



NEWSLETTER

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SPECIFIC PERFORMANCE AND INJUNCTION CANNOT BE SOUGHT IN ONE SUIT

Appellant: SUCHA SINGH SODHI	Court: THE SUPREME COURT OF INDIA
Respondent: BALDEV RAJ WALIA AND ANR.	Date of Judgement: 13.04.2018
	Citation: CIVIL APPEAL NO. 3777 OF 2018

In the said matter, the Supreme Court has held that the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief for specific performance are independent. Hence the Plaintiff in this matter was disallowed to claim specific performance of an agreement along with permanent injunction in the same suit.

The few points of differences in both the relief's claimed, as pointed out by the Apex Court, were the cause of action for both, factual ingredients and both reliefs being classified under different articles of the Limitation Act, 1963 respectively.

FACEBOOK FRIENDS CAN BE CONNECTED PERSONS FOR INSIDER TRADING

IN THE MATTER OF INSIDER TRADING OF DEEP INDUSTRIES LIMITED	Authority: THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI Date of Order: 16.04.2018 Provision of Law: Under Sections 11 (1), 11 (4) and 11 (B) of the Securities and Exchange Board of India Act, 1992
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In a recent Order by the Securities and Exchange Board of India dated 16.04.2018, 'friendship' on social networking site, 'Facebook' was used as a

parameter to determine whether two individuals were connected to each other. It was held by the forum that the two could be classified as 'connected person' under the SEBI (Prohibition of Insider Trading) Regulations based on their 'likes history' and 'friendship' on 'Facebook'.

INSOLVENCY FOR 'DEFAULTERS'

Appellant: ICICI BANK Respondent: ESSAR POWER JHARKHAND LTD.	Forum: THE NATIONAL COMPANY LAW TRIBUNAL Date of Judgement: 05.04.2018 Relevant Act: INSOLVENCY AND BANKRUPTCY CODE, 2016
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The Principal Bench of the National Company Law Tribunal on 05.04.2018 admitted an Insolvency Petition against Essar Power Jharkhand Ltd. The petition had been filed by ICICI Bank against debts amounting to Rs. 3,033 crores. The NCLT also imposed a moratorium as provided for u/s 14 of the I & B Code. In this regard, it is for Essar Power Jharkhand Ltd. to now initiate the Insolvency Resolution Process by submitting a debt resolution plan to the Tribunal for their approval within 180 days.

STORAGE OF ADULTERATED FOOD FOR PREPARING OTHER FOOD SUBSTANCE FOR SALE IS AN OFFENCE

Appellant: Delhi Administration Respondent: Vidya Gupta	Forum: The Supreme Court of India Date of Judgement: 26.04.2018 Relevant Act: Criminal Appeal No 625 of 2018
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Storage of adulterated for making of another food which is for sale, is prohibited with regard to first reason, the bench of Justice observed that the explanation to the section 7 of the Food Adulteration Act clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be deemed to store adulterated food.

The bench of Justice SA Bobde and Justice L Nageswara Rao held that the court, while trying an offence under the Food Adulteration Act, needs to

consider the contents of the certificate of the director only and it need not refer to the variation between the report of the public analyst and the director.

The bench said: "The purpose of this provision is clear, it prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale but is used in making some food which is offered for sale. It is clearly to prevent the adulteration of food and its sale to the public even when it is meant to be used for preparing some other food which is offered for sale. Thus, either way, whether the adulterated food is stored for sale, or if such food is stored for making some other food which is sold, such storing is an offence. Parliament has rightly assumed that no one, who offers food for sale, would store food which is not meant to be used in some food meant for sale"

The court also dismissed the accused's contention relying on apex court order in Municipal Corporation of Delhi v. Laxmi Narain Tandon, wherein it was observed that the storing of an adulterated article of food not meant for sale would not constitute an offence. The court said the judgment was delivered before the Act was amended to introduce the deeming fiction that a person shall be deemed to store any adulterated food, even if he stores such food for manufacturing from it any article for sale

REQUIREMENT OF MENS REA NOT AN ESSENTIAL ELEMENT FOR PENALTY U/S. 43A COMPETITION ACT

Appellant: Competition Commission of India Respondent: Thomas Cook India Ltd. and Anr.	Forum: The Supreme Court of India Date of Judgement: 18.04.2018 Relevant Act: Civil Appeal No 13578 of 2015
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The Supreme Court has observed that the imposition of penalty under section 43A of the Competition Act is on account of breach of a civil obligation and the proceedings being neither criminal nor quasi-criminal, there is no requirement of mens rea or intentional breach as an essential element for levy of penalty.

A bench of Justice Arun Mishra and Justice Navin Sinha upheld the order of Competition Commission of India whereby penalty of Rs 1 crore was imposed

on the Thomas Cook (India) Ltd on the ground of noncompliance of provisions contained in section 6(2) of the Act.

Section 6(2) of the Act requires that an advance notice has to be given of the proposal to enter into a combination within 30 days of approval of the proposal relating to merger or amalgamation, execution of any agreement or other document or acquisition referred to in section 5(a). Section 6(2) makes it clear that no combination shall come into effect until 210 days have elapsed from the date on which notice has been given to the Commission under section 6(2) and the Commission has passed orders under section 30(1), whichever is earlier.

The company in this case, had failed in notifying the 'market purchase' under section 6(2) of the Act. The order of CCI, imposing penalty was set aside by the Competition Appellate Tribunal. The CCI then approached the apex court in appeal.

Apart from factual contentions, one contention of the company was that there were no mala fide intentions on the part of the company as such penalty could not have been imposed.

For the imposition of penalty under section 43A, the action may not be mala fide in case there is a breach of the statutory provisions of the civil law, penalty is attracted on its violation.

There was no requirement of mens rea under section 43A or intentional breach as an essential element to levy penalty. Section 43A of the Act does not use the expression "the failure has to be willful or mala fide" for the purpose of imposition of penalty. The breach of the provision is punishable and considering the nature of the breach, it is open to impose the penalty."

UNILATERAL WITHDRAWAL OF TEMPORARY ENHANCEMENT OF AGE OF SUPERANNUATION ILLEGAL

Appellant: Pradeep Phosphate Limited	Court: The Supreme Court of India
Respondent: State of Orissa	Date of Judgement: 19th April 2018
	Case No.: CIVIL APPEAL No.3997-3998 of 2018

The Supreme Court has held that unilateral withdrawal of the order of enhancement of age of superannuation of the employees which was temporary in nature, amounts to the contravention of Section 9A of the Industrial Disputes Act, 1947 and such act of the employer is bad in the eyes of law.

The Court further held that Age of superannuation is an integral part of the service condition of the employee. Also, enhancement of superannuation age would impliedly amount to a privilege since it was provided particularly for the central public-sector employees.” “Naturally, every employee is under the expectation that before reducing his superannuation age, he would be given a proper chance to be heard. Right to work is a vital right of every employee and in our view, it shall not be taken away without giving reasonable opportunity of being heard otherwise it would be an act of violation of the Constitutional mandate.”

PLASTIC WASTE MANAGEMENT (AMENDMENT) RULES, 2018

On 27th March 2018, the Ministry for Forest and Environment notified the Plastic Waste Management (Amendment) Rules, 2018.

The amended Rules prescribes for a centralized registration system for the registration of producers / importers / brand owners and specifies the entire procedural mechanism for such registration. One crucial change in the new rules is the phasing out of Multilayered Plastic which is “non-recyclable, or non-energy recoverable, or with no alternate use.”

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