Bhardwaj, Adv.
Mr. C.S. Ashri, AOR

Mr. Mangaljit Mukherjee, Adv.
Mrs. Debarpita Basu Mukherjee, Adv.
Mr. Sagnik Basu, Adv.
Mrs. Sarla Chandra, Adv.

Mr. Sidharth Luthra, Sr. Adv.
Ms. Supriya Juneja, AOR
Mr. Bharat Monga, Adv.

Mr. Sahil Sethi, Adv.
Mr. Shivam Sharma, Adv.
Mr. Puneeth G., Adv.
Ms. Astha Sharma, AOR

Mr. Praveen Swarup, AOR
Mr. Suvesh Kumar, Adv.
Mr. Sahil Chaudhary, Adv.

Mr. Shashi Kiran, Adv.
Mr. Sujit Kumar Jha, Adv.
Mr. Shatish Chandra, Adv.

Ms. Ranny, Adv.
Mr. P.V. Raghunandan, Adv.
Ms. Poonam Raswat, Adv.

Mr. Ambhoj Kumar Sinha, Adv.

Mr. Gaurav Sharma, Adv.

Mr. Pradhuman Gohil, Adv.
Ms. Taruna Singh Gohil, AOR
Mr. Himanshu Chaubey, Adv.
Mr. Zain Maqbool, Adv.
Ms. Neelu Mohan, Adv.

Ms. Prerna Mehta, AOR
Mr. Rohit Singh, Adv.

Mr. Alok Shukla, AOR
Mr. Neeraj Kumar Gupta, AOR
Mr. Anil Kumar, Adv.
Mr. Nitin Singh, Adv.
Mr. Anjani Kumar, Adv.
Mr. Ranjeet Kumar Singh, Adv.

Mr. Shyam Divan, Sr. Adv.
Ms. Sonal Gupta, Adv.
Ms. Raveen Rai, Adv.
Ms. Aishwarya Dash, Adv.

Unuc Legal LLP, AOR
Mr. Ajit Sharma, AOR
Mr. Amit Sharma, AOR
Mr. Arun K. Sinha, AOR
Mr. Sachin Patil, AOR

Mr. M. A. Krishna Moorthy, AOR
Mr. K.K. Mohan, AOR
Mr. Raj Kishor Choudhary, AOR
Mr. Ashok Mathur, AOR
Mr. Rabin Majumder, AOR
Mr. Anup Jain, AOR
Mr. Kedar Nath Tripathy, AOR
Mr. T. Harish Kumar, AOR
Mr. Abhijat P. Medh, AOR
Mr. Pradeep Kumar Bakshi, AOR
Mr. Mukesh Kumar Maroria, AOR
Ms. Sharmila Upadhyay, AOR
Ms. Madhusmita Bora, AOR
Ms. Supriya Juneja, AOR
Mr. Balaji Srinivasan, AOR
Mr. Rajeev Kumar Bansal, AOR
Mr. Abhishek Yadav, AOR
Mr. Amarjit Singh Bedi, AOR
Mr. Mudit Sharma, AOR
Mr. Syed Jafar Alam, AOR
Mr. Arjun Garg, AOR
Mr. Md. Rashid Saeed, AOR

UPON hearing the counsel the Court made the following
O R D E R

Though these matters were to be taken up at 2.00 p.m., learned counsel for the petitioners, Mr. K.K. Venugopal, learned Attorney General and learned senior counsel for the respondents agreed to have it taken in the first hour. In pursuance of earlier order, eight independent directors and five promoter directors are present.

It is submitted by learned senior counsel appearing for Jaiprakash Associates Limited (JAL) that the company is ready with 275 crores. The home buyers raised their concern about the realization of the amount. This Court appreciates the grievance and the concern of the home buyers.

We think it would be appropriate to direct as follows:-

(a) A Demand Draft of Rs.275 crores be

deposited by Mr. Anupam Lal Das, learned counsel appearing for the company, before the Registry of this Court, today.

(b) A sum of Rs.150 crores be deposited by 13.12.2017.

(c) A further sum of Rs.125 crores be deposited by 31.12.2017.

(d) Neither the independent directors nor the promoter directors shall alienate their personal properties or assets in any manner, and if they do so, they will not only be liable for criminal prosecution but contempt of the Court.

(e) That apart, we also direct that the properties and assets of their immediate and dependent family members should also not be transferred in any manner, whatsoever.

Needless to say that direction for deposit of Rs.2,000 crores shall remain as it is. The only indulgence is to pay the same in installments.

Mr. Pawan Shree Agrawal, who had been appointed as Amicus Curiae on an earlier date, shall create a portal within a week and do the needful as he has done in similar matters. Mr. Anupam Lal Das, learned counsel shall provide all the details as required by Mr. Pawan Shree Agrawal. Mr. Anupam Lal Das shall provide a sum of Rs.5 lakhs to Mr. Pawan Shree Agrawal for creation of the portal and to carry on the consequential activities.

Matters be listed on 10.1.2018.

On that day, all the independent directors and promoter directors of Jaiprakash Associates Limited, shall remain present.

Copies of the affidavits deposed by all the five promoter directors, shall be served on the Central Agency, so that the learned Attorney General can be made aware of that.

Call on the date fixed.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

National Company Law Tribunal

Allahabad Bench

CP NO. (IB) 77/ALD/2017

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.08.2017

NAME OF THE COMPANY: *IDBI Bank Limited Vs. Jaypee Infratech Ltd*

SECTION OF THE COMPANIES ACT: *U/S 7 of IB Code 2016*

| <u>Sl. NO.</u> | <u>Name</u> | <u>Designation</u> | <u>Representation</u> | <u>Signature</u> |
|----------------|----------------------|--------------------|-----------------------|----------------------|
| <u>1.</u> | <i>R. P. Agarwal</i> | <i>Adv.</i> | <i>Resp.</i> | <i>R. P. Agarwal</i> |
| <u>2.</u> | <i>Rahul Agarwal</i> | <i>Adv.</i> | <i>Petitioner</i> | <i>Rahul Agarwal</i> |
| | <i>Uday Khore</i> | <i>Adv.</i> | <i>Respondent</i> | <i>Uday Khore</i> |

CP (IB) 77/ALD/2017: IDBI Bank Vs Jaypee Infratech Limited

The case is fixed today for pronouncement of order on the present application, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on its admission or otherwise.

As, total amount of default is stated Rs. 526,11,40,827/- which is in excess of Rs. 1,00,000/- (Rupees One Lac only). Hence, the Financial Creditor has filed the present application for initiation of Corporate Insolvency Resolution Process as per the Insolvency & Bankruptcy Code, 2016. The

Order in detail is recorded separately the operative portion thereof reads as under:

Since in the present matter the Corporate Debtor Company earlier had filed objection opposing the admission of the present petition but later on 04.08.2017, of the Corporate Debtor Company in presence of its officer proposed to withdraw the same and conceded to allow the admission of present petition.

Keeping in view of the above subsequent development took place, the court advised the Corporate Debtor Company to file a formal memo. Pursuant thereto Shri Manoj Gaur, the Chairman Cum Managing Director ^{has} filed a memo _n



in this respect, through his counsel Shri R.P. Agarwal, which contains such averment that *“the parties to the application had a meeting on 03.08.2017. They discussed need to withdraw their objection on the present petition and they expressed their desire for early approval of the resolution plan of the Corporate Debtor Company which is already under consideration of its lenders. In view of this the Corporate Debtor has expressed its no- objection to the present application”*.

The Corporate Debtor Company further explained in the memo that its no-objection is given considering *the interest of all the stakeholders of the Respondents Company including home buyers and depositors*. Therefore, the Corporate Debtor did not want to press for its objection to the present I & B application.

We perused the above stated memo and examined the content of the present application as well as the subsequent development took place in the matter. It is now an undisputed position in the matter that the Financial Creditor along with other lenders as well as the Corporate Debtor Company are having consensus for early approval of a resolution plan.

By perusal of contents of present Petition, we find that, it is filed in conformity with section 7 of the Insolvency and Bankruptcy Code, 2016 and rules made thereunder. Hence, it is found complete.

Having heard Shri Bishwajit Dubey along with Shri Rahul Agarwal, learned Counsel for Financial Creditor and Shri R.P. Agrawal learned counsel for Corporate Debtor, the present petition deserved to be admitted. Hence, it is admitted with Consequential Directions given as under:

I. That the adjudicating Authority of this bench of the Tribunal hereby appoints **Mr. Anuj Jain** , **Email.Id anujvjain@bsraffiliates.com** , **Registration No. IBBI/IPA-001/IP-P00142/2017-18/10306**, Address : M/S BSRR & Co. Chartered Accountants , 8th Floor, Building No. 10, DLF Cybercity , Gurgaon – 122002 as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code.

II. That the order of moratorium u/s 14 shall have effect from 09.08.2017 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or



Handwritten signature

passes an order for liquidation of corporate debtor under section 33 as, the case may be.

- III. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement ,decree or order in any court of law, tribunal ,arbitration panel or other authority ; transferring , encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ; any action to foreclose , recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFESI Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- IV. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the I.R.P as and when he takes charge of Corporate Debtor Company.
- V. During the period of Moratorium, the affairs of Corporate Debtor Company to be continued and conducted in accordance with the law and as a going concern.
- VI. That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VII. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
- VIII. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17 18, 20,21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code, ^{to} extend every assistance and cooperation to the Interim Resolution Professional, would be liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I& B Code, 2016.



- IX. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor after the completion of necessary formalities.
- X. A Copy of this order be communicated to the IRP as well as to Insolvency and Bankruptcy Board of India.

→ Sd →

H.P Chatūrvedi 9/8/2017
(Member Judicial)

Date- 09/08/2017

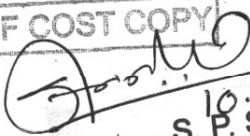
Typed By:

Aparna Trivedi

Law Research Assistant



FREE OF COST COPY

Compared by  10.8.2017.
S. P. SINHA
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD-U.P.
2017

EXTRACT OF THE KOTAK COMMITTEE REPORT ON CORPORATE GOVERNANCE

KEY RECOMMENDATIONS

- **Composition and Role of the Board of Directors:** The Committee recommends that for any listed entity, a minimum of six directors should be required on the board of directors and at least one independent woman director should be appointed. Further, recommendations related to minimum meetings which are to be attended by the Directors, quorum of the meetings, disclosure of expertise of the directors, mandatorily updating the directors at least once a year with all regulatory compliance have also been prescribed. The Committee has recommended that Listed entities with more than 40% public shareholding should separate the roles of Chairperson and MD/CEO.

In order to increase the accountability of the board in relation to adherence of regulatory compliance, the Committee has recommended that a confirmation should be provided by the board of a listed entity as a part of its corporate governance report, that it has been responsible for the business and overall affairs of the listed entity in the relevant financial year.

- **Institution of Independent Directors:** The Report states that every listed entity, irrespective of whether the Chairperson is executive or non-executive, may be required to have at least half its total number of directors as Independent Directors. Further, the committee has recommended the revision of eligibility criteria for a director to be an “independent director” and continuous assessment of such criteria. The compensation to be given to independent directors has also been deliberated upon in the Report.
- **Board Committees:** The Committee has recommended that all Committees constituted by the Board shall meet on regular intervals. It proposes that the Audit Committee should meet at least 5 times a year as opposed to 4 times. Further, various provisions related to the composition, role and functions of the committees constituted have also been proposed.
- **Enhanced Monitoring of Group Entities:** The Report proposes to amend the definition of material subsidiary. It states that the definition of the term “material subsidiary” should be revised to mean a subsidiary whose income or net worth exceeds 10% (from the current 20%) of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. Further, it is recommended that where

a listed entity has a large number of unlisted subsidiaries, the listed entity may monitor their governance through a dedicated group governance unit or governance committee comprising the members of the board of the listed entity.

- **Promoters/Controlling Shareholders and Related Party Transactions:** The Report proposes to increase the number of disclosures in reports made by a company in relation to related party transactions or insider trading. Further, stricter penalties to discourage the same have been proposed. New provisions for “Information Rights of Certain Promoters and Significant Shareholders” have been proposed by the Report.
- The Committee also recommends the increase in disclosures in the reports of the company with a view to encourage and promote transparency.
- The recommendations also include increasing the human resource in SEBI so as to build the capacity in SEBI to regulate corporate governance entities.
- Other recommendations related to accounting and audit related issues, investor participation in meetings of listed entities, governance aspects of public sector enterprises and leniency mechanism have been provided for in the report.

Specific Recommendation by Committee on Disclosures on Board Evaluation

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations contain broad provisions on board evaluation i.e. evaluation of the performance of: (i) the board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various committees of the board. The provisions also specify responsibilities of various persons/committees for the conduct of such evaluation and the disclosure requirements that are a part of the listed entity's corporate governance obligations. A guidance note on board evaluation has also been issued by SEBI vide circular dated January 5, 2017.

Recommendation and rationale:

The Committee is of the view that the concept of board evaluation is at a nascent stage in India and prescribing detailed requirements in this area may not be desirable at this stage. The Committee also takes note of the Guidance Note dated January 5, 2017 issued by SEBI on board evaluation and is of the opinion that the Note is comprehensive and covers all major aspects of board evaluation.

However, based on the study of a few actual board evaluation disclosures made by global companies, the Committee recommends that in order to strengthen disclosures on board evaluation, a guidance should be issued specifying, in particular, the following disclosures to be made as a part of the disclosures on board evaluation:

- a) Observations of board evaluation carried out for the year
- b) Previous year's observations and actions taken
- c) Proposed actions based on current year observations

In due course, depending on the experience, SEBI could consider making them mandatory, if it so deems fit.

Proposed amendments to SEBI LODR Regulations:

Since the aforesaid recommendations are in the nature of guidance, no specific amendments may be required to the SEBI LODR Regulations. However, a guidance note in the nature of a circular should be issued by SEBI, in this regard stating as under:

“All listed entities may consider the following as a part of their disclosures on board evaluation:

- a) Observations of board evaluation carried out for the year*
- b) Previous year's observations and actions taken*
- c) Proposed actions based on current year observations.”*

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 320-336 OF 2010

(Arising out of S.L.P. (Crl.) Nos. 445-461 of 2008)

National Small Industries Corp. Ltd. Appellant (s)

Versus

Harmeet Singh Paintal & Anr. Respondent(s)

WITH

CRIMINAL APPEAL NO. 337 OF 2010

(Arising out of S.L.P. (Crl.) No. 1079 of 2008)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted in all the above special leave petitions.
- 2) The appeals arising out of S.L.P. (Criminal) Nos. 445-461 of 2008 have been filed by the appellant-National Small Industries Corporation Limited against the common judgment and order dated 24.10.2007 passed by the High Court of Delhi at New Delhi in a batch of cases whereby

the High Court quashed the summoning orders passed by the trial Court against respondent No.1 - Harmeet Singh Paintal, under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short “the Act”)

3) The connected criminal appeal arising out of S.L.P. CrI. No. 1079 of 2008 is filed against the judgment and order dated 24.05.2007 passed by the High Court of Delhi in Criminal Revision Petition No. 163 of 2005, whereby the High Court quashed the summoning order passed by the trial Court against respondent No.1 - Dev Sarin under Section 138 read with Section 141 of the Act.

4) Since all these appeals are identical and same legal issues arise, they are being disposed of by this common judgment.

5) The appellant - National Small Industries Corporation Ltd. had filed 12 criminal complaints under Section 138 read with Sections 141 and 142 of the Act against M/s Jay Rapid Roller Limited, a Company incorporated under the Companies Act, its Managing Director - Shri Sukhbir

Singh Paintal, and its Director - Shri Harmeet Singh Paintal. It is the claim of the appellant that so as to make the Managing Director and Director of the Company liable to be prosecuted under the provisions of the Act, they had specifically averred in the complaint that all the accused persons approached it for financing of bill integrated market support programme. It was also stated that the accused persons had issued cheques which were dishonoured on presentation against which the appellant had filed criminal complaints under the provisions of the Act against all the respondents herein. It is their further case that all the accused persons accepted their liability and delivered various cheques, which are the subject matter of the present appeals.

6) In the connected appeal, the appellant - DCM Financial Services Ltd., entered into a hire purchase agreement on 25.02.1996 with M/s International Agro Allied Products Ltd. At the time of entering into contract, the Company handed over post-dated cheques to the appellant towards

payment of monthly hire/rental charges. Respondent No.1 – Dev Sarin was one of the Directors of the said Company. The cheque issued by International Agro and Allied Products Ltd. in favour of the appellant was duly presented for payment on 28.10.1998 and the same was returned unpaid for the reason that the Company had issued instructions to the bankers stopping payment of the cheque. The appellant issued a legal notice on 05.12.1998 to the Company, Respondent No.1 and other Directors under Section 138 of the Act informing them about the dis-honouring of the cheque in question. Despite the service of the notice, the Company did not make the payment to the appellant. The appellant, on 11.01.1999, filed a complaint before the Metropolitan Magistrate, New Delhi against respondent No.1 and others under Section 138 read with Section 141 of the Act. By order dated 04.02.1999, the Metropolitan Magistrate, New Delhi, after recording evidence summoned the accused persons including respondent No.1 herein. Respondent

No.1 filed an application before the Additional Sessions Judge, Delhi for dropping of proceedings against him. By order dated 08.09.2004, the Metropolitan Magistrate dismissed the said application. Aggrieved by the said order, the respondent filed a petition under Section 482 of the Criminal Procedure Code before the High Court for quashing of the complaint. The High Court, after finding that the averments against respondent No.1 are unspecific and general and no particular role is assigned to the appellant, quashed the summoning order insofar as it concerned to him.

7) In this factual matrix, the issue which arises for determination before this Court is whether the order of the High Court quashing the summoning orders insofar as the respondents are concerned is sustainable and what should be the averments in the complaint under Section 138 read with Section 141 of the Act against the Director of a Company before he can be subjected to criminal proceedings.

8) Heard learned counsel for the appellants as well as the learned ASG and senior counsel for the respondents.

9) Section 138 of the Act refers about penalty in case of dishonour of cheque for insufficiency of funds in the account. We are more concerned about Section 141 dealing with offences by Companies which reads as under:-

“141. *Offences by companies.*—(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm."

It is very clear from the above provision that what is required is that the persons who are sought to be made **vicariously liable** for a criminal offence under Section 141 should be, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for

the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.

10) Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company **without anything more as to the role of the Director.** But the complaint should spell out as to how and in what manner Respondent No.1 was in-charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in-charge of and responsible for

the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.

11) In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company.

12) In the light of the above provision and the language used therein, let us, at the foremost, examine the complainta filed by National Small Industries Corporation Limited and the DCM Financial Services Ltd. In the case of National Small Industries Corpn. Ltd., the High Court has reproduced the entire complaint in the impugned order and among other clauses, clause 8 is relevant for our consideration which reads as under:

“8. That the accused No. 2 is the Managing Director and accused No. 3 is the Director of the accused company. The accused No. 2 and 3 are the in-charge and responsible for

the conduct of the business of the company accused No. 1 and hence are liable for the offences.”

13) In the case of DCM Financial Services Ltd., in complaint-Annexure-P2 the relevant clause is 13 which reads as under:

“13. That the accused No. 1 is a Company/Firm and the accused Nos. 2 to 9 were in charge and were responsible to the accused No. 1 for the conduct of the business to the accused No. 1 at the time when offence was committed. Hence, the accused Nos. 2 to 9 in addition to the accused No. 1, are liable to be prosecuted and punished in accordance with law by this Hon'ble Court as provided by section 141 of the N.I. Act, 1881. Further the offence has been committed by the accused No. 1 with the consent and connivance of the accused Nos. 2 to 9.”

14) Now, let us consider whether the abovementioned complaint in both cases has satisfied the necessary ingredients to attract Section 141 insofar as the respondents, namely, Directors of the company are concerned. Section 141 of the Act has been interpreted by this Court in various decisions. As to the scope of Section 141 of the Act, a three-Judge Bench of this Court considered the following questions which had been referred to it by a two-Judge Bench of this Court in **SMS Pharmaceuticals vs. Neeta Bhalla and Anr.** (2005) 8 SCC 89:

“(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.”

While considering the above questions, this Court held as under:

“**18.** To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

Therefore, this Court has distinguished the case of persons who are in-charge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in-charge of and responsible for the conduct of the business of the company. Further, in

order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the concerned Directors should be specific. The description should be clear and there should be some unambiguous allegations as to how the concerned Directors were alleged to be in-charge of and was responsible for the conduct and affairs of the company.

15) In **Sabitha Ramamurthy** vs. **R.B.S. Channabasavaradhya**, (2006) 10 SCC 581, this Court while dealing with the same issue observed as under:

“.....It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. Not only the averments made in para 7 of the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of the respondent herein, does not contain any statement that the appellants were in charge of the business of the Company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict

compliance with the statutory requirements. In terms of Section 200 of the Code of Criminal Procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view.”

16) In **Saroj Kumar Poddar vs. State (NCT of Delhi)** (2007) 3 SCC 693, while following **SMS Pharmaceuticals case** (supra) and **Sabhita Ramamurthy case** (supra), this Court held that with a view to make the Director of a company vicariously liable for the acts of the company, it was obligatory on the part of the complainant to make specific allegations as are required under the law and under Section 141 of the Act and further held that in the absence of such specific averments in the complaint showing as to how and in what manner the Director is liable, the complaint should not be entertained. The relevant portion of the judgment is reproduced hereinbelow:-

“12. A person would be vicariously liable for commission of an offence on the part of a company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary.

13. The purported averments which have been made in the complaint petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:

“That Accused 1 is a public limited company incorporated and registered under the Companies Act, 1956, and Accused 2 to 8 are/were its Directors at the relevant time and the said Company is managed by the Board of Directors and they are responsible for and in charge of the conduct and business of the Company, Accused 1. However, cheques referred to in the complaint have been signed by Accused 3 and 8 i.e. Shri K.K. Pilia and Shri N.K. Munjal for and on behalf of Accused 1 Company.

14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.”

17) In a subsequent decision in **N.K. Wahi vs. Shekhar Singh & Ors.**, (2007) 9 SCC 481 while following the precedents of **SMS Pharmaceuticals's case** (supra), **Sabhita Ramamurthy's case** (supra) and **Saroj Kumar Poddar's case** (supra), this Court reiterated that for launching a prosecution against the alleged Directors,

there must be a specific allegation in the complaint as to the part played by them in the transaction. The relevant portion of the judgment is as under:

“7. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

18) The said issue again came up for consideration before a three-Judge Bench of this Court recently in **Ramraj Singh vs. State of M.P. & Anr.** (2009) 6 SCC 729. In this case, the earlier decisions were also considered in detail. Following the decisions of **SMS Pharmaceuticals'** case (supra), **Sabhita Ramamurthy's** case (supra), **Saroj Kumar Poddar's** case (supra) and **N.K. Wahi's** case

(supra) this Court held that it is necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was in-charge of, and responsible for the conduct of the business of the company. Furthermore, it held that vicarious liability can be attributed only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused/Director therein vicariously liable for the offence committed by the company. It was further held that before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Thus, the issue in the present case is no more *res integra* and has been squarely covered by the decisions of this Court referred above. It is submitted that the aforesaid decisions of this Court have become binding precedents.

19) In the case of second **SMS Pharmaceuticals** vs. **Neeta Bhalla**, (2007) 4 SCC 70, this Court has

categorically held that there may be a large number of Directors but some of them may not assign themselves in the management of the day-to-day affairs of the company and thus are not responsible for the conduct of the business of the company.

Para 20 of the said judgment is relevant which is reproduced hereunder:-

“20. The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent 1 herein was a party to a purported resolution dated 15-2-1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day-to-day affairs of the Company and, thus, are not responsible for the conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was in charge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefor must be satisfied.”

20) Relying on the judgment of this Court in ***Everest Advertising Pvt. Ltd. vs. State Govt. of NCT of Delhi & Ors.***, (2007) 5 SCC 54, learned counsel for the appellants argued that this Court has not allowed the recalling of

summons in a criminal complaint filed under sections 138 and 141. However, a perusal of the judgment would reveal that this case was of recalling of summons by the Magistrate for which the Magistrate had no jurisdiction. Further, para 22 of the judgment would reveal that in the complaint “allegations have not only been made in terms of the wordings of section but also at more than one place, it has categorically been averred that the payments were made after the meetings held by and between the representative of the Company and accused nos. 1 to 5 which would include Respondent Nos. 2 and 3.” In para 23, this Court concluded that “it is therefore, not a case where having regard to the position held by the said respondents in the Company, they could plead ignorance of the entire transaction”. Furthermore, this Court has relied upon **S.M.S. Pharamaceutical’s** case (three-Judge Bench) (supra), **Saroj Kumar Poddar’s** case (supra) and **N.K. Wahi’s** case (supra).

21) Relying on the judgment of this Court in **N. Rangachari vs. Bharat Sanchar Nigam Ltd.**, (2007) 5 SCC 108, learned counsel for the appellants further contended that a payee of cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in-charge of its affairs and the Directors are *prima facie* in that position. However, it is pertinent to note that in this case it was specifically mentioned in the complaint that (i) accused no. 2 was a director and in charge of and responsible to the accused Company for the conduct of its business; and (ii) the response of accused no. 2 to the notice issued by BSNL that the said accused is no longer the Chairman or Director of the accused Company was false and by not keeping sufficient funds in their account and failing to pay the cheque amount on service of the notice, all the accused committed an offence. Therefore, this decision is clearly distinguishable on facts as in the said case necessary averments were made out in the complaint itself. Furthermore, this decision does not

and could not have overruled the decisions in **S.M.S. Pharmaceutical's** case (three-Judge Bench)(supra), **Ramraj Singh's** case (three-Judge Bench)(supra), **Saroj Kumar Poddar's** case (supra) and **N.K. Wahi's** case (supra) wherein it is clearly held that specific averments have to be made against the accused Director.

22) Learned counsel for the appellants after elaborately arguing the matter, by inviting our attention to **Paresh P. Rajda vs. State of Maharashtra & Anr.**, (2008) 7 SCC 442 contended that a departure/digression has been made by the Court in the case of **N. Rangachari vs. BSNL** (supra). However, in this case also the Court has observed in para 4 that the High Court had noted that an overall reading of the complaint showed that specific allegations had been leveled against the accused as being a responsible officer of the accused Company and therefore, equally liable. In fact, the Court recorded the allegations in the complaint that the Complainant knew all the accused and that accused no. 1 was the Chairman

of the accused Company and was responsible for day to day affairs of the Company. This Court though has only noted the decision in **N. Rangachari's** case (supra) and observed that an observation therein showed a slight departure vis-à-vis the other judgments (i.e. **S.M.S. Pharmaceuticals** first case and **S.M.S. Pharmaceutical's** second case), but then Court went on to record that in **N.K. Wahi's** case (supra) this Court had reiterated the view in **S.M.S. Pharmaceutical's** case (supra). The Court then concluded in para 11 that it was clear from the aforequoted judgments that the entire matter would boiled down to an examination of the nature of averments made in the complaint. On facts, the Court found necessary averments had been made in the complaint.

23) Though, the learned counsel for the appellants relying on a recent decision in **K.K. Ahuja vs. V.K. Vora & Anr.**, (2009) 10 SCC 48, it is clearly recorded that in the complaint it was alleged that the accused were in-charge

of and was responsible for the conduct of the day-to-day business of the accused Company and further all the accused were directly and actively involved in the financial dealings of the Company and the same was also reiterated in the pre-summoning evidence. Furthermore, this decision also notes that it is necessary to specifically aver in a complaint that the person accused was in-charge of and responsible for the conduct of the business of the Company. After noting **Saroj Kumar Poddar's** case (supra) and **N.K. Wahi's** case (supra), this Court further noted in para 9 that “.....the prevailing trend appear to require the Complainant to state how a Director who is sought to be made an accused, was in-charge of the business of the Company, as every Director need not be and is not in-charge of the business of the Company.....”. In Para 11, this Court has further recorded that “.....When conditions are prescribed for extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or

implied compliance. Therefore, a specific averment complying with the requirements of Section 141 is imperative...” Though the Court then said that an averment in the complaint that the accused is a Director and in-charge of and responsible for the conduct of the business may be sufficient but this would not take away from the requirement that an overall reading of the complaint has to be made to see whether the requirements of Section 141 have been made out against the accused Director or not. Furthermore, this decision cannot be said to have overruled the various decisions of this Court.

24) Section 291 of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is *prima facie* in-charge of and responsible for the

company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

- (a) the Managing Director/s;
- (b) the whole-time Director/s;
- (c) the Manager;
- (d) the Secretary;
- (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

But if the accused is not one of the persons who falls under the category of “persons who are responsible to the company for the conduct of the business of the company” then merely by stating that “he was in-charge of the business of the company” or by stating that “he was in-charge of the day-to-day management of the company” or

by stating that “he was in-charge of, and was responsible to the company for the conduct of the business of the company”, he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.

25) From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no

presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

26) Apart from the legal position with regard to compliance of Section 141 of the Act, in the appeals of National Small Industries Corporation, respondent No.1- Harmeet Singh Paintal was no more a Director of the company when the cheques alleged in the complaint were

signed and the same is evidenced from the Sixth Annual Report for the year 1996-97 of the accused company. The said report is of dated 30.08.1997 and the same was submitted with the Registrar of Companies on 05.12.1997 and assigned as document No. 42 dated 09.03.1998 by the Department. Those documents have been placed before this Court by respondent No.1 as an additional document. In view of these particulars and in addition to the interpretation relating to Section 141 which we arrived at, no liability could be fastened on respondent No.1. Further, it was pointed out that though he was an authorized signatory in the earlier transactions, after settlement and in respect of the present cause of action, admittedly fresh cheques were not signed by the first respondent. In the same way, in the appeal of the DCM Financial Services, the respondent therein, namely, Dev Sarin also filed additional documents to show that on the relevant date, namely the date of issuance of cheque he had no connection with the affairs of the company.

27) In the light of the above discussion and legal principles, we are in agreement with the conclusion arrived at by the High Court and in the absence of specific averment as to the role of the respondents and particularly in view of the acceptable materials that at the relevant time they were in no way connected with the affairs of the company, we reject all the contentions raised by learned counsel for the appellants. Consequently, all the appeals fail and are accordingly dismissed.

.....J.

(P. SATHASIVAM)

JUDGMENT.....J.

(H.L. DATTU)

NEW DELHI;
FEBRUARY 15, 2010.

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 24 OF 2007

1. Skyline Aquatech Exports Ltd.,
No.80, 111 Cross Lavelle Road,
Bangalore, Karnataka, 560 001.

2. Mr. Peter J.R. Prabhu,
Managing Director,
Skyline Aquatech Exports Ltd.,
No.80, 111 Cross Lavelle Road,
Bangalore, Karnataka, 560 001.

3. Mrs. Carmel Prabhu,
Director,
Skyline Aquatech Exports Ltd.,
No.80, 111 Cross Lavelle Road,
Bangalore, Karnataka, 560 001.

4. Mr. S.R. Singh,
Director,
Skyline Aquatech Exports Ltd.,
No.80, 111 Cross Lavelle Road,
Bangalore, Karnataka, 560 001.

.... Petitioners

V/s.

M/s. Sachima Agro Industries Pvt. Ltd.,
a Company incorporated under
the Indian Companies Act,
through its Managing Director,
Sara Fernandes,
having its registered office at 136,
Cotta, Chandor, Salcete, Goa.

.... Respondent

Mr. S.D. Lotlikar, Senior Advocate with Mr. R. Menezes, Advocate for the
Petitioners.

Mr. M.S. Joshi, Advocate for the Respondent.

Coram : N.A. BRITTO, J.

Date : 22nd OCTOBER, 2007

ORAL JUDGMENT :

Rule. By consent heard forthwith.

2. Challenge in this petition, filed under Section 482 of the Code of Criminal Procedure, 1973, is to the order dated 30/06/2007 of the learned Sessions Judge, Panaji upholding the order dated 3/11/1998 of the learned JMFC issuing process against the accused under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short).

3. The Complainant and A1 are registered companies. A2 to A7 are the directors of A1.

4. This petition has been filed by accused nos. 1,2,5 & 6 in the said complaint filed by the Complainant.

5. The subject matter of the complaint are two cheques, both dated 29/12/1997 for a sum of Rs. 12,75,000/- and Rs. 10,00,000/- issued on behalf of accused no.1/company of which accused no.2 is the Manager Director. The said two cheques were initially signed by two Directors of the said company namely A3/D'Souza and A4/Kumar as company's authorized signatories. As per the Complainant the said two cheques dated 2/05/1997 were returned to A3/D'Souza who was the company's General Manager at

Goa and who returned the said two cheques after changing the date from 2/05/1997 to 29/12/1997 and the said two cheques thereafter were presented for payment but were returned dishonoured, the cheque for Rs. 12,75,000/- having been dishonoured on the ground that the signatories were withdrawn by the company and the cheque for Rs. 10,00,000/- on the ground that the payment was stopped by the drawer and the signatories were withdrawn. The Complainant sent notices dated 5/06/1998 for dishonour of each of the cheques and called upon the accused to make the payment within a period of 15 days and thereafter on the failure on the part of the accused to make the payment, the Complainant filed the complaint.

6. The learned Sessions Judge dismissed the revision petition filed by the petitioners. However, one thing which is clear today is that A3/D'Souza was discharged in a revision petition filed by him bearing no. 42/2000 by order dated 27/06/2001 and the said order as on today has attained finality. Mr. Joshi, the learned Advocate appearing on behalf of the Complainant, upon instructions from the Complainant, has also stated that A7/Dr. K.C. Nag has expired. It is therefore obvious that no inquiry/trial can now proceed against A3/D'Souza who stands discharged and A7/Dr. K.C. Nag who has expired.

7. A4/Selva Kumar has not challenged the order issuing process against him.

8. The first question to be addressed is whether the inquiry/trial could proceed against A5/Carmel Prabhu and A6/S.R. Singh, the latter having been nominated as the Director on behalf of Karnataka State Financial Corporation. The said accused has filed a copy of the letter dated 3/03/1994 sent by the Assistant General Manager (MIS) stating that the said A6/S.R. Singh is a nominated Director in terms of Section 27(2) of the State Financial Corporations Act, 1951 which deals with power to impose conditions for accommodation. Section 27 reads as follows:

(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where any arrangement entered into by the Financial Corporation with an industrial concern provides for the appointment by the Financial Corporation of one or more directors of such industrial concern, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the industrial concern, and any provision regarding share qualification, age limit, number of directorships, removal of office of directors and such like conditions contained in any such law or instrument aforesaid shall not apply to any director appointed by the Financial Corporation in pursuance of the arrangement as aforesaid.

(3) Any director appointed in pursuance of sub-section (2) shall -

(a) hold office during the pleasure of the Financial Corporation and may be removed or substituted by any person by order in writing by the Financial Corporation;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.

9. On behalf of the petitioners/accused in addition to invoking Section 27 of the State Financial Corporations Act, 1951, in case of A6/S.R. Singh, reliance is placed on *Elizabeth Leela George V/s. Hmt International & Ors. (2007 ALL SCR 948)* wherein on concession made it was held that the nominee Directors could not be prosecuted under Section 138 of the Act. It is also submitted that no process could be issued against A5/Carmel Prabhu and A6/S.R. Singh since there was no averment in the complaint or in the statement on oath of the Complainant to the effect that either of them were in charge of and responsible for the company at the time the offence was committed.

10. On the other hand, learned Counsel on behalf of the Complainant has submitted that the complaint has got to be read as a whole and when so read, learned Counsel submits that there were sufficient averments to show that both these accused namely A5/Carmel Prabhu and A6/S.R. Singh were the Directors who were in charge of and responsible for the conduct of the business of the accused no.1/company and, as such, process issued against them could not be faulted. Learned Counsel on behalf of the Complainant

has also drawn my attention to the second proviso to Section 141 of the Negotiable Instruments Act, 1881 which reads as follows;

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

The learned Counsel on behalf of the Complainant contends that this second proviso was inserted with effect from 6/02/2003 and therefore would be inapplicable to the facts of the case, the complaint having been filed on or about 24/07/1998. Counsel on behalf of the petitioners contends that the said proviso is brought about only to explain the prohibition contained in sub-section (3) of Section 27 of the State Financial Corporations Act, 1951.

11. Section 141 of the Act deals with offences by companies and Sub-section (1) thereof provides that if the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent

the commission of such offence:

12. In *S.M.S. Pharmaceuticals Ltd. V/s Neeta Bhalla & Anr. (2005 (8) SCC 89)* the Apex Court referred to *K.P.G. Nair V/s Jindal Menthol India Ltd., (2001 (10) SCC 218)* and stated that the allegations in the complaint did not in express words or with reference to the allegations contained therein make out a case that at the the time of commission of the offence, the appellant was in charge of and was responsible to the company for the conduct of its business and it was held that the requirement of Section 141 was not met and the complaint against the accused was quashed. The Apex Court stated that similar was the position in *Katta Sujatha V/s Fertilizers & Chemicals Travancore Ltd. (2002 (7) SCC 655)* which was the case of a partnership. It was found that there were no allegations contained in the complaint regarding the fact that the accused was a partner in charge of and was responsible to the firm for the conduct of the business of the firm nor was there any allegation that the offence was committed with the consent and connivance or that it was attributable to any neglect on the part of the accused. It was held that no case was made out against the accused who was a partner and the complaint was quashed. The Apex Court noted that the latest in the line is the judgment in *Monaben Ketanbhai Shah V/s State of Gujarat (2004 (7) SCC 15)* wherein it was observed that if the substance of the allegations made in the complaint fulfill the requirement of Section 141,

the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the Court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the Complainant, the ingredients of the offence are altogether lacking. The Apex Court also noted that there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against the person sought to be made liable. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provisions. In *K. Srikanth Singh V/s. M/s. North East Securities Ltd. & Anr. (2007 ALL SCR 2010)* the Apex Court has stated that vicarious liability on the part of the person must be pleaded and proved. It cannot be inferred. Again in *Sabitha Ramamurthy & Anr. V/s. R.B.S. Channabasavaradhya (2007 ALL SCR 190)* the Apex Court stated that

vicarious liability of the Directors of the company can be inferred only if requisite statements, which are required to be averred in the complaint are made so as to make the accused vicariously liable. The Court also stated that in terms of Section 200 of the Code of Criminal Procedure, the Complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. If the Complainant fails in this respect, the accused would be entitled to file a suit for damages and the Court may also direct registration of a case against the Complainant for mala fide prosecution of the accused. In *Saroj Kumar Poddar V/s State (NCT of Delhi) & Anr. (2007 ALL SCR 526)* the Apex Court again stated that a complaint not making out as to how and in what manner the accused was responsible for the conduct of the business of the company, the complaint did not disclose any offence and the proceedings against him ought to have been quashed by High Court. In *N.K. Wahi V/s Shekhar Singh & Ors. (2007 ALL MR (Cri.) 1445 (S.C.))*, the Apex Court has stated that a Director would be liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable. There must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in charge and responsible

for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.

13. Reverting to the facts of the case, the averments as regards the directors in relation to Section 141 of the Act are confusing and so also in the statement on oath of the Complainant. Admittedly, the offence gets committed in a case under Section 138 of the Act when there is failure to comply with the statutory notice after fifteen days from the receipt thereof. The Complainant in para 6 of the complaint stated that accused nos. 2 to 7 were in charge of and responsible for the payment of the amount of Rs. 22,75,000/-. The Complainant has not alleged that the said accused were in charge of or responsible to the company for the conduct of the business. The said two allegations do not mean one and the same thing. The Complainant again in para 7 stated that though the responsibility lies from accused no. 2 onwards who are Directors of the company, accused no.2 who is the Managing Director and accused no.3 are responsible as accused no.3 was a Director as well as the Manager at the local office of the accused no.1 at Goa which otherwise has its registered office in Bangalore. Again in para 21, the Complainant reiterated that all the accused persons were in charge of and

responsible for the conduct of the business of accused no.1 and as such the accused nos. 1 to 7 were guilty of having committed offences under Section 138 r/w Section 141 of the Act. In other words the Complainant did not allege that they were in charge of at the time the offence was committed which is a sine qua non for commission of offence. On behalf of the accused it is submitted that there is no question of reiteration that the accused were in charge of and responsible for the conduct of the business of accused no 1 since what was stated by the Complainant earlier was that accused nos. 2 to 7 were in charge of and responsible for payment of the amount of Rs. 22,75,000/-. Likewise in the statement on oath what was stated by the Complainant was that accused nos. 2 to 7 were in charge of and responsible for the payment for the loan amount. What Section 141 contemplates is that there should be a clear averment to the effect that when a person committing an offence under Section 138 is a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company so as to be proceeded against and punished accordingly. There is no categorical averment either in the complaint or in that matter in the statement on oath to the effect that accused nos. 2 to 7 and particularly, accused nos. 5 & 6 were in charge of and were responsible to the company for the conduct of the business of the company at the time the offence was committed and in this view of the matter, in my view no process could have been issued against the said accused nos. 5 and 6.

It may be noted that such a categorical averment was necessary to be made in the complaint. That apart A6/S.R. Singh who was admittedly a nominee Director of Karnataka State Financial Corporation enjoyed the immunity provided by clause (b) of Sub-section 3 of Section 27 of the State Financial Corporations Act, 1951 and therefore no process could have been issued against him. The second proviso to Section 141 of the Act was only clarificatory in nature and clarified what Section 27 of the State Financial Corporations Act, 1951 provided for. The complaint therefore cannot proceed against accused nos. 5 and 6. They deserved to be discharged.

14. The next question is whether the complaint could proceed against A1 which is a company and A2/Peter Prabhu who was its Managing Director. Learned Senior Counsel on behalf of accused no.2/Peter J.R. Prabhu has fairly conceded that accused no.2 being the Managing Director of accused no.1 would be liable for prosecution under Section 138. In this context reliance could be placed on *Everest Advertising Pvt. Ltd. V/s State Govt. of NCT of Delhi & Ors. (2007 ALL MR (Cri.) 1741 (S.C.))* wherein the Apex Court has stated that the Managing Director or a Dy. Managing Director, in view of *S.M.S. Pharmaceuticals Ltd.* (supra) would be deemed to be aware thereof (aware of commission of offence). Again, in *Elizabeth L. George* (supra) it was conceded that Managing Director and the Secretary could not escape liability.

15. However, the learned Senior Counsel contends that the subject cheques were issued on 2/05/1997 and they had to be presented within 6 months. Learned Senior Counsel further contends that the cheques were signed on behalf of the company by two of its authorized signatories namely A3/D'Souza and A4/Selva Kumar and therefore the date could not have been changed unilaterally by A3/D'souza alone. In other words, learned Senior Counsel on behalf of the accused contends that the cheque which was issued by two signatories on behalf of the company after its expiry could not have been validated only by one Director of the said company and had necessarily to be signed by two signatories. Learned Counsel further contends that the signature changing the date from 2/05/1997 to 29/12/1997 did not show that it was of the authorized signatory as it did not carry any stamp below it. Learned Senior Counsel further contends that it was the duty of the Complainant to have brought on record that A3/D'Souza was alone authorized to make the said alteration and in the absence of such prima facie evidence no process could have been issued against the accused.

16. The Complainant, in para 14 of the complaint, stated that the Complainant produced the cheques to accused no.3/D'Souza who was one of the signatories and the accused no.3 on behalf of the accused no.1 changed the date from 02/05/1997 to 29/12/1997 and signed the said cheques. The Complainant had stated in para 14 of the complaint that interpolation i.e. as

regards the change of date was an afterthought so much so that the accused no.3/D'Souza in his letter dated 15/06/1998 in reply to the legal notice dated 5/06/1998 had admitted having issued and signed the said cheques.

17. The learned Sessions Judge while dealing with this controversy stated that accused no. 3/D'Souza by letter dated 29/12/1997 had requested the Complainant to return the said cheques for revalidation of dates and accordingly, the accused no.3/D'Souza changed the dates from 2/05/1997 to 29/12/1997 and signed the said changes made and hence the said change was prima facie done by accused no.3/D'Souza on behalf of accused no.1. The learned Sessions Judge also noted, and in my view rightly, that whether two signatories are required for revalidation or only one was sufficient namely of accused no.3/D'Souza was a fact within the knowledge of accused no.3/D'Souza, or, it may be added here within the knowledge of accused no.1 company. Therefore, that would be a matter which would be required to be proved at the trial. Since the subject cheques were returned on behalf of the company with changed date duly signed by one of the Directors who was also one of the authorized signatories who had earlier signed the cheques, it could not be said at this stage that the cheques were no cheques at all in the eyes of law. Revalidation of cheques by change of dates is not unknown in commercial transactions. In the above view of the matter, the complaint will now have to proceed against accused no.1/company, accused no.2/Peter

Prabhu and against A4/SelvaKumar who has not challenged the order dated 3/11/1998 of the learned JMFC.

18. Consequently, the petition is partly allowed. The orders of both the Courts below are accordingly modified. The trial shall now proceed only against A1/Company, A2/Peter Prabhu, being the Managing Director and A4/Selva Kumar against whom the order dated 3/11/1998 has become final. Rule made absolute on above terms.

N.A. BRITTO, J.

NH/-

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 34 OF 2015
(arising out of Special Leave Petition (Crl.) No. 2961 of 2013)

SUNIL BHARTI MITTALAPPELLAN

T(S)

VERSUS

CENTRAL BUREAU OF INVESTIGATIONRESPONDENT

(S)

WITH

CRIMINAL APPEAL NO. 35 OF 2015
(arising out of Special Leave Petition (Crl.) No. 3161 of 2013)

AND

CRIMINAL APPEAL NOS. 36-37 OF 2015
(arising out of Special Leave Petition (Crl.) No. 3326-3327 of 2013)

JUDGMENT

A.K. SIKRI, J.

Leave granted.

Signature Not Verified

Introduction:

Digitally signed by
Charanjeet Kaur
Date: 2015.01.09
16:59:12 IST
Reason:

2. In the year 2008, during the tenure of the then Minister of
Telecommunications, Unified Access Services Licenses ("UASL")

Criminal Appeal No. of 2015 & Ors. Page 1

of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
were granted. After sometime, an information was disclosed to

the Central Bureau of Investigation (CBI) alleging various forms of
irregularities committed in connection with the grant of the said
UASL which resulted in huge losses to the public exchequer. On
the basis of such source information, the CBI registered a case
bearing RC DAI 2009 A 0045 on 21 st October, 2009. It is now
widely known as "2G Spectrum Scam Case".

The case was

registered against unknown officers of the Department of

Telecommunications (DOT) as well as unknown private persons and companies.

3. While the investigation into the said case was still on, a writ petition was filed by an NGO known as Center for Public Interest Litigation (CPIL) before the High Court of Delhi seeking directions for a Court monitored investigation. Apprehension of the petitioner was that without such a monitoring by the Court, there may not be a fair and impartial investigation. Delhi High Court dismissed the petition.

4. Challenging the order of the Delhi High Court, CPIL filed Special Leave Petition before this Court under Article 136 of the Constitution of India. At that time, another petitioner, Dr.Subramanian Swamy, directly approached the Supreme Court

Criminal Appeal No. _____ of 2015 & Ors. Page 2 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

by way of a writ petition under Article 32 of the Constitution of India seeking almost the same reliefs on similar kinds of allegations. Leave was granted in the said SLP, converting it into a civil appeal. Said civil appeal and writ petition were taken up together for analogous hearing. On 16 th December, 2010, a detailed interim order was passed in the civil appeal inter alia giving the following directions:

"a. The CBI shall conduct thorough investigation into various issues highlighted in the report of the Central Vigilance Commission, which was forwarded to the Director, CBI vide letter dated 12.10.2009 and the report of the CAG, who have prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences and huge loss to the public exchequer running into several thousand crores. The CBI should also probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why the TRAI and the DoT did not take action against those licensees who sold their stakes/equities for many thousand crores and also against those who failed to fulfill roll out obligations and comply with other conditions of licence.

b. The CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on

the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19.10.2007."

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 3 of 58

5. Thereafter, detailed judgment was passed by the Bench of this

Court in the aforesaid proceedings on 2 nd February, 2012 which is reported as Centre for Public Interest Litigation & Ors. v.

Union of India & Ors.¹. The Court allowed the appeal as well as

the writ petition, holding that spectrum licences were illegally granted to the beneficiaries at the cost of the nation. The Court

accordingly cancelled the licences granted to the private

respondents on or after 10.01.2008 and issued certain directions

for grant of fresh licences and allocation of spectrum in 2G Band.

It was also specifically clarified that the observations in the said judgment would not, in any manner, affect the pending

investigation by the CBI, Directorate of Enforcement and other

agencies or cause prejudice to those who are facing prosecution

in the cases registered by the CBI or who may face prosecution

on the basis of charge-sheet(s) which may be filed by the CBI in

future. The Court also made it clear that the Special Judge, CBI

would decide the matter uninfluenced by the judgment dated

February 02, 2012.

Thereafter, order dated 11.04.2011 was

passed in that very appeal, making its intention manifest that this

Court would be monitoring the investigation by CBI in larger

public interest. Special Court was set up for trial of the 2G case

1

(2012) 3 SCC 1

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 4 of 58

and a Senior Advocate was nominated as the Special Public

Prosecutor by the Court itself, who also agreed with his

appointment in that capacity. The Court also made it clear that no

other Court would stay or impede trial conducted by the Special

Court and the aggrieved person could approach this Court for any

grievance. In the present proceedings, we are not concerned

with the subject matter of the said trial. However, the aforesaid

narrative became necessary to point out that present proceedings triggered as a result of order dated 16.12.2010 vide which the Court directed CBI to register a case and conduct the inquiry in connection with alleged irregularities in grant of licences from 2001 to 2006-2007 as well. Further, as would be noticed later, the investigation pertaining to this period also is being monitored by the Supreme Court and the learned counsel for all the parties were at ad idem that challenge to the impugned order is to be entertained by this Court only under Article 136 of the Constitution, though while entertaining these appeals, the Court would bear in mind the parameters of Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

The Instant Proceedings : Factual Narration

6. The CBI registered another RC being RC DAI 2011 A 0024 on

Criminal Appeal No. _____ of 2015 & Ors. Page 5 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

17th November, 2011 with regard to alleged irregularities in grant of additional spectrum in the year 2002 during the tenure of late Shri Pramod Mahajan as Minister of Communications. In this RC, apart from Shri Pramod Mahajan, others who were named were Mr. Shyamal Ghosh, the then Secretary (Telecom), Mr. J.R. Gupta, the then Deputy Director General (VAS) and three Cellular Companies viz. M/s Bharti Cellular Limited, M/s Hutchison Max Telecom (P) Limited and M/s Sterling Cellular Limited.

After registering the said RC, the CBI started investigation into the allegations contained therein. As already pointed out above, since the matter was being monitored by this Court, progress reports of investigation were filed from time to time in sealed envelopes. On 29th November, 2012, after perusing certain documents presented in a sealed cover, this Court directed the CBI to take action in accordance with the views expressed by it on the issue of prosecution of public servants and the companies in connection with the said case. The precise nature of this order can be seen from the actual language thereof which is

reproduced hereunder:

"At the commencement of hearing in connection with CBI Case No. RC DAI 2011 A 0024, Shri K.K. Venugopal, learned senior counsel appearing for the Central Bureau of Investigation placed before the Court a sealed envelope, which was opened in the Court.

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 6 of 58

We have perused the papers contained in the sealed envelope and are of the view that the CBI shall take action in accordance with the views expressed by the Director, CBI on the issue of prosecution of public servants and the companies in connection with the said case.

The report produced by Shri Venugopal shall be put in sealed cover and handed over to the counsel instructing Shri Venugopal. The needful has been done.

List the case on 05.12.2012.

To be taken up at 3.30 P.M."

7. On completion of the investigation, charge-sheet was filed by the CBI in the Court of Shri O.P. Saini, the learned Special Judge, on 21st December, 2012.

8. Before proceeding further, it would be prudent to mention in brief the case set up by the CBI in the charge-sheet to have the flavour of the prosecution case. Though we are not much concerned about the merits of the allegations in these proceedings, a brief account thereof will facilitate in understanding the background leading to the roping in of the appellants in these proceedings. During monitoring of the investigation of CBI Case No. RC-DAI-2009-A-0045 (2G Spectrum Case), this Court vide its order dated 16.12.2010 directed CBI to investigate the irregularities committed in the grant of licences from 2001 to 2007

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 7 of 58

with partial emphasis on the loss caused to the public exchequer and corresponding gain to the Licensees/Service Providers.

Accordingly, in compliance to the said order, a Preliminary

Enquiry vide No. PE-DAI-2011-A-0001 was registered on

04.01.2011 at CBI, ACB, New Delhi. During inquiry of the said

PE, it was learnt from reliable sources that vide a decision dated

31.01.2002 of the then MoC&IT, on the recommendation of

certain DoT officers, the allocation of additional spectrum beyond 6.2 MHz upto 10 MHz (paired) was approved wherein only 1% additional revenue share was charged thereby causing revenue loss to Government exchequer.

9. As pointed above, on the basis of the outcome of the aforesaid inquiry, a regular case was registered on 17.11.2011 for the offences punishable under Sections 120-B IPC r/w 13 (2) and 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short, 'PC Act'). It was against Mr. Shyamal Ghosh, Mr. J.R. Gupta and the three Cellular Companies, names whereof have already been mentioned above. The main allegation is that additional spectrum beyond 6.2 MHz upto 10 MHz (paired) was approved at an additional revenue share at the rate of 1% only, meaning thereby the said additional revenue should have been at a higher rate. As

per the investigation, Cellular Operators Association of India Criminal Appeal No. of 2015 & Ors. Page 8 of 58 (arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

(COAI) had made a request to DoT, in the year 2001, for allocating additional spectrum particularly in Delhi and Mumbai service areas. On this, Technical Committee was constituted which gave its report on 21.11.2001 recommending therein that 6.2 MHz spectrum was sufficient for a subscriber based out of about 9 lacs per operator in service areas like Delhi and Mumbai for another 24-30 months. The Committee also recommended to levy incremental charges for additional spectrum. However, on 31.01.2002, a note was put up by Mr. J.R. Gupta mentioning therein that a consensus had emerged after discussion that additional spectrum to the extent of 1.8 MHz (paired) beyond 6.2 MHz in 1800 MHz band might be released on case to case co-ordination basis to the Operators by charging additional 1% of revenue after customer base of 4-5 lacs was reached. On this note, Mr. Shyamal Ghosh agreed to the reduced subscriber base from 9 lacs to 4/5 lacs for allocation of additional spectrum and recommended to allocate additional spectrum beyond 6.2 MHz upto 10 MHz by charging only additional 1% of AGR. This note

was approved by the then Minister of Communications and Information Technology on the same day i.e. 31.01.2002 itself. It resulted in issuance and circulation of General Order on 01.02.2002 to all Cellular Mobile Telecom Service (CMTS)

Criminal Appeal No. _____ of 2015 & Ors. Page 9 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Operators. As per the allegations in the FIR, the accused public servants entered into a criminal conspiracy with the accused beneficiary companies in taking the aforesaid decision which caused undue cumulative pecuniary advantage of Rs.846.44 crores to the beneficiary companies and corresponding loss to the Government Exchequer, by charging an additional 1% AGR only for allotting additional spectrum from 6.2 MHz upto 10 MHz (paired) instead of charging 2% AGR, as per the existing norms.

10. Thus, the allegation, in nutshell, is for grant of additional spectrum by lowering the condition of 9 lacs subscribers to 4/5 lacs subscribers, by only charging additional 1% AGR instead of charging additional 2% AGR which has caused losses to the Government Revenue. It is further the case of the prosecution that this was the result of conspiracy hatched between Mr. Shyamal Ghosh and the then Minister as well as the accused Cellular Operator Companies. The decision was taken in haste on 31st January, 2002 itself inasmuch as note was prepared by Mr. J.R. Gupta on that day which was agreed to by Mr. Shyamal Ghosh and thereafter approved by the Minister on the same day. On that basis, circular was issued on the very next day i.e. on 01.02.2002. As per the charge-sheet, investigation has also

revealed that all this was done in haste to help M/s Bharti Cellular
Criminal Appeal No. _____ of 2015 & Ors. Page 10 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Limited which had come out with Initial Public Offer (IPO) that was opened and it was not getting good response from the public as it had remained under-subscribed. The moment such a decision of allocating additional spectrum was taken on 31.01.2002, on the very next day, the issue got over-subscribed.

11. It would be pertinent to mention that in the charge-sheet filed,

Mr.J.R. Gupta was not made accused as no material of any conspiracy or being a part of decision is attributed to him. In this charge-sheet, CBI named Mr. Shyamal Ghosh and the aforesaid three companies namely M/s Bharti Cellular Limited, M/s Hutchison Max Telecom (P) Limited and M/s Sterling Cellular Limited as the accused persons in respect of offences under Section 13(2) read with 13(1)(d) of the PC Act and allied offences.

The Impugned Order

12. The matter was taken up by the Special Judge on 19th March, 2013 for the purposes of issuance of summons to the accused persons in the said charge-sheet (CC No.101/12). The learned Special Judge passed orders dated 19th March, 2013 recording his satisfaction to the effect that there was enough incriminating material on record to proceed against the accused persons. At the same time, the learned Special Judge also found that Mr.Sunil

Criminal Appeal No. _____ of 2015 & Ors. Page 11 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Bharti Mittal was Chairman-cum-Managing Director of Bharti Cellular Limited, Mr. Asim Ghosh was Managing Director of Hutchison Max Telecom (P) Limited and Mr. Ravi Ruia was a Director in Sterling Cellular Limited, who used to chair the meetings of its Board. According to him, in that capacity, these persons, prima facie, could be treated as controlling the affairs of the respective companies and represent the directing mind and will of each company. They were, thus, "alter ego" of their respective companies and the acts of the companies could be attributed and imputed to them. On this premise, the Special Judge felt that there was enough material on record to proceed against these three persons as well. Thus, while taking cognizance of the case, he decided to issue summons not only to the four accused named in the charge-sheet but the aforesaid three persons as well.

13. Two of the aforesaid three persons are before us in these appeals. Feeling aggrieved, they have challenged the order insofar as it proceeds to implicate them as accused persons in

the said charge-sheet.

14. Before proceeding to record the submissions of the learned counsel for the appellants as well as the counsel opposite, it

Criminal Appeal No. _____ of 2015 & Ors. Page 12 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

becomes necessary to take note of the brief order dated 19th March, 2013, as this order was read and re-read time and again by each counsel with an attempt to give their own interpretation to the same. Therefore, we deem it apposite to reproduce the said order in its entirety as it would facilitate understanding the arguments of counsel on either side, with more clarity.

The

impugned order dated 19th March, 2003 reads as under:

"I have heard the arguments at the bar and have carefully gone through the file and relevant case law.

2. It is submitted by the learned PP that accused Shyamal Ghosh was a public servant, who has since retired. It is further submitted that remaining three accused are companies, namely M/s Bharti Cellular Limited, M/s Hutchison Max Telecom (P) Limited and M/s Sterling Cellular Limited. It is further submitted that there is enough incriminating material on record against the accused persons and, as such, they may be proceeded against, as per law.

3. I have carefully gone through the copy of FIR, chargesheet, statement of witnesses and documents on record. On the perusal of the record, I am satisfied that there is enough incriminating material on record to proceed against the accused persons.

4. I also find at the relevant time, Sh. Sunil Bharti Mittal was Chairman-cum-Managing Director of Bharti Cellular Limited, Sh. Asim Ghosh was Managing Director of Hutchison Max Telecom (P) Limited and Sh. Ravi Ruia was a Director in Sterling Cellular Limited, who used to chair the meetings of its board. In that capacity, they were/are, prima facie, in control of affairs of the respective companies. As such, they represent the directing mind and will of each company and their state of mind is the state of mind of the companies. They are/were "alter ego" of their respective companies.

In this fact situation, the acts of the companies are to

Criminal Appeal No. _____ of 2015 & Ors. Page 13 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

be attributed and imputed to them. Consequently, I find enough material on record to proceed against them also.

5. Accordingly, I take cognizance of the case.
Issue summons to all seven accused for 11.04.2013."

15. It will also be pertinent to mention that the appellants were not implicated as accused persons in the charge-sheet. As discussed

in some details at the appropriate stage, Mr. Mittal was interrogated but in the opinion of CBI, no case was made out against him. Mr. Ravi Ruia was not even summoned during investigation.

The Arguments : Appellants

16. M/s Harish Salve and Fali Nariman, learned senior counsel, argued the case on behalf of the appellant Sunil Bharti Mittal in an attempt to take him out of the clutches of the impugned order. Mr.K.V. Viswanathan, learned senior counsel, led the attack to the said order on behalf of the appellant Ravi Ruia. Their onslaught was tried to be blunted by Mr. K.K. Venugopal, learned senior counsel appearing for the CBI. Challenge of the appellants was also sought to be thwarted by Mr. Prashant Bhushan, learned counsel appearing for CPIL, and Mr. Sunil Malhotra, counsel who argued on behalf of Telecom Watchdog, which has filed the appeal arising out of SLP (Crl.) Nos.3326-3327/2013 challenging

Criminal Appeal No. _____ of 2015 & Ors. Page 14 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
another order of the even date namely 19th March, 2013 passed by the Special Judge whereby protest application filed by this appellant has been dismissed.

17. Leading the attack from the front, Mr. Harish Salve opened his submission by arguing that the impugned order was in two parts. Paras 1 to 3 pertain to the charge-sheet which was filed by the CBI naming four accused persons namely, Mr. Shyamal Ghosh and the three Cellular Companies. This fact is noted in para 2. He pointed out that in respect of these four accused persons named in the charge-sheet, after going through the copy of the FIR, charge-sheet, statement of witnesses and documents on record, the learned Judge was satisfied that there was enough incriminating material on record to proceed against them. However, in the second part of the order, which was contained in para 4, the Court also found that the three persons (including the two appellants) were, prima facie, controlling the affairs of the

said three companies and, therefore, they represented the directing mind and will of each company. On that basis, these three persons are treated as "alter ego" of their respective companies and in the opinion of the learned Special Judge, the acts of the companies are "to be attributed and imputed to them".

That was the reason given by the Special Judge finding enough material to proceed against them also which resulted in issuing of summons against these three persons including the appellant.

Criminal Appeal No. _____ of 2015 & Ors. Page 15 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

18. The neat submission of Mr. Salve was that the aforesaid reason given by the learned Special Judge was clearly erroneous in law. Expanding this argument, he submitted that principle of "alter ego" has always been applied in reverse, inasmuch as general principle is that the acts of individual, who is in control of the affairs of a company and is a directing mind, are attributed to the company, inasmuch as whenever such a person, who is controlling the affairs of the company, is made an accused, on the application of the principle of "alter ego", the company can also be implicated as accused person. It is on the well recognised principle that company does not act of its own but through its Directors/Officers and when such Directors/Officers act on behalf of the company, the company is also held liable for those acts on the application of "principal - agent" principle. He submitted that it has never been a case where for the act of the company, an individual is made accused, unless there is a categorical provision in the statute making such a person vicariously liable or there is enough material to attribute the alleged acts of criminality to the said person. For his aforesaid submissions, he placed heavy

reliance upon the decision of this Court in Iridium India Telecom Ltd. v. Motorola Inc2. He further submitted that merely on the

Criminal Appeal No. _____ of 2015 & Ors. Page 16 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy, as was held in Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.3 in the

following manner:

"27. A bare perusal of the complaint shows that the gravamen of the allegation is that a fabricated document containing the offending endorsement was tendered in evidence before the Arbitral Tribunal on behalf of MSEB by Accused 6, who was in charge of Shirpur Section. It is evident from the aforeextracted paragraphs of the complaint that other accused have been named in the complaint because, according to the complainant, MSEB, Accused 1 was acting under their control and management. It bears repetition that the only averment made against Appellant 2 is that Appellant 1 i.e. MSEB was acting under the control and management of Appellant 2 along with other three accused. There is no denying the fact that Appellant 2 happened to be the Chairman of MSEB at the relevant time but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the company. In the entire body of the complaint there is no allegation that Appellant 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance that the subject interpolation was made in Ext. C-64.

xx

xx

xx

29. In this regard, it would be useful to advert to the observations made by a three-Judge Bench of this Court in S.M.S. Pharmaceuticals (2005)8 SCC 89: (SCC p. 98, para 8)

2 (2011) 1 SCC 74
3 (2010) 10 SCC 479
Criminal Appeal No.
(arising out of SLP

of 2015 & Ors.

(Crl.) No. 2961 of 2013 & Ors.)

Page 17 of 58

"8. ... There is no universal rule that a Director of a company is in charge of its everyday affairs. We have discussed about the position of a Director in a company in order to illustrate the point that there is no magic as such in a particular word, be it Director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A company may have managers or secretaries for different departments, which means, it may have more than one manager or secretary."

Mr. Salve also referred to the following observations in S.K.

Alagh v. State of U.P.4:

12. The short question which arises for consideration is as to whether the complaint petition, even if given face value and taken to be correct in its entirety, disclosed an offence as against the appellant under Section 406 of the Penal Code.

xx

xx

xx

19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director

of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581."

Reliance was also placed on the decision in the case of Aneeta Hada v. Godfather Travels & Tours (P) Ltd. 5, with particular emphasis on the following passage:

4 (2008) 5 SCC 662

5 (2012) 5 SCC 661

Criminal Appeal No.

of 2015 & Ors.

Page 18 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

"32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification."

19. In addition to the above, another submission of Mr. Salve was that in the present case, role of the appellant was specifically looked into and investigated by the CBI and an opinion was formed that there was no material to implicate him. Since the appellant was consciously omitted from the array of the accused persons after thorough discussions and deliberations by the investigating agency at the appropriate level, and it was specifically so stated in the charge-sheet itself, in a situation like this even if the learned Judge wanted to differ from the investigating agency and decided to take cognizance against the appellant, he should have given valid reasons for proceeding against the appellant which could include his opinion that there was sufficient material against the appellant to be proceeded against. However, reasons given in the impugned order,

according to the learned senior counsel, are totally extraneous

Criminal Appeal No.

of 2015 & Ors.

Page 19 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

amounting to wrong approach in law.

20. His further submission was that even at a later stage if any evidence surfaces against the appellant, the Court is not

powerless as any person can be summoned as accused under Section 319 of the Code at any stage of the trial.

21. Mr. Viswanathan who appeared for the appellant Mr. Ravi Ruia, while adopting the aforesaid arguments and reiterating them briefly, tried to canvass another feature peculiar to in the case of his client Mr. Ravi Ruia. The learned counsel pointed out that he was not even called for interrogation by the CBI which would show that there is no material against him at all. His name is not even mentioned in the charge-sheet. He painstakingly pleaded that in the absence of any material reflected even in the charge-sheet, this appellant would be handicapped in making any submission for his discharge at the stage of framing charges. As the appellant was implicated involving the principle of vicarious liability, which is not applicable and erroneously referred to, he had no option but to file the present appeal for quashing of the notice of cognizance against him. Mr. Viswanathan in support of his submission referred certain judgments, which we shall discuss at the appropriate stage.

Criminal Appeal No. _____ of 2015 & Ors. Page 20 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
The Arguments: Respondents

22. Mr. K. K. Venugopal, learned senior counsel appearing for the CBI, refuted the aforesaid submissions in strongest possible manner. He referred to the various portions of the charge-sheet where allegations against the accused persons are stated and outcome of the investigation revealed. His endeavour was to demonstrate the manner in which the decision was taken, resulting into huge loss to the Government Exchequer and, prima facie, it was established that such a decision was taken to help the accused Telecom Companies. He argued that once the companies are charged with mens rea offences, they require guilty mind as these are not strict liability offences. However, the companies would act through their Directors/Officers only and the mens rea/guilty mind would be of those persons who are controlling the affairs of the companies. He referred to the

counter affidavit filed by the CBI which, in summary form, mentions the role of different persons including the manner in which note was put up by Mr. J.R. Gupta; the changes that were made by Mr. Shyamal Ghosh to the said note allegedly to benefit the companies; and the manner in which it was approved by the Minister. This affidavit also mentions that there is evidence on

Criminal Appeal No. of 2015 & Ors. Page 21 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Pramod Mahajan during 2001-2002 for getting allocated

additional spectrum beyond 6.2 MHz for tele-service area of his

company. There was also evidence of meetings between the

appellant and Mr. Shyamal Ghosh for the same purpose during

the same period which would constitute the circumstantial

evidence to implicate these persons.

The thrust of his

submission, thus, is that it is the "human agency" in the accused

companies who was responsible as it was a mens rea offence

and such an agency/person has to be the top person, going by

the circumstantial evidence. Therefore, even if in th

e

charge-sheet, names of these appellants were not included, the

Special Judge was within his powers to look into the matter in its

entirety as the charge-sheet along with documents spanning over

25000 pages was submitted to him.

23. Mr. Venugopal joined issue on the interpretation given by the

appellants to the impugned order. According to him, the order

could not be bifurcated into two parts.

Para 3 of the order

wherein the Special Judge has observed that he had perused the

FIR, charge-sheet, statement of witnesses and documents on

record was relatable to the three individuals, including the two

appellants as well. He even submitted that in the absence of

individual accused persons, who were in charge of the affairs of

Criminal Appeal No. of 2015 & Ors.

Page 22 of

58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

the three accused companies, it may become difficult to proceed

against the accused companies alone as it was a mens rea

offence. He also relied upon the following judgments to support

the impugned order, with the plea that the trial court was invested with requisite powers to summon the appellants:

1. M.C. Mehta (Taj Corridor scam) v. Union of India⁶

"30. At the outset, we may state that this Court has repeatedly emphasised in the above judgments that in Supreme Court monitored cases this Court is concerned with ensuring proper and honest performance of its duty by CBI and that this Court is not concerned with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. Therefore, the question which we have to decide in the present case is whether the administrative hierarchy of officers in CBI, in the present case, have performed their duties in a proper and honest manner."

2. Kishun Singh v. State of Bihar⁷

"13. The question then is whether de hors Section 319 of the Code, can similar power be traced to any other provision in the Code or can such power be implied from the scheme of the Code? We have already pointed out earlier the two alternative modes in which the Criminal Law can be set in motion; by the filing of information with the police under Section 154 of the Code or upon receipt of a complaint or information by a Magistrate. The former would lead to investigation by the police and may culminate in a police report under Section 173 of the Code on the basis whereof cognizance may be taken by the Magistrate under Section 190(1)(b) of the Code. In the latter case, the Magistrate may

6 (2007) 1 SCC 110
7 (1993) 2 SCC 16
Criminal Appeal No.
(arising out of SLP

of 2015 & Ors.
(Crl.) No. 2961 of 2013 & Ors.)
either order investigation by the police under Section 156(3) of the Code or himself hold an inquiry under Section 202 before taking cognizance of the offence under Section 190(1)(a) or (c), as the case may be, read with Section 204 of the Code. Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under Section 191) or commit him for trial under Section 209 of the Code if the offence is triable exclusively by a Court of Session. As pointed out earlier cognizance is taken of the offence and not the offender. This Court in Raghubans Dubey v. State of Bihar (1967) 2 SCR 423 stated that once cognizance of an offence is taken it becomes the Court's duty 'to find out who the offenders really are' and if the Court finds 'that apart from the persons sent up by the police some other persons are involved, it is its duty to proceed against those persons' by summoning them because 'the summoning of the additional accused is part of the proceeding initiated by its taking cognizance of an offence'. Even after the present Code came into force, the legal position has not undergone a change; on the contrary the ratio of Dubey case was affirmed in Hareram Satpathy v. Tikaram Agarwala. (1978) 4 SCC 58 Thus far there

Page 23 of 58

is no difficulty.

3. Dharam Pal v. State of Haryana⁸

"40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case (1993) 2 SCC 16 that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

41. We are also unable to accept Mr Dave's submission that the Sessions Court would have no

8 (2014) 3 SCC 306
Criminal Appeal No.
(arising out of SLP

of 2015 & Ors.
(Crl.) No. 2961 of 2013 & Ors.)

Page 24 of 58

alternative, but to wait till the stage under Section 319 CrPC was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session."

24. He also referred to the decision in the case of Lee Kun Hee, President, Samsung Corpn., South Korea v. State of Uttar Pradesh⁹ wherein this Court has set down the limits of High Court's power under Section 482 of the Code to interfere with summoning orders passed by the trial court, as follows:

"10. JCE Consultancy filed a criminal complaint (Complaint No. 30 of 2005) under Sections 403, 405, 415, 418, 420 and 423 read with Sections 120-B and 34 of the Penal Code, 1860 before the VIIth Additional Chief Judicial Magistrate, Ghaziabad. In the complaint filed by Shaikh Allauddin Pakir Maiddin, the sole proprietor of JCE Consultancy, Samsung, Dubai, was impleaded as Accused 1 (Appellant 5 herein); Byung Woo Lee, Managing Director of Samsung, Dubai, was impleaded as Accused 2 (Appellant 3 herein); Lee Kun Hee, President, Samsung Corporation, was impleaded as Accused 3 (Appellant 1 herein); Yon Jung Yung, Vice-President and Chief Executive Officer, Samsung Corporation, was impleaded as Accused 4 (Appellant 2 herein); Dong Kwon Byon, ex-Managing Director, Samsung, Dubai, was impleaded as Accused 5 (Appellant 4 herein); S.C. Baek, ex-Financial Advisor, Samsung, Dubai, was impleaded as Accused 6; Sky Impex Ltd. was impleaded as Accused 7; and the Chairman of Sky Impex Ltd. was impleaded as Accused 8.

xx xx xx

21. In order to support the aforesaid primary

9 (2012) 3 SCC 132

contention, it was also emphasised, that Appellants 1 to 4 are all foreign citizens, whereas, Appellant 5 is a foreign company incorporated in Dubai. Appellant 1, we are told, was Chairman and Director of Samsung, South Korea. It is contended that he has had nothing to do with Samsung, Dubai. We are informed that he lives in South Korea. Appellant 2, we are informed, was a former Vice-Chairman and CEO of Samsung, South Korea. He also has had nothing to do with Samsung, Dubai. He too lives in South Korea.

xx xx xx

54. The fourth contention advanced at the hands of the learned counsel for the appellants was aimed at demonstrating; firstly, that the charges, as have been depicted in the summoning order, were not made out; secondly, that the appellants herein were functionaries of a company, and therefore, per se could not be made vicariously liable for offences emerging out of actions allegedly taken in furtherance of the discharge of their responsibilities towards the company; and thirdly, that none of the appellants had any concern whatsoever (even as functionaries of the company concerned), with the allegations levelled by the complainant.

xx xx xx

57. In paras 24 to 30, this Court in Iridium India Telecom Ltd. case (2011) 1 SCC 74 noticed the facts pertaining to the controversy, and the emerging legal technicalities canvassed at the hands of the appellants. In paras 31 to 37, this Court recorded the response thereto, at the behest of the accused. Thereupon, this Court in Iridium India Telecom Ltd. case made the following observations in para 38: (SCC p. 89) "38. We have considered the submissions made by the learned Senior Counsel. A bare perusal of the submissions would be sufficient to amply demonstrate that this cannot be said to be an 'open and shut' case for either of the parties. There is much to be said on both sides. The entire scenario painted by both the sides is circumscribed by 'ifs' and 'buts'. A mere

reading of the 1992 PPM would not be sufficient to conclude that the entire information has been given to the prospective investors. Similarly, merely because there may have been some gaps in the information provided in the PPM would not be sufficient to conclude that the respondents have made deliberate misrepresentations. In such circumstances, we have to examine whether it was appropriate for the High Court to exercise its jurisdiction under Section 482 CrPC to quash the proceedings at the stage when the Magistrate had merely issued process against the respondents."

xx xx xx

59. While dealing with the various judgments rendered by this Court on the subject reference was also made to the decision in M.N. Ojha v. Alok Kumar Srivastav (2009) 9 SCC 682 . In M.N. Ojha

case similar views as in Bhajan Lal case 1992 Supp (1) SCC 335 came to be recorded in the following words: (M.N. Ojha case, SCC pp. 686-88, paras 25 & 27-30)

"25. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realised that the complaint was only a counterblast to the FIR lodged by the Bank against the complainant and others with regard to the same transaction.

xx xx xx

27. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinise even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

Criminal Appeal No. of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 27 of 58

xx xx xx

28. The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic facts which were placed before it for its consideration.

29. It is true that the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending.

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in the progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in

motion with a view to exert pressure and harass the persons arrayed as accused in the complaint."

Criminal Appeal No.
(arising out of SLP

63. As of now we are satisfied, that the factual
of 2015 & Ors.

Page 28 of 58

(Crl.) No. 2961 of 2013 & Ors.)
foundation/background of the acts of omission and commission presented by the complainant is specific and categorical. We are also satisfied that the allegations levelled by the complainant, fully incorporate all the basic facts which are necessary to make out the offences whereunder the impugned summoning order dated 12-1-2005 has been passed. The instant controversy does not suffer from any of the impairments referred in Iridium India Telecom Ltd. case. Accordingly, we leave it open to the appellants to canvass the legal issues, as were canvassed before us, before the trial court. After the rival parties have led their evidence the trial court will return its finding thereon in accordance with law without being influenced by any observations made on the merits of the controversy hereinabove, or hereafter.

xx xx xx

71. It was also the contention of the learned counsel for the respondents, that the civil liability, in the instant case, was raised as against the eventual purchaser of the goods/product (Samsung, Dubai), in lieu of the goods/product supplied by the complainant JCE Consultancy, which had passed onto the purchasers under the agreement dated 1-12-2001. Accordingly, the civil liability was only raised as against Samsung, Dubai. However, insofar as the criminal liability is concerned, Samsung, Dubai being one of the subsidiary companies of Samsung, South Korea, it was allegedly under the overall control exercised by Samsung, South Korea. Samsung, South Korea, according to the complainant, was instrumental in the eventual decision taken by Samsung, Dubai to deny the passing of the reciprocal monetary consideration for the goods supplied under the agreement dated 1-12-2001. This, according to the respondents, has been the categorical stance of JCE Consultancy in the criminal complaint, as also, in the pre-summoning evidence recorded before the VIIth Additional Chief Judicial Magistrate, Ghaziabad under Section 200 of the Code of Criminal Procedure.

Criminal Appeal No.
(arising out of SLP

of 2015 & Ors.
(Crl.) No. 2961 of 2013 & Ors.)

Page 29 of 58

72. These allegations made by JCE Consultancy, are supported by documents furnished to the summoning court. The aforesaid factual position has also been endorsed by Sky Impex Ltd. before this Court. According to the learned counsel for the respondents, the culpability of the appellants before this Court, in a series of similar actions, clearly emerges even from documents placed on record of the instant case by Sky Impex Ltd. As such, it is submitted, that the respondents have per se repudiated all the submissions advanced on behalf of the appellant, obviously subject to the evidence which rival parties will be at liberty to adduce before

the trial court.

xx

xx xx

74. It would not be appropriate for us to delve into the culpability of the appellants at the present juncture on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn at the present juncture is that even on the basis of the last submission canvassed on behalf of the appellants it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law after allowing the rival parties to lead evidence to substantiate their respective positions."

25. He concluded his submission by reiterating that when it was a case of circumstantial evidence which appeared on record in abundance, the trial court was right in summoning the appellants and in fact, judgment in *Keshav Mahindra v. State of M.P.*¹⁰ fully supported the impugned order. On the other hand, decision in *10 (1996) 6 SCC 129 Criminal Appeal No. of 2015 & Ors. (arising out of SLP (Crl.) No. 2961 of 2013 & Ors.) Iridium India Telecom Ltd. (supra)* had no application to the facts of this case.

Page 30 of 58

26. Mr. Prashant Bhushan, appearing for intervenor, highlighted the role of the appellant Mr. Sunil Bharti Mittal from the records and particularly the extract of file noting which inter alia contained the views of the Superintendent of Police. He, thus, submitted that this constituted sufficient material to proceed against him and since it was only a summoning order, the appellants were free to seek discharge before the trial court. Submissions of Mr. Sunil Malhotra, Advocate, were also on the same lines.

The Arguments: Appellants' Rejoinder

27. Mr. Fali Nariman argued in rejoinder on the lines submissions were made by Mr. Salve, and in the process lucidly expanded those submissions. Emphasising that position in law with regard to vicarious liability was that there is no such vicarious liability in criminal law unless something is imputed or there is a specific

statutory provision creating criminal vicarious liability. He pointed out that in para 4 of the impugned order, the learned Special Judge has not gone into the facts but did so taking shelter under a legal cover, but went wrong in applying an ex facie incorrect non-existing legal principle.

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
Our Analysis of the Subject Matter

Page 31 of 58

28. We have given our serious consideration to all the submissions made before us and fully conscious of the importance of the matter as well. At the outset, we would like to point out that detailed submissions were made on the nature of the charges, and in the process, learned counsel for the appellants tried to trivialize the matter by stating that what was decided was only a policy decision of the Government to allocate additional spectrum by charging 1% additional AGR i.e. from 4% to 5%; benefit thereof was extended to all Cellular Operating Companies including Public Sector Companies like MTNL and BSNL etc. and, therefore, there cannot be a criminal intent behind it. Mr. Salve as well as Mr. Nariman took pains in showing various portions of the counter affidavit filed by the CBI to show that the appellant was left out and not made accused after due deliberations and argued that it was not a case of erroneous omission by CBI. It was also argued at length that the allegations were in the domain of the policy decision taken by the Government to charge 4% of AGR whereas it was realised much later in the year 2010 when the TRAI has passed orders that it should have been 5% AGR.

According to them, it was merely a bona fide policy decision

which could not be subject matter of criminal proceedings, in the
Criminal Appeal No. _____ of 2015 & Ors. Page 32 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
absence of intent of criminality therein. More so, when benefit of

the said decision was not confined to the appellant's company, namely M/s Bharti Cellular Limited, but was extended to all others as well including public sector telecom companies like MTNL and BSNL. Therefore, there cannot be a criminal intent behind such a decision. Mr. K.K. Venugopal and others, appearing for the other

side, had tried to demonstrate that the aforesaid submission of the learned counsel for the appellant was totally erroneous and contrary to records. He tried to project that it was a conspiracy of major level with sole intention to benefit the accused companies at the cost of the public exchequer and for this purpose, criminal conspiracy was hatched up between them. However, we make it clear at this juncture itself that this part of the submission is beyond the scope of the present appeals inasmuch as even according to the learned counsel for the appellants that the aforesaid is not made the basis of the order while implicating the appellants herein. Insofar as four persons who were made accused in the charge-sheet by the CBI is concerned, they are concededly not before us as their summoning order has not been challenged. Therefore, we deem it unnecessary to go into this question, which position was even conceded by all the counsel appearing before us.

Criminal Appeal No. _____ of 2015 & Ors. Page 33 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

29. The fulcrum of the issue before us is the validity of that part of impugned order vide which the two appellants who were not named in the charge sheet, have been summoned by the Special Judge, for the reasons given therein.

(i) Dissecting the Impugned Order:

30. In the first instance, we make it clear that there is no denying the legal position that even when a person is not named in the charge sheet as an accused person, the trial court has adequate powers to summon such a non-named person as well, if the trial court finds that the charge sheet and the documents/material placed along with the charge-sheet disclose sufficient prima facie material to proceed against such a person as well. Kishun Singh (supra) and Dharam Pal (supra) are the direct decisions on this aspect. However, in the present case, the question is not as to whether there is sufficient material against the appellants filed in the trial court to proceed against them. Whether such a material is there or not is not reflected from the impugned order

as that aspect is not even gone into. The learned Special Judge has not stated in the order that after examining the relevant documents, including statement of witnesses, he is satisfied that there is sufficient incriminating material on record to proceed

Criminal Appeal No. _____ of 2015 & Ors. Page 34 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
against the appellants as well. On reading of the impugned order

which is already extracted verbatim, it is very clear that in para 2 of the order, the learned Special Judge discusses the submissions of the Public Prosecutor in respect of the persons who are made accused in the charge-sheet. Insofar as charge-sheet is concerned, it has named Mr. Shyamal Ghosh, who was the public servant and other three accused persons are the corporate entities. Submission of the learned Public Prosecutor is recorded in this para that there is enough incriminating material on record against them and they be proceeded against, as per law. Immediately thereafter in para 3, the learned Special Judge records his satisfaction on the perusal of the records namely FIR, charge-sheet, statement of witnesses and documents and states that he is satisfied that there is enough incriminating material on record to proceed against the "accused persons". Para 3 is clearly relatable to para 2. Here, the "accused persons" referred to are those four persons whose names are mentioned in para 2. Obviously, till that stage, appellants were not the accused persons as they are not named as such in the charge-sheet. After recording his satisfaction qua the four said accused persons, discussion about other three individuals (including the two appellants) starts from para 4 where

Criminal Appeal No. _____ of 2015 & Ors. Page 35 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
the Special Judge "also" finds and refers to the positions which

these three persons hold/held in the three companies respectively. In para 4, the learned Special Judge does not mention about any incriminating material against them in the statement of witnesses or documents etc. On the other hand, the reason for summoning these persons and proceeding against them are specifically ascribed in this para which, prima facie, are:

- i) These persons were/are in the control of affairs of the respective companies.
- ii) Because of their controlling position, they represent the directing mind and will of each company.
- iii) State of mind of these persons is the state of mind of the companies. Thus, they are described as "alter ego" of their respective companies.

31. It is on this basis alone that the Special Judge records that "in this fact situation, the acts of companies are to be attributed and imputed to them".

(ii) Principle of "alter ego", as applied

32. The moot question is whether the aforesaid proposition, to proceed against the appellants is backed by law? In order to find the answer, let us scan through the case law that was cited during the arguments.

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 36 of 58

33. First case which needs to be discussed is Iridium India (supra).

Before we discuss the facts of this case, it would be relevant to point out that the question as to whether a company could be prosecuted for an offence which requires mens rea had been earlier referred to in a Constitution Bench of five Judges in the case of Standard Chartered Bank v. Directorate of Enforcement¹¹. The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite mens rea to prove the guilt. Para 8 reads as under:

"8. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."

34. In Iridium India (supra), the aforesaid question fell directly for

consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and

11 (2005) 4 SCC 530

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 37 of 58

England on this issue. For our benefit, we will reproduce paras 59, 60, 61, 62, 63 and 64 herein:

"59. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.

60. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. 1972 AC 153: (AC p. 156):

"A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention -- indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

61. The principle has been reiterated by Lord Denning in Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. in the following words: (AC p. 172):

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 38 of 58

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said

to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty."

62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law: (AC p. 170 E-G)

"I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of
of 2015 & Ors.

Criminal Appeal No.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 39 of 58

the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the

company.

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530 . On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6)

"6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Page 40 of 58

that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

35. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

36. In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability

Criminal Appeal No. _____ of 2015 & Ors.
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
detailing the circumstances under which a direction of a company
can be held liable.

Page 41 of 58

(iii) Circumstances when Director/Person in charge of the affairs of the company can also be prosecuted, when the company is an accused person:

37. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.
38. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.
39. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any Criminal Appeal No. _____ of 2015 & Ors. (arising out of SLP (Crl.) No. 2961 of 2013 & Ors.) statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the

acts committed by or on behalf of the company.

This very

principle is elaborated in various other judgments.

We have

already taken note of Maharashtra State Electricity

Distribution Co. Ltd. (supra) and S.K. Alagh (supra). Few other

judgments reiterating this principle are the following:

1. Jethsur Surangbhai v. State of Gujarat¹²

"9. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the

12 (1984) Supp. SCC 207

Criminal Appeal No.

of 2015 & Ors.

Page 43 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters

Criminal Appeal No.

of 2015 & Ors.

Page 44 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

and it would not be humanly possible for him to

analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant."

2. Sham Sunder v. State of Haryana¹³

"9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

3. Hira Lal Hari Lal Bhagwati v. CBI ¹⁴

"30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been thereinunder wholly discharged and the GCS granted immunity from prosecution."

¹³ (1989) 4 SCC 630

¹⁴ (2003) 5 SCC 257

Criminal Appeal No.

of 2015 & Ors.

Page 45 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

4. Maksud Saiyed v. State of Gujarat¹⁵

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the

complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

5. R. Kalyani v. Janak C. Mehta¹⁶

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

6. Sharon Michael v. State of T.N.¹⁷

15 (2008) 5 SCC 668

16 (2009) 1 SCC 516

17 (2009) 3 SCC 375

Criminal Appeal No. of 2015 & Ors.

Page 46 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

"16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company."

7. Keki Hormusji Gharda v. Mehervan Rustom Irani¹⁸

"16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion,

was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because

18 (2009) 6 SCC 475

Criminal Appeal No.

of 2015 & Ors.

Page 47 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

some allegations were made against the Company.

18. In Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749 this Court held as under: (SCC p. 760, para 28)

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure."

40. It is stated at the cost of repetition that in the present case, while

issuing summons against the appellants, the Special Magistrate

Criminal Appeal No.

of 2015 & Ors.

Page 48 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

has taken shelter under a so-called legal principle, which has

turned out to be incorrect in law.

He has not recorded his

satisfaction by mentioning the role played by the appellants which

would bring them within criminal net. In this behalf, it would be

apt to note that the following observations of this Court in the

case of GHCL Employees Stock Option Trust v. India Infoline

Ltd.19:

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. (Thermax Ltd. v. K.M. Johny followed)

xx xx xx

21. In the instant case the High Court has correctly noted that issuance of summons against Respondents 2 to 7 is illegal and amounts to abuse of process of law. The order of the High Court, therefore, needs no interference by this Court."

41. We have already mentioned above that even if the CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of first class (and in those cases where Magistrate of the second class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts; and
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

42. This Section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd & Ors.20 in the following words:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic

significance in criminal law. It merely means "become aware of: and when used with reference to a court or a Judge, it connoted "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking Cognizance" does not involve any

20 (2008) 2 SCC 492

Criminal Appeal No.

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

of 2015 & Ors.

Page 50 of 58

formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence...."

Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

43. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

Criminal Appeal No.

of 2015 & Ors.

Page 51 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

44. Person who has not joined as accused in the charge-sheet can

be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See SWIL Ltd. v. State of Delhi²¹). It is also trite that even if a person is not named as an accused by

the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See Union of India v. Prakash P. Hinduja and another²²). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

45. On the other hand, Section 204 of the Code deals with the issue

21 (2001) 6 SCC 670

22 (2003) 6 SCC 195

Criminal Appeal No.

of 2015 & Ors.

Page 52 of 58

(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

46. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for
Criminal Appeal No. _____ of 2015 & Ors. Page 53 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

48. However, there has to be a proper satisfaction in this behalf which should be duly recorded by the Special Judge on the basis of material on record. No such exercise is done. In this scenario, having regard to the aforesaid aspects coupled with the legal position explained above, it is difficult to sustain the impugned order dated 19.03.2013 in its present form insofar as it relates to implicating the appellants and summoning them as accused persons. The appeals arising out of SLP (Crl.) No. 2961 of 2013 and SLP (Crl.) No. 3161 of 2013 filed by Mr. Sunil Bharti Mittal and Ravi Ruia respectively are, accordingly, allowed and order summoning these appellants is set aside. The appeals arising out of SLP (Crl.) Nos. 3326-3327 of 2013 filed by Telecom Watchdog are dismissed.

Epilogue
Criminal Appeal No. _____ of 2015 & Ors. Page 54 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)

49. While parting, we make it clear that since on an erroneous presumption in law, the Special Magistrate has issued the summons to the appellants, it will always be open to the Special Magistrate to undertake the exercise of going through the material on record and on that basis, if he is satisfied that there is enough

incriminating material on record to proceed against the appellants as well, he may pass appropriate orders in this behalf. We also make it clear that even if at this stage, no such prima facie material is found, but during the trial, sufficient incriminating material against these appellants surfaces in the form of evidence, the Special Judge shall be at liberty to exercise his powers under Section 319 of the Code to rope in the appellants by passing appropriate orders in accordance with law at that stage.

.CJI.
(H.L. DATTU)
.....J.
(MADAN B. LOKUR)
.....J.
(A.K. SIKRI)

NEW DELHI;
JANUARY 09, 2015.

Criminal Appeal No. of 2015 & Ors. Page 55 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
Criminal Appeal No. of 2015 & Ors. Page 56 of 58
(arising out of SLP (Crl.) No. 2961 of 2013 & Ors.)
ITEM NO. 1A COURT NO.1 SECTION II
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 34 OF 2015 @
PETITION FOR SPECIAL LEAVE TO APPEAL (Crl.) NO. 2961 OF 2013

Sunil Mittal .. Appellant(s)

vs.

Central Bureau of Investigation ..Respondent(s)

WITH

CRIMINAL APPEAL NO. 35 of 2015
(@ SLP(Crl.) No. 3161 of 2013

CRIMINAL APPEAL NOS.36-37 of 2015
(@ SLP(Crl.) Nos. 3326-3327 of 2013)

DATE : 09.01.2015 These matters were called on for
pronouncement of judgment today.

For Appellant(s) Mr. Harish Salve, Sr. Adv.
Mr. Fali S. Nariman, Sr. Adv.

Mr. Amit Desai, Sr. Adv.
Mr. Percival Billimonia, Adv.
Mr. Sidharth Agarwal, Adv.
Mr. Kamal Shankar, Adv.
Mr. Atul N, Adv.
Mr. Manpreet Lamba, Adv.
Mr. Gautam , Adv.
Mr. Utkarsh Saxena, Adv.
Mr. Utkarsh Saxena, Adv.

For Respondent (s) Ms. Pinky anand, ASG
Mr. Gopal Sankaranarayanan, Adv.
Mr. Rajesh Ranjan, Adv.
Mr. Balendu Shekhar, Adv.
Mr. B.V. Balram Das, Adv.
Ms. Meenakshi Grover, Adv.
Mr. Rohit Bhat, Adv.
Mr.D.S. Mehara, Adv.

2

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising Hon'ble the Chief Justice, Hon'ble Mr. Justice Madan B. Lokur and His Lordship.

Leave granted.

The appeals arising out of SLP(Crl.) No. 2961 of 2013 and 3161 of 2013 are allowed. The appeals arising out of SLP(Crl.) Nos. 3326-3327 of 2013 are dismissed.

[Charanjeet Kaur]
Court Master

[Vinod Kulvi]
Asstt. Registrar

[Signed reportable judgment is placed on the file]