NEWSLETTER

ANA/NL/January 2016

Departmental Inquiries (State or Private) should be concluded within six months

Petitioner: Prem Nath Bali **Respondent:** Registrar, High Court of Delhi & Anr.	**Court**: Supreme Court of India **Date of Judgment:** December 16, 2015. **Case No:** CIVIL APPEAL No.958 OF 2010

In this case, the Hon'ble Supreme Court held that Every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

Additional evidence can be produced in an appellate court in only three situations

Appellant: A. Andisamy Chettiar **Respondents:** A. Subburaj Chettiar	**Court**: Supreme Court of India **Date of Judgment:** December 08, 2015 **Case No:** CIVIL APPEAL NO. 14055 OF 2015 (Arising out of S.L.P. (C) No. 7798 of 2015)

In this case, the Supreme Court ruled that parties to a civil litigation are entitled to produce additional evidence, oral or documentary, in the appellate court, in only three situations contemplated in Order 41 Rule 27 of the Civil Procedure Code which reads as follows:

- The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

Analysing the aforesaid provisions, the Apex Court held that the parties cannot be allowed to fill the lacunae in their evidence at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of any of the three conditions mentioned in Rule 27.

Company Judge cannot interfere in proceedings by a secured creditor to realize its secured interests as per provisions of the SARFAESI Act

Appellant: Pegasus Assets Reconstruction P. Ltd. **Respondent:** M/s. Haryana Concast Limited	**Court**: Supreme Court Of India **Date of Judgment:** December 29, 2015 **Case No:** CIVIL APPEAL NO. 3646 OF 2011

The Appeals in this case arise from the conflicting decisions of two High Courts whereby the Punjab and Haryana High Court upheld the view of Company Court and approved of certain fetters placed upon the secured creditor, namely Appellant herein and proceed with the sale of the secured assets whereas the Delhi High Court held that the company judge or the official liquidator cannot have any say in the sale of secured assets by the secured creditors under the SARFAESI Act. The issue before the Apex Court in this case was, whether a Company Court, directly or through an Official Liquidator, can wield any control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under the SARFAESI Act. The Apex Court observed that SARFAESI is a complete code. There is nothing lacking in the Act so as to borrow anything from the Companies Act till the stage the secured assets are sold by the secured creditors in accordance with the provisions in the SARFAESI Act and the Rules. Required provisions of the Companies Act have been incorporated in the SARFAESI Act for harmonizing this Act with the Companies Act in respect of dues of workmen and their protection under Section 529A of the Companies Act. Section 13 of the SARFAESI Act that a secured creditor has the right to enforce its security interest without the intervention of the court or tribunal. The Apex court upheld the views taken by the Delhi Court.

RBI cannot deny information sought under RTI

Petitioner: Reserve Bank of India and Ors. **Respondents:** Jayantilal N. Mistry and Ors.	**Court**: Supreme Court of India **Date of Judgment:** December 16, 2015 **Case No:** TRANSFERRED CASE (CIVIL) NO. 91 OF 2015 (Arising out of Transfer Petition (Civil) No. 707 of 2012) along with 10 other Transfer Petitions

The issue before the Supreme Court in this case was whether information sought under the Right to Information Act, 2005 ("RTI Act") can be denied by the Reserve Bank of India (RBI) and other Banks to the public at large on the ground of economic interest,

commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other.

Rejecting RBI's contention that inspection reports of banks prepared by it contain a wide range of information that is collected in a fiduciary capacity, if people are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, the Court opined that the RBI does not place itself in a fiduciary relationship with the Financial institutions because, reports of inspections, bank statements, information related to the business obtained by the RBI are not under the pretext of confidence or trust. The Court further opined that RBI is a statutory regulatory authority to oversee the functioning of banks. RBI is supposed to uphold public interest and not the interest of individual banks and is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. The Court added that the attitude of the RBI and the Banks of sidestepping the general public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest" will attract more suspicion and disbelief in them

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Note appended to proposal form of Insurance Policy binds the insured

Appellant: United India Insurance Co. Ltd **Respondent:** M/s Orient Treasures Pvt. Ltd.	**Court:** Supreme Court of India **Date of Judgment:** January 13, 2016 **Case No:** CIVIL APPEAL No.2140 OF 2007

In an appeal against an Order of the National Consumer Disputes Redressal Forum (NCDRF), the Supreme Court has held that notes appended to proposal forms of Insurance Policies limiting insurance coverage to the goods insured, shall bind the

insured. The Appellant Insurance Company repudiated the claim for burglary contending that the stolen articles were kept outside the safe during night time, contrary to conditions stipulated in note appended to clause 4 and 5 of the proposal form. The NCDRF in its Order observed that regardless of the Note in the proposal form, *the Complainant (Insured) made it clear that certain precious stones, would be kept out of the safe at night at all times. If this condition in the proposal form is accepted by the Insurance Company by taking premium, the contract is binding on the Insurance Company and subsequently, it cannot take a summersault and contend that it is not binding on it.*"

Rejecting the contentions of the Appellant, the Supreme Court said that there is neither any ambiguity nor absurdity in the language/wording of Note appended to clauses 4 or/and 5. The language/wording of the note in both the clauses is plain, unambiguous and creates no confusion about its meaning. The Court opined that a well-settled rule of interpretation, which applies to every contract, is that whenever the NOTE is appended to the main Section, it explains the true meaning of the main Section and has to be read in the context of main Section. Setting aside the Order of the NCDRF, the Apex Court ruled that the Insurer is justified in contending that the stolen articles were not covered under the policy by virtue of clauses 4, 5 of Proposal Form and Clause 12 of the policy and no liability could be fastened on them to indemnify the loss of such articles for awarding any compensation to the insured.

Legal Update:

- Employers are required to pay the contributions and administrative charges within fifteen days of close of every month as per the provisions of EPF & MP Act 1952 under three Schemes namely Employees' Provident Funds Scheme (EPFS), 1952, Employees' Pension Scheme (EPS), 1995 and Employees' Deposit Linked Insurance Scheme (EDLIS), 1976. Previously, a grace period of 5 days was also allowed to employers to remit the contributions in addition to the statutory provisions. This grace period of 5 days was

allowed in view of the practice of manual processing of calculation of wages and dues of the employees at the end of Employers. The remittances of the dues in the bank also required additional time in the manual setup. In view of the availability of technological tools to the employers, the concession of 5 days has outlived its basic purpose and utility. Accordingly, the concession of grace period of 5 days available to the employers for depositing the contribution and other dues has been withdrawn. Now, the Employees Provident Fund Organisation (EPFO) has withdrawn grace period of 5 days for depositing the dues with effect from February, 2016 [EPFO Circular dated 8th January 2016].

Readers may view the said Circular at the link provided herein below:
http://www.epfindia.com/site_docs/PDFs/Circulars/Y2015-2016/WSU_Removal_GracePeriod_35031.pdf

- The Ministry of Corporate Affairs has issued fresh frequently asked questions clarifying provisions of Corporate Social Responsibility under Section 135 of Companies Act, 2013 [General Circular No. 1/2016 dated 12th January 2016].
  Readers may view the said FAQs at the link provided herein below:
  http://www.mca.gov.in/Ministry/pdf/FAQ_CSR.pdf

- The Central Government delegated Regional Directors at Mumbai, Kolkata, Chennai, Delhi, Ahmedabad, Hyderabad and Shillong, the power vested in it under section 208 of the said Act for receiving the report from the Registrar (having jurisdiction over the place of registered office of the company concerned) or from the Inspector where such report recommends action for violation of offences under the said Act for which imprisonment of less than two years is provided, (except for violation of offences under Chapter III, IV, section 127, 177 and 178 for which the report shall be received by the Central Government) subject certain conditions as mentioned in Notification F. No. 3/76/2015-CL.-II dated 31st December 2015.
  Readers may view the said Notification at the link provided herein below:
  http://www.mca.gov.in/Ministry/pdf/Notification_31122015.pdf

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