

Highlights:**Corporate Brief**

- *Clarification of Spending of Corporate Social Responsibility Funds;*
- *Companies Fresh Start Scheme, 2020;*
- *LLP Settlement Scheme, 2020;*
- *Relaxations made by Securities and Exchange Board of India; and*
- *Key Highlights of Companies (Amendment) Bill, 2020.*

RERA Brief

- *Maharashtra RERA's Final order for Revision of Project Registration Validity and Extended Timeline for Statutory Compliances, in view of COVID 19 Pandemic;*
- *Karnataka RERA's Circular for Revision of Project Registration Validity and Extended Timeline for Statutory Compliances, in view of COVID 19 Pandemic;*
- *Punjab RERA's order for Composite Web Maintenance fee, vested under Punjab RERA (General) regulations, 2017.*

Litigation Brief

- *Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic*
- *Appellate Tribunal Directs Exclusion of time elapsed on account of lockdown from the CIRP period.*
- *Consumer Protection Act: Whether a construction worker, who is beneficiary of a Scheme, is a 'consumer' under Section 2(d)?*
- *Dhanpat Vs. Sheo Ram (Deceased) Through Lrs. & Ors.*

Corporate Brief**⇒ Clarification on Spending of Corporate Social Responsibility Funds after the Outbreak of COVID- 19:**

- Considering outbreak of COVID- 19, the Ministry of Corporate Affairs vide its General Circular No. 10/2020 dated 23.03.2020, clarified that the spending of the Corporate Social Responsibility Funds for COVID- 19 are eligible for Corporate Social Responsibility Activity. Therefore, the Corporate Social Responsibility funds may be spent for numerous activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 that are including but not limited to the promotion of health care (preventive health care, sanitation and disaster management).
- Further, the Ministry of Corporate Affairs vide its Office Memorandum dated 28.03.2020 clarified that any contribution made by the Companies to the Prime Minister's Citizen Assistance and Relief in Emergency Situation Fund' (PM CARES Fund) would be eligible and qualify as a Corporate Social Responsibility Expenditure and activity by the respective companies under the Companies Act, 2013.

⇒ Companies Fresh Start Scheme, 2020:

- The Ministry of Corporate Affairs vide its General Circular No. 12/ 2020 dated 30.03.2020 issued "Companies Fresh Start

Scheme, 2020" to promote the defaulting companies to make a fresh start on a clean state for the benefit of all companies. Key provisions of the Companies Fresh Start Scheme, 2020 are enumerated hereinbelow:

- The said Companies Fresh Start Scheme, 2020 shall come in force on 01.04.2020 and shall remain effective until 30.09.2020.
- The Companies that have defaulted in compliances for filing the annual returns and financial statements under Section 403 of the Companies Act, 2013, are given a leeway to file such belated documents in the MCA- 21 registry along with normal fee for filing such documents as prescribed under the Companies (Registration and Office) Rules, 2014.
- The abovementioned fee shall be payable during the currency of Companies Fresh Start Scheme, 2020 as per the provisions of Section 403 read with Companies (Registration Offices and Fee) Rules, 2014 and Section 460 of the Companies Act, 2013.
- The Companies Fresh Start Scheme, 2020 also gives an opportunity to the inactive companies to get their companies declared as a "dormant" company under Section 455 of the Companies Act, 2013 by filing e-form MSC- 1 at a normal fee; OR apply for striking off the name of the company by filing e-form STK- 2 by paying the fee applicable on form STK- 2.
- Upon payment of the normal fees on the date of filing of each belated document, the immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent of such prosecution or the proceedings for imposing penalty under the Companies Act, 2013 pertaining to the delay associated with the filings of the belated documents.
- In an event the defaulting company has filed an appeal against any notice issued or complaint or order passed by the court and/ or by the adjudicating authority for the violation of provisions under the Companies Act, 1956 and/ or Companies Act, 2013, then, the defaulting company applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.
- Post the grant of immunity, the designated/ competent authority shall withdraw the prosecutions pending, if any, before the concerned court and the proceedings for adjudication of penalties under Section 455 of the Companies Act, 2013, against which the immunity has been granted shall be deemed to have been completed without any further action of the designated/ competent authority.

- The said Companies Fresh Start Scheme, 2020 shall *not* be applicable in the following cases:
 - i. To the companies against which the final notice for striking off the name under Section 258 of the Companies Act, 2013 or Section 560 of the Companies Act, 1956 has already been initiated;
 - ii. Where the application for striking off the name of the company from the register of the companies has already been filed;
 - iii. To companies which have been amalgamated under the scheme of arrangement or compromise under the Companies Act, 2013;
 - iv. Where the application has been filed for obtaining the Dormant Status of the company under Section 455 of the Companies Act, 2013;
 - v. To vanishing companies;
 - vi. Where any increase in the authorized capital is involved (Form SH- 7) and also charge related documents (CHG- 1, CHG- 4, CHG- 8 and CHG- 9).

➤ **Limited Liability Partnership Settlement Scheme, 2020:**

The Ministry of Corporate Affairs vide its General Circular No. 6/ 2020 dated 04.03.2020 and its General Circular No. 13/ 2020 dated 30.03.2020 provided certain reliefs and relaxations to the limited liability partnership firms registered in India in order to deal with the threat of COVID- 19. Brief of such reliefs/ relaxations provided to the same are briefly mentioned hereinbelow:

- The said LLP Settlement Scheme shall come into force from 01.04.2020 and shall remain effective until 30.09.2020.
- The said LLP Settlement Scheme allows the registered limited liability partnership firms to file belated documents which were due for filing till 30.09.2020 on no additional charges for filing such forms.
- This Scheme shall not apply to LLPs which have made an application in Form 24 to the Registrar, for striking off their name from the Register of LLP as per provisions of Rule 37(1) of the LLP Rules, 2009.

➤ **Relaxations made by the Securities and Exchange Board of India (SEBI):**

i. Compliances Regarding AIFs and VCFs:

- SEBI vide its Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/58 dated 30.03.2020 provided relaxation in compliance with requirements pertaining to the timelines prescribed under the SEBI (Alternative Investment Funds) Regulations, 2020 and circulars issued thereunder.
- The due date for filings of the Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) for the periods ending 31.03.2020 and 30.04.2020 respectively,

has been extended by a period of 2 (two) months over and above the timelines prescribed under the SEBI (Alternative Investment Funds) Regulations, 2020 and circulars thereto.

ii. Compliances Regarding Portfolio Managers:

SEBI vide its Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/57 dated 30.03.2020 provided relaxation in compliance with requirements pertaining to portfolio managers by extending the timeline for the following by 2 (two) months:

- a Monthly reporting to SEBI by portfolio managers for the period of 30.03.2020 and 30.04.2020; and
- b Applicability of SEBI Circular dated 13.02.2020 on guidelines for portfolio managers.

iii. Processing of Documents Regarding Foreign Portfolio Investors (FPIs)

- SEBI vide its Circular No. SEBI/HO/FPI&C/CIR/P/2020/056 dated 30.03.2020 provided temporary relaxation in processing of documents compliance with requirements pertaining to FPI due to COVID- 19, which are applicable until 30.06.2020.
- In an event where the FPIs are not in a position to send original and/ or certified documents as specified in the operational guidelines for Foreign Portfolio Investors and Designated Depository Participants (DDPs) issued under the Securities and Exchange Board of India (FPI) Regulations, 2019, SEBI shall grant the following relaxations:
 - a DDPs and Custodians may consider and process the request(s) for registration, continuance and KYC review and any other material change basis the scanned copies of the original documents received by (i) email address of global custodians when details already captured or (ii) email address of new clients received from domains that are duly encrypted.
 - b These documents may be uploaded on the KYC Registration Agency(s).
- However, while complying with the abovementioned procedure, the intermediaries should undertake necessary due diligence including that which are required for the regulatory and risk based approach towards compliances with anti-money laundering requirements while processing the said documents.

iv. Relaxation from Compliance to the Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs):

- Due to the outbreak of COVID- 19, SEBI vide its Circular dated SEBI/HO/DDHS/CIR/P/2020/42 dated

23.03.2020, by virtue of which SEBI has extended the due date for regulatory filings and compliances for REITs and InvITs for the period ending 31.03.2020 by one month over and above the timelines prescribed under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) and circulars listed thereunder.

➤ **Key Highlights of Companies (Amendment) Bill, 2020:**
The major amendments proposed to be brought in by virtue of the Companies (Amendment) Bill, 2020 is enumerated hereunder:

i. Issue of Shares under Section 62 of the Companies Act, 2013:

The time period for providing the offer letter to all the existing shareholders under the rights issue process which is made between 15 (fifteen) days to 30 (thirty) days. However, the Companies (Amendment) Bill, 2020 proposes to add the term "or such lesser number of days as may be prescribed" which suggests that beyond this time period, any offer that is made is deemed to be declined.

ii. Resolutions and Agreements to be filed under section 117 of the Companies Act, 2013: Dealing with the filing of resolutions with the Registrar of Companies, in which the exemption has been granted to the banking companies. The Companies (Amendment) Bill, 2020 proposes to extend such exemption to the Non-Banking Financial Companies registered under Chapter IIIB of the Reserve Bank of India Act, 1934; and also any class of housing finance company registered under the National Housing Bank Act, 1987.

iii. Corporate Social responsibility under Section 135 of the Companies Act, 2013: The Companies (Amendment) Bill, 2020 proposes to bring in the following changes with respect to the Corporate Social Responsibility Obligations:

- The requirement to set up a Committee for Corporate Social Responsibility has been waived in an event the amount required to be spent is less than Rs. 50 Lakhs and in such a case the Board of Directors shall be entitled to discharge the obligations of the Committee of Corporate Social Responsibility.
- The amounts that are spent in excess of the requirements are allowed to be set-off for such number of subsequent financial years.
- The penalty for default in transfer of the unspent amounts shall be as follows:
 - a For Companies: the penalty shall be twice the amount that is required to be transferred or Rs. 1 Crore, whichever is lower; and
 - b For Officer in Default: the penalty shall be 1/10th of the amount that is required to be transferred or Rs. 2 Lakhs, whichever is lower.

iv. Apart from the abovementioned proposed changes, the Companies (Amendment) Bill, 2020, also proposes to reduce terms and penalties in breach of various offences under the Companies Act, 2013 in an event those defaults may be determined objectively without an element of fraud.

Real Estate Brief

➤ **Vide Order No.:- 13/ 2020, No. MahaRERA/Secy/25/2020, dated 02.04.2020, Maharashtra Real Estate Regulatory Authority ("Authority"):**

The following order was passed:

- **Precautionary lockdown and complete lockdown due to declaration of Novel coronavirus (COVID-19) as a pandemic by WHO (World Health Organisation):**
Whereas, Globally, countries and governments are struggling to cope with health and economic crisis caused by sudden outbreak and rapid spread of Novel Coronavirus (COVID-19). Whereas, World Health Organization (WHO), On 11th March 2020, declared Novel Coronavirus (COVID-19) as a pandemic and called for the countries to take immediate actions to save human lives. Whereas, Since Mid-March 2020, Maharashtra Government by way of precaution and to stop this contagious virus from further spreading has been declaring controlled lockdowns, in the manner that partial workforce has been able to attend work/ construction sites. Further, from 24th March 2020, a complete lockdown of the entire country for Twenty-One days (i.e. until 14.04.2020) has been declared, allowing only operation of select essential services. In view of these partial lockdowns / recent complete lockdown, the Construction work in MahaRERA Registered projects has been severely affected.
- **Allowance of a 3 (three) month moratorium by RBI on fixed term loans and EMI due to the set back of Real estate projects across Maharashtra:**
Due to the aforesaid lockdowns, the supply chains for obtaining construction material have been disrupted and Labour work force may have migrated back to their home states. Due to these circumstances, Real estate projects across Maharashtra will take some time to restart work. Recognizing this, RBI has also allowed banks to provide a three month moratorium on fixed term loans and EMI payments. Therefore, in order to aid government efforts in controlling the damage of COVID-19 and ensure that completion of MahaRERA registered projects does not get adversely affected, it has been decided to issue this order.

- **Extension of period for validity of registration for projects whose completion date expires on 15th March, 2020:**

Whereas while granting registration/extension under Section 5, 6, 7(3) of the Act or Rule 4(2) of Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017, Authority has to take into consideration reasons and circumstances that influence the duration for completion of projects. And these sections are to be read with Section 34(f) of the Act, wherein Authority is required to ensure compliance of the obligations cast upon the promoters, the allottees and real estate agents.

Therefore, it has been decided that:

- For all MahaRERA Registered projects where completion date, revised completion date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months. MahaRERA shall accordingly issue project registration certificates, with revised timelines for such projects, at the earliest.
- Further, the time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which were due in March / April / May are extended to 30th June 2020.

⇒ **Vide Circular of KRera No.Sec.CR.04/2019-20, dated 04.04.2020, Karnataka Real Estate Regulatory Authority (“Authority”):**

It was decided that:

- **Precautionary lockdown and complete lockdown due to declaration of Novel coronavirus (COVID-19) as a pandemic by WHO (World Health Organisation):** World Health Organization (WHO), On 11th March 2020, declared Novel Coronavirus (COVID-19) as a pandemic and called for the countries to take immediate actions to save human lives. On 23.03.2020, Government of Karnataka by way of precaution and to stop this contagious virus from further spreading has been declared controlled lockdowns up to April 1st 2020. Subsequently, on 24.03.2020 the Government of India has been declared for complete lockdown for the entire country for twenty one days (i.e., until 14.04.2020) allowing only operation of select essential services. In view of these partial lockdowns / recent complete lockdown, the progress of the real estate projects registered with Karnataka

Real Estate Regulatory Authority (KREERA) has been severely affected.

- **Adjournment of complaints due to setback of Real Estate projects in Karnataka:**

On account of imposition of lockdown in India for 21 days i.e. up to 14.04.2020 all complaint cases listed for hearing up to 14.04.2020 before the Karnataka Real Estate Regulatory Authority and Adjudicating Officer, KREERA, need to be adjourned. Due to the aforesaid lockdowns, the supply chains for obtaining construction material have been disrupted and Labor work force may have migrated back to their home states. Under these circumstances, Real estate projects across Maharashtra will take some time to restart work.

- **Extension of period for validity of registration for projects whose completion date expires on 15th March, 2020:**

Further, while granting registration/extension under Section 5, 6, 7(3) of the Real Estate (Regulation and Development) Act or Rule 7 of Karnataka Real Estate (Regulation and Development) Rules framed thereunder, the Authority has to take into consideration reasons and circumstances that influence the duration for completion of projects. And these sections are to be read with Section 34(f) of the Act, wherein Authority is required to ensure compliance of the obligations cast upon the promoters, the allottees and real estate agents.

Therefore, it has been decided that:

- a) For all KREERA Registered projects where completion date, revised completion date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months. KREERA shall accordingly issue project registration certificates, with revised timelines for such projects, at the earliest.
- b) Further, the time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which were due in March / April / May are extended to 30th June 2020.
- c) All complaint cases listed for hearing up to 14.04.2020 before the Karnataka real Estate Regulatory Authority and the Adjudicating officer, KREERA, have been adjourned except cases urgent in nature to avoid gathering of litigants/ lawyers/ visitors. Next dates of hearing in each case will be posted on the website of the Authority.

➤ **Vide Circular Endstt. No.RERA/Pb/FIN/2020/1641-1666, dated 02.03.2020, Punjab Real Estate Regulatory Authority (“Authority”):**

It was decided that:

The Authority had earlier issued order on levying of RERA Online Convenience Fee on the promoters/real estate agents vide Endst. No RERA2018/4958 dated 11.06.2018. The said convenience fee has been decided in exercise of the powers vested under para 33 of the Punjab Real Estate Regulatory Authority (General) Regulations, 2017.

The matter has been further reviewed considering practical convenience to the promoters and agents and it has been decided by the Authority that instead of taking the said fee annually at the beginning of each financial year, it will now be taken for the entire duration of the validity of the Registration Certificate, at the time of registration, as tabulated below,

Sr.	Type of Transaction	Duration for chargeability of Fee at the time of Registration.	Composite Web Maintenance Fee
1	Real Estate Agents at the time of application for Registration or Renewal.	5 years	Rs. 5000.00 for 5 years (@ Rs. 1000/-p.a.)
2	Promoters of New/Ongoing projects at the time of application for Registration or Extension.	From the date of registration, till the date of completion of project.	@ Rs.5000/- p.a. for each financial year or part thereof.

All Projects and Real Estate Agents which have already been registered with the Authority as on date, shall be liable to pay the Composite Web Maintenance Fee for entire period of validity of Registration Certificate as above, excluding the web maintenance fee already paid by the Promoters/Real Estate Agents.

The above fee will be payable in the same mode as the payment of Registration Fee payable under the Rules, under the heading "Composite Web Maintenance Fee".

The Authority accordingly calls upon all the Promoters and Real estate agents to pay the said fees on or before 31st March, 2020 and avoid any punitive action under the law.

This Order is issued in suppression of earlier order no. RERA-2018/4958 published on 31-08-2018.

Litigation Brief

➤ **Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic.**

The Hon'ble Supreme Court of India ("Supreme Court") in lieu of the recent outbreak of COVID-19 (Coronavirus) in several countries, including India, has necessitated the immediate adoption of measures to ensure social distancing in order to prevent the transmission of the virus. The bench informed that the Supreme Court and High Courts have adopted measures to reduce the physical presence of lawyers, litigants, court staff, para legal personnel and representatives of the electronic and print media in courts across the country and to ensure the continued dispensation of justice.

The Hon'ble Supreme Court in *Suo Motu Writ (Civil) No. 5/2020* vide Order dated 06.04.2020, has directed that every individual and institution is expected to cooperate in the implementation of measures designed to reduce the transmission of the virus. Further stating that the scaling down of conventional operations within the precincts of courts is a measure in that direction. The importance of access to justice to preserve the rule of law in the democracy envisaged by the Constitution of India was also reaffirmed. Further, the bench stated that the challenges occasioned by the outbreak of COVID-19 had to be addressed while preserving the constitutional commitment to ensuring the delivery of and access to justice to those who seek it. The need to necessarily ensure compliance with social distancing guidelines issued from time to time by various health authorities, Government of India and States was also highlighted.

It was stated that in lieu of the unprecedented and extraordinary outbreak of a pandemic, it is necessary that Courts at all levels respond to the call of social distancing and ensure that court premises do not contribute to the spread of virus. The bench held that the Courts throughout the country particularly at the level of the Supreme Court and the High Courts have employed video conferencing for dispensation of Justice and as guardians of the Constitution and as protectors of individual liberty governed by the rule of law. Taking cognizance of the measures adopted by Hon'ble Supreme Court and by the High Courts and District Courts, directions were issued by taking recourse to the jurisdiction conferred by Article 142 of the Constitution.

Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make

such orders as are necessary for doing complete justice, the Hon'ble Supreme Court directed that:

- i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;
- ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and
- iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies;
- iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.
- v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.
- vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.
- vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.
- viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless

such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

The above directions were issued in furtherance of the commitment to the delivery of justice. The Hon'ble Supreme Court further directed that the cooperation of all courts, judges, litigants, parties, staff and other stakeholders is indispensable in the successful implementation of the above directions to ensure that the judiciary rises to face the unique challenge presented by the outbreak of COVID-19.

⇒ Appellate Tribunal Directs Exclusion of time elapsed on account of lockdown from the CIRP period.

On account of repeated requests for urgent listing of cases and difficulty in undertaking physical filing because of complete lockdown declared by the Government with effect from 25th March, 2020, the National Company Law Appellate Tribunal ('Appellate Tribunal') took suo moto cognizance of the unprecedented situation arising out of spread of COVID-19. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court¹ by extending the period of limitation with effect from 15th March, 2020 till further order(s) in terms of order dated 23rd March, 2020.

The Appellate Tribunal stated that certain steps were required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 ('I & B Code') to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships. Pursuant to which the Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 read with the decision of the Appellate Tribunal on 8th May, 2018² ordered as follows: –

1. That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for Resolution Process under Section 12 of the I & B Code, in all cases where Corporate Insolvency Resolution Process ('CIRP') has been initiated and pending before any

¹ Suo Motu Writ Petition (Civil) No(s).03/2020

² Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018

Bench of the National Company Law Tribunal ('Adjudicating Authority') or in Appeal before the Appellate Tribunal.

2. Any interim order/ stay order passed by the Appellate Tribunal in anyone or the other Appeal under I & B Code shall continue till next date of hearing, which may be notified later.

Summation:

The period of lockdown COVID19 shall be excluded for the purpose of counting of the period for CIRP under Section 12 of the I & B Code, in all cases where CIRP has been initiated & pending before any Bench of the Adjudicating Authority or in an Appeal before the Appellate Tribunal.

⇒ **Consumer Protection Act: Whether a construction worker, who is beneficiary of a Scheme, is a 'consumer' under Section 2(d)?**

In the matter of: The Joint Labor Commissioner and Registering Officer and Another Vs. Kesar Lal (Decided by Supreme Court of India at New Delhi)

Issue:

Whether a construction worker who is registered under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as "**Act of 1996**") and is a beneficiary of the Scheme made under the Rules framed pursuant to the enactment, is a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act, 1986 (hereinafter referred to as "**COPRA**")?

Facts:

- Parliament enacted the Act of 1996 and in pursuance of the rule-making powers, the Union Government has framed the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 1998. The State of Rajasthan has also framed the Rajasthan Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules in 2009, under which the Rajasthan Building and Other Construction Workers Welfare Board (hereinafter referred to as "**Welfare Board**") was constituted. The Welfare Board has formulated a scheme on 01.08.2011, for beneficiaries registered under the Act, rendering financial assistance on the occasion of the marriage of a daughter of a beneficiary.
- The respondent obtained a Labor Beneficiary Identity Card on 29.12.2011, under the Welfare Board from the appellants after depositing the registration fee and annual contribution. The identity card was valid for a period of one year. Seeking to avail financial aid under the scheme, the respondent submitted an application on 06.11.2012, in anticipation of the marriage of his

daughter which was to take place on 24.11.2012. Nine (9) months after the application was submitted, the Joint Commissioner of Labor, Jaipur issued an order of rejection on the ground that it was not accompanied by an application for exemption from the procedural requirement of submitting it 90 days before the marriage of his daughter.

- The Respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum which was dismissed. In appeal, the State Consumer Disputes Redressal Commission set aside the order of the District Forum and directed the Appellants to pay an amount of Rs.51,000/- to the Respondent together with compensation, expenses and interest of 18% p.a. from the date of the institution of the complaint. The National Consumer Disputes Redressal Commission affirmed the decision, overruling the objection that the Respondent is not a 'consumer' within the meaning of the Consumer Protection Act, 1986 and reduced the rate of interest from 18% pa to 9% pa.
- The Appeal before Supreme Court has arisen from the order of the National Commission.

Arguments and Court's Observations:

- The Appellants put forth that Parliament enacted Act of 1996, wherein, the cess forms a part of the Welfare Board. The collection of the cess which runs into thousands of crores becomes part of the fund which is generated from the compulsory exaction from employers who engage construction workers. Therefore, the cess is nothing but a tax under Article 366(28) of the Constitution. It was further argued that the welfare schemes are funded by the cess and the contribution of the workers is meagre in comparison to the expenditure on the welfare schemes. It was also contended that where the State commits itself to welfare schemes and a negligible amount is charged in token of the services which are rendered, the beneficiary of a service is not a 'consumer' within the meaning of Section 2(d) of the COPRA. Such services are primarily financed out of budgetary allocations and in the present case, though a service is rendered by the Board, the expenditure on the welfare scheme is defrayed from the cess which is collected and hence, is not a 'service' within the meaning of COPRA.
- The Respondent contended that every construction worker is a 'beneficiary' under the Act, Rules and the Schemes. Under Section 12 of the Act of 1996, every worker should be registered as a beneficiary and is required to fill application and submit documents along with prescribed fees. The welfare schemes which are implemented by the Board cannot be construed as a sovereign function as the State Welfare Board is a body corporate. Section 24 of the Act of 1996 requires the constitution of a Workers Welfare Fund into which the

contribution of the beneficiaries is credited and thus, the service which is provided is not gratuitous. The contribution paid by a beneficiary forms a part of the fund together with grants, loans, sums received by the Board and advances from the Union or State Governments, local authorities and other resources as decided by the Central or State Governments. The claims of benefits provided under the scheme are higher than the contribution by the beneficiary, however, this cannot be a reason to hold that it is not a contribution. In the present case, there was a gross deficiency of service on the part of the Appellants and the denial of benefits under the Welfare scheme was casual and mechanical. The remedy under COPRA is a valuable provision made by the Parliament to provide access to justice and the purpose embedded in the Consumer Protection Act 1986, will be defeated if a construction worker is required to approach a civil court or the writ jurisdiction under Article 226 of the Constitution to seek relief of a small claim.

- The Supreme Court observed that the workers who are registered under the Act of 1996 are beneficiaries of the schemes made by the Board. The fund into which the contributions by persons who are registered under the Act are remitted, comprises among other sources, the contributions made by the beneficiaries. The fund is applied *inter-alia* for meeting the expenses incurred to fulfill the objects and purposes authorized by the legislation. In view of the statutory scheme, the services which are rendered by the Board to the beneficiaries are not services which are provided free of charge so as to constitute an exclusion from the statutory definition contained in Section 2(1)(o) and Section 2(d)(ii) of the COPRA. It was further observed that so long as the service which has been rendered is not rendered free of charge, any deficiency of service is amenable to the fora for Redressal constituted under the COPRA. From the definition contained in Section 2(1)(d), a 'consumer' includes not only a person who has hired or availed of service but even a beneficiary of a service. The registered workers are clearly beneficiaries of the service provided by the Board in a statutory capacity.

➤ **Dhanpat Vs. Sheo Ram (Deceased) Through Lrs. & Ors.**

[Civil Appeal No. 1960 of 2020 arising out of SLP (Civil) No. 22496 of 2014]

**Hemant Gupta, J. and L. Nageswara Rao, J.
Judgment pronounced on 19.03.2020**

Supreme Court:

- Not mentioning some natural legal heirs in Will is no suspicious circumstance**
- Secondary Evidence under section 65 (c) of Indian Evidence Act can be produced without an application**

Brief Facts:

FAMILY TREE:

Misri (Grandfather)

|

Chandu ram (Father) X Chand Kaur (Mother)

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i. Sheo ram (Plaintiff) **ii.** Sohan Lal (Defendant no. 5) **iii.** Defendant no. 7-9.

The Plaintiff filed a suit for declaration that he along with his mother, Chand Kaur and his sisters, defendants Nos. 7-9, were the owners and in possession of equal shares of the suit land measuring 489 kanals 4 marlas. He asserted that he belonged to the Jat community and was governed by Punjab Customary Law. Further, Defendant no. 5 got a Will, dated 30.04.1980, executed in favour of his sons, from Father. Defendant No.5 and his sons, the beneficiaries under the Will filed a common written statement and asserted that the custom had been abrogated after passing of the Hindu Succession Act and that Chandu Ram had separated all his sons during his life time and given sufficient amount to his daughters, defendant Nos.7-9, in the shape of dowry and other ceremonial and customary festivities.

In this regard, sufficient land had also been given to the plaintiff, therefore, there was no Joint Hindu Family. The Will had been executed by Chandu Ram out of his natural love and affection and was without any inducement or fraud or misrepresentation.

The learned trial court held that the Will is duly proved on the basis of statement of DW-3 Maha Singh, an attesting witness, DW-4 Advocate D.S. Panwar, the scribe, DW-5 Sohan, the defendant and Krishan Kant, Registration Clerk as DW 2. The Court noticed that DW-4 D.S. Panwar was Chandu Ram's advocate in the cases before the Civil Court who had scribed the Will at his instance and Maha Singh had put his signatures on the original Will in his presence. DW-4 D.S. Panwar deposed that the original Will was stated to have been lost and that he was not sure as to whether Ex. D-3 was the correct photocopy of the original Will. Chand Kaur, wife of Chandu Ram was examined as PW-1 who had deposed that Chandu Ram had ousted her from his house. Therefore, the Court found that it was natural for Chandu Ram to execute the Will in favour of Defendant No.5, Sohan Lal's sons. The Court did not find any merit in the argument that a deviation from natural succession will make the Will doubtful. It was also held that the scribe cannot be treated as an attesting witness but that since two attesting witnesses have signed the Will, the execution of the Will is proved by examining one of the attesting witnesses. With the aforesaid findings, the learned trial court dismissed the suit filed by the plaintiff. The learned First Appellate Court affirmed the findings recorded by the trial court. On second appeal, The High Court had held that only Maha Singh was examined as attesting witness as DW-3 whereas the second attesting witness Azad Singh was not produced, therefore, the Will was not proved. It also held that the

Will had been completely misread, misconstrued and misinterpreted. The High Court found that in the Will, there was no mention of Chandu Ram's wife and the other son i.e. the Plaintiff and therefore, such fact was a suspicious circumstance to doubt the genuineness of the Will.

The High Court framed the following two substantial questions of law:

1. Whether the Will dated 30.4.1980 Ex.D-3 was surrounded by suspicious circumstances and due execution thereof was also not proved, in accordance with the requirements of Section 63 of the Succession Act;
2. Whether the learned courts below have completely misread, misconstrued and misinterpreted the evidence available on record, particularly the Will Ex.D-3, because of which the impugned judgments cannot be sustained."

The Supreme Court observed that:

"Para 17- "The Will was in possession of the beneficiary and was stated to be lost. The Will is dated 30th April, 1980 whereas the testator died on 15th January, 1982. There is no cross-examination of any of the witnesses of the defendants in respect of loss of original Will. Section 65 of the Evidence Act permits secondary evidence of existence, condition, or contents of a document including the cases where the original has been destroyed or lost. The plaintiff had admitted the execution of the Will though it was alleged to be the result of fraud and misrepresentation. The execution of the Will was not disputed by the plaintiff but only proof of the Will was the subject matter in the suit. Therefore, once the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading of secondary evidence."

"Para 20- There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed."

"para 23- at least one of the attesting witnesses is required to be examined to prove his attestation and the attestation by another witness and the testator. Once the Will has been proved then the contents of such document are part of evidence. Thus, the requirement of Section 63 of the Act and Section 68 of the Evidence Act stands satisfied. The witness is not supposed to repeat in a parrot like manner the language of Section 68 of the Evidence Act. It is a question of fact in each case as to whether the witness was present at the time of execution of the Will and whether the testator and the attesting witnesses have signed in his presence. The statement of the attesting witness proves the due execution of the Will apart from the evidence of the scribe and the official from the Sub-Registrar's office."

"para 30- respect of an argument that some of the natural heirs were not even mentioned in the Will, therefore, the Will is surrounded by suspicious circumstances is again not tenable."

Further reiterated the observations laid down in **Rabindra Nath Mukherjee & Anr. v. Panchanan Banerjee (Dead) by LRs. & Ors. that** "As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially.

Accordingly, the appeal was allowed and the suit was dismissed.

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