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CENTRE FOR BUSINESS LAWS AND TAXATION

LEGAL CONSPECTUS

CASE LAW DIGEST

Taxation | Finance | IPR | Capital Markets | Competition | Real Estate | Insolvency & Bankruptcy

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ABOUT THE UNIVERSITY

The Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, to fulfill the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization. Recently the University has earned the coveted status of being one of the top-ranking law teaching institutions in the Country. Over 1000 students acquire state of art legal education in a well-furnished and fully developed residential campus which boasts of all necessary infrastructural and manpower facilities for the all-around growth of the students. RGNUL is currently emphasizing research, training, and consultancy in various areas of contemporary interest. It is envisaged to be a research-intensive university in the times to come. It has as many as 19 centers focusing on various areas of social-legal inquiries which includes the Centre for Business Law and Taxation (CBLT). RGNUL publishes 05 journals covering a vast range of subjects of topical interest.

Centre for Business Laws and Taxation

ABOUT THE CENTRE

The Centre for Business Laws and Taxation (CBLT) is one of the Rajiv Gandhi National University of Law, Punjab’s flagship centre. The Centre aims to further its objective of bridging the gap between the theory and practice of corporate law. It is established to promote comparative research and discussion in the field of corporate law. It focuses on analyzing current policy approaches in various areas of corporate laws such as corporate governance, insolvency law, mergers and acquisitions, taxation, etc. It plans to streamline the process of learning through academic courses, programs, and publications. It also focuses on identifying the gaps existing between industry and academia by effective joint research. The Centre follows a multi-disciplinary approach to recognizing problems in the field of corporate laws and endeavors to engage in dialogue to facilitate changes in it. It is based on the objective of establishing a culture of discussion on corporate laws in the country by educating the next generation of lawyers and law students.

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ABOUT CBLT

The landscape of corporate law has been changing and has even undergone a sea change during the last few decades. Varied issues in the corporate law domain including insolvency resolution of companies, mergers and amalgamation deals, etc have sprung up and corporate lawyers had to confront ever-changing corporate world regulations. To cope with such issues, the legal framework has also undergone amendments and enactment of new laws, rules, and regulations. Further, there is a wide gulf between law in theory and law in practice. Keeping this in mind, the certificate course on corporate laws and practice is structured with the objective of analyzing the current legal issues in the field of corporate litigation by identifying the lacunas existing in corporate law so as to benefit law students and young professionals who understand the nuances of corporate litigation. It will cover various topics of contemporary importance such as structuring a merger deal, preparing a resolution plan, regulation of cryptocurrency, data privacy, and competition law amongst others.

CASE DIGEST

VIDYASAGAR PRASAD V. UCO BANK & ANR.;ORISSA MANGANESE & MINERALS LTD. V. STATE OF ODISHA AND ORS.; AMIT NARANG V. ADITYA BIRLA FINANCE LTD. AND ANR.; SHANTECH INTERNATIONAL PVT. LTD. VS. DEVENDRA SINGH

- BY ANANYA JOSHI

Vidyasagar Prasad v. UCO Bank & Anr.

Background: In this case, the balance sheet of the corporate debtor made a general entry acknowledging the debt owed to the financial creditor, but didn't mention how much debt is owed to which creditor. Moreover, the auditor of the corporate debtor's director appended a note to the balance sheet saying that the "company has made certain defaults in the repayment of term loans and interest." Thereafter, the Financial Creditor/Bank initiated CIRP against the corporate debtor upon filing an application under section 7 of the IBC before the Adjudicating Authority which was resisted by the appellant contending that there was no clear and unequivocal acknowledgement of debt of the Corporate Debtor in the entries of the balance sheets. This case concerns an interpretation of section 7 of the IBC for the purposes of Corporate Insolvency Resolution Process (CIRP).

Judgment: The Supreme Court dismissed the plea against the initiation of CIRP, holding that there is no compulsion for the companies to specify the names of every secured/unsecured creditor in their balance sheet. It observed that when debt entries exist in the corporate debtor's balance sheet, the debtor could not deny its liability merely on the ground that there were no specific entries of the particular creditor in their balance sheet regarding the debt owed to that creditor.

Conclusion: The case has affirmed that there exists no to specify the names of creditor, whether secured or unsecured in the balance sheet. The position that the CIRP can be initiated by a general entry or acknowledgment of debt in itself is a novel one.

Orissa Manganese & Minerals Ltd. v. State of Odisha and Ors.

Background: The State Bank of India, financial creditor, filed an application under section 7 of the Insolvency and Bankruptcy Code against Orissa Manganese and Minerals Ltd.-OMML, corporate debtor, for initiating Corporate Insolvency Resolution Process (CIRP). The application was admitted in 2017 by the NCLT. The NCLT approved a resolution plan submitted by a successful resolution applicant in 2018. This plan was approved by Committee of Creditor (CoC) with 89.23% voting shares.

This approval of plan attained finality after it was approved by the Supreme Court in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors. in 2021. Three writ petitions were filed challenging demand letters issued by the state to the corporate debtor.

Judgment: The Orissa High Court held that all liabilities of the corporate debtor prior to approval of resolution plan stand extinguished once the plan is approved under section 31 of the Insolvency and Bankruptcy Code. The court held that in the present case the resolution plan was approved on June 22, 2018 by the NCLT. It extinguished all liabilities predating the date of approval of resolution plan therefore the claims of the state with respect to the period prior to the approval date cannot be entertained.

The court further observed that no new surprising claims can be demanded from the Successful Resolution Applicant. After the approval of resolution plan, all the liabilities owed by the corporate debtor prior to the approval of resolution plan are negated. The court further observed that after the approval of the plan, the corporate debtor no more remains a corporate debtor, it is under a legal obligation only as per the plan.

The High Court directed the state to issue demand letters afresh from June 22, 2018 onwards. The court set aside the impugned letters under which demands were made against the petitioner. Accordingly, all three writ petitions were disposed of.

Conclusion: This case further propagates the clean slate theory, which suggests that all liabilities of the corporate debtor prior to approval of resolution plan stand extinguished once the plan is approved under section 31 of the IBC.

Amit Narang v. Aditya Birla Finance Ltd. & Anr.
Background: A loan amount of Rs. 11.50 crores was advanced by the financial creditor to corporate debtor with NDPL acting as a co-borrower. The terms and conditions of the loan were enumerated in letters sanctioned on September 19, 2016, December 4, 2018. Subsequently, a facility agreement and a supplementary facility agreement were also executed on September 29, 2016 and December 7, 2018 respectively. An indenture of mortgage was executed on October 17, 2016 in which a security interest over its assets was created by the NDPL in favour of the financial creditor. Account of the corporate debtor was classified as Non-Performing Assets on June 16, 2019 when it defaulted in paying the loan amount.

This approval of plan attained finality after it was approved by the Supreme Court in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors. in 2021. Three writ petitions were filed challenging demand letters issued by the state to the corporate debtor.

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Conclusion: This case further propagates the clean slate theory, which suggests that all liabilities of the corporate debtor prior to approval of resolution plan stand extinguished once the plan is approved under section 31 of the IBC.

Shantech International Pvt. Ltd. v. Devendra Singh

Background: The Corporate Insolvency Resolution Process against Venus Rolling Mills Pvt. Ltd., Corporate Debtor, commenced on 22nd April 2019.

Upon failure of resolution, the Committee of Creditors resolved to liquidate the Corporate Debtor. On 9th June 2022, the liquidation commenced. The Adjudicating Authority directed the liquidation of the Corporate Debtor. The Corporate Debtor was sold as a 'going concern' on the e-auction held on 30th March 2023. The appellant was the successful bidder. On 14th September 2023, the Liquidator issued a Sale Certificate to the Appellant. The Appellant then filed an application for the completion of the Corporate Debtor's sale process to be recorded. The Adjudicating Authority disposed of the Application by an order. Some reliefs claimed by the Appellant were not granted. The issue was whether the clean slate principle extended only to liabilities prior to the insolvency commencement date or if it extended to the date of actual sale of the Corporate Debtor as a 'going concern'.

Judgment: The NCLAT held that, when the claim itself is on the liquidation commencement date in the liquidation process, the argument that extinguishment of claims and liabilities should be granted till the date of sale by e-auction is not in accord with the statutory scheme as delineated by IBBI (Liquidation Process) Regulations, 2016. The NCLAT held that the claims and liabilities incurred prior to the date of e-auction could not be extinguished.
It stated that the Adjudicating Authority had granted all reliefs to which the Appellant was entitled. Therefore, it dismissed the appeal.

Conclusion: The NCLAT elaborated upon the “clean slate" principle under the IBC, in holding that it does not extend to liabilities on date of e-auction sale of corporate debtor as 'going concern'.

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GOLD CORP GLOBAL LOGISTICS P. LTD. VS BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.; BHARAT SANCHAR NIGAM LIMITED & ANR. VS. CHAURASIYA ENTERPRISES & OTHERS; GAIL (INDIA) LIMITED VS. JOSE P. PHILIP & OTHERS

-BY PRAGYA GUPTA

Gold Corp Global Logistics P. Ltd. vs Bajaj Allianz General Insurance Co. Ltd.

Facts: Gold Corp Global Logistics P. Ltd. (the plaintiff) filed a suit against Bajaj Allianz General Insurance Co. Ltd. (the defendant) seeking recovery of ₹92,26,000. The plaintiff, a transportation company, had insured one of its vehicles, a tipping trailer, with the defendant for a sum of ₹46,00,000. On November 21, 2021, the insured vehicle was involved in an accident. The plaintiff claimed that despite following all procedures and notifying the defendant immediately, the insurance claim was unjustly denied. The defendant's main contention was that the plaintiff misrepresented facts about the driver of the vehicle and suppressed material information, which constituted a breach of the insurance contract.

Judicial Decision: The court ruled in favor of the plaintiff, ordering Bajaj Allianz General Insurance Co. Ltd. to pay the insured amount of ₹46,00,000. It found that the defendant failed to provide sufficient evidence of any misrepresentation or suppression of material facts by the plaintiff. The court ruled against the defendant, highlighting several key failings. The defendant's assertion that the insured vehicle was driven by a different person than reported was unsupported by reliable evidence, with the court noting discrepancies in the investigation reports and a lack of conclusive proof. Additionally, the surveyor's report, which was central to the claim rejection, was prepared on the defendant's portal rather than independently, violating IRDA regulations that require surveyors to maintain neutrality and confidentiality. The defendant also failed to demonstrate that exclusion clauses were communicated to the plaintiff, as required by IRDA guidelines, and the repudiation letter did not specify any such clause, weakening their defense. Finally, the court determined that the vehicle suffered damage exceeding 75% of its insured value, qualifying it as a constructive total loss, thereby entitling the plaintiff to the full insured amount.

Bharat Sanchar Nigam Limited & Anr. vs. Chaurasiya Enterprises & Others

Facts: The case arose from a dispute between Bharat Sanchar Nigam Limited (BSNL) and Chaurasiya Enterprises regarding contracts awarded in 2015 for the laying of underground optical fiber cables in Bhadoi district. Following disagreements over outstanding payments, Chaurasiya Enterprises sent notices to BSNL in 2019 to clear the dues and requested the appointment of an arbitrator. When BSNL did not respond, the claimant sought the court's intervention, leading to the appointment of a sole arbitrator. The arbitrator, after conducting proceedings, issued awards in favor of Chaurasiya Enterprises. BSNL challenged these awards under Section 34 of the Arbitration and Conciliation Act, 1996, but their objections were dismissed by the Commercial Court, Varanasi. Consequently, BSNL filed appeals under Section 37 of the same Act.

Judicial Decision: The High Court dismissed BSNL's appeals, upholding the awards granted by the arbitrator. The court found that BSNL's conduct throughout the arbitration proceedings was reckless and indicated a lack of seriousness. Despite several opportunities and clear communication through multiple channels, BSNL failed to participate actively, leading to an ex parte decision. The court rejected BSNL's arguments that the arbitrator's mandate should have been terminated due to procedural lapses and delays, especially during the COVID-19 pandemic. The court concluded that the statutory period for completing pleadings was extended appropriately, considering the pandemic, and BSNL had not shown sufficient cause for non-compliance.

Gail (India) Limited vs. Jose P. Philip & Others

Facts: GAIL (India) Limited initiated contempt proceedings against Jose P. Philip and other respondents under Section 12 of the Contempt of Courts Act, 1971, claiming deliberate disobedience of a prior court order dated 30 January 2015. The case stems from a contract dispute involving the Kochi-Koottanad-Bangalore-Mangalore Pipeline Project, where GAIL had awarded contracts to a consortium, including Tecpro Systems Ltd. and AMK VIGAZ, for laying pipelines. The consortium provided Performance Bank Guarantees (PBGs) and Advance Bank Guarantees (ABGs) as security. Due to delays and defaults by the consortium, GAIL sought to encash these guarantees. The consortium opposed this move and obtained an interim injunction from the court in 2014, which was extended during ongoing arbitration proceedings in 2015, provided the guarantees were kept valid. However, GAIL alleged that the respondents failed to extend the ABGs, constituting a breach of the court’s directions.

The respondents contended that they were unable to renew the guarantees due to financial constraints, insolvency proceedings, and issues with their banking partners.

Judicial Decision: The court dismissed the contempt petitions, finding that there was no intentional or wilful disobedience by the respondents. It noted that although the guarantees were not renewed, the respondents had acted within their capacity, including appearing in court and attempting to resolve the issue by making partial payments.

The court acknowledged that insolvency proceedings against Tecpro Systems Ltd. complicated the matter, as it restricted the company's ability to extend the guarantees. The judgment highlighted that contempt proceedings require clear proof of deliberate defiance, which was not established in this case. The court also emphasized that the respondents, being individuals associated with the consortium, were not personally liable under the original contract terms. Since insolvency resolution processes were ongoing, any further financial obligations or actions regarding the guarantees fell under the purview of the Insolvency Resolution Professional (IRP).

GLAS TRUST COMPANY LLC VS. BYJU RAVEENDRAN

- BY RIYA MISHRA

Background: It is a case of financial disputes involving Byjus's Alpha Inc., which is a Delaware company under the Indian company Think and Learn Private Ltd. (T&L). The company has entered a loan agreement for an aggregate amount of $1.2 billion, raised through common stock, with GLAS Trust Company LLC, the administrative and collateral agent. One of the more significant conditions they agreed upon was the sanction from the RBI on the approval of another subsidiary of T&L, named Whitehat, as a guarantor. But due to the change in the regulations, it wasn't possible that Whitehat get its RBI approvals, and thus, a clause of the loan agreement was breached. After this breach, GLAS Trust Company LLC filed the enforcement action to enforce its rights under the loan agreement and the Court ruled that Timothy R. Pohl was the sole director and officer of Byju's Alpha. The Delaware Court of Chancery held that Byju Raveendran's defense that since a 'no' from RBI constituted an impossibility that excused the breach of contract was rejected. Meanwhile, Byju Raveendran was settling a debt with the Board of Control for Cricket in India amounting to more than ₹158 crores.

GLAS contested its settlement citing improper sourcing of funds and issues related to the possibility of being given preferential treatment.

Judgment: The Supreme Court of India ruled that the amendments to the loan agreement clearly defined Whitehat's failure to accede as a "Specific Default", thereby allowing GLAS to enforce its remedies.
The court emphasized that sophisticated parties should have anticipatory regulatory changes and included provisions in their contracts to mitigate such risks. In relation to the settlement with BCCI, the Supreme Court set aside an earlier order by the National Company Law Appellate Tribunal (NCLAT) that had allowed withdrawal from the Corporate Insolvency Resolution Process (CIRP). The court held that NCLAT improperly invoked inherent powers when specific statutory procedures existed for CIRP withdrawal.

The Supreme Court affirmed the lower court's ruling regarding GLAS Trust Company LLC's right under the loan agreement and reinstated insolvency proceeding against Byju's . It mandated that any funds related to settlements be deposited into an escrow account managed by the Committee of Creditors (CoC), ensuring compliance with legal frameworks governing insolvency.

Conclusion: This case emphasized the importance of critical issues regarding the enforceability of loan agreements in light of regulatory changes along with the responsibilities of corporate directors in managing compliances with financial obligations. Furthermore the boundaries of judicial discretion in insolvency proceedings under Indian law were also highlighted.
The ruling shall serve as a precedent for future cases in the realm of corporate governance challenges involving complex financial arrangements with insolvency contexts.

Source-
https://law.justia.com/cases/delaware/supreme-court/2024/463-2023.html
https://www.kslaw.com/attachments/000/012/210/original/ravindran_v._glas_trust_company_llc_%28no._4632023%29_-_opinion_fina.pdf?1730385120

PRINCIPLE COMMISSIONER OF INCOME TAX V. SHRI RAMESH CHANDRA RAI

-BY SHAGUN

Background- According to Section 86 of the Income Tax Act of 1961, an assessee's share of the income from the association of persons (AOP) or body of individuals (BOI), as determined by Section 67A, is exempt from income tax if they are a member of one of these organisations, with the exception of corporations, co-operative societies, or registered societies. The member's share will not be included in their total income if the AOP or BOI is taxed at the highest marginal rate or a higher rate, according to Section 86(a) of the Income Tax Act, 1961. The respondent/assessee is a private individual who primarily makes money from selling alcohol. Additionally, the assessee earned money from his hotel busniess,

M/s. Hotel Ambrosia, which he operated as a proprietorship. Additionally, the assessee receives revenue from specific partnership businesses in which he is a partner. Salary and rental income are also received by the assessee. In accordance with Section 139 of the Act of 1961, the assessee provided his original income returns for the various years. On January 7, 2016, search and seizure procedures under Section 132 of the Act were conducted at several Shivhare Group and assessee locations. As a result, notices under Section 153A of the Act were sent to the assessee. The assessee filed income returns for Assessment Years 2010–11 through 2015–16 on a variety of dates in response to the aforementioned notices. On March 31, 2017, the assessee submitted their regular income return, stating that they had earned Rs. 98,89,480.

In this instance, the Assessing Officer made additions due to the assessee's portion of certain syndicates' hidden revenue, the share of the syndicates' inadmissible expenses, and some concealed capital that the assessee had placed in a number of syndicates. Only the question of whether the ITAT erred in removing the additions (of various amounts in other connected appeals) made by the Assessing Officer based on the appellant's share of profit derived by various syndicates, maintaining that share of profit is taxable in the hands of the syndicate and not in the hands of the assessee according to the existing provisions of the Income Tax Act, was raised by the appellant Revenue Counsel before the MP High Court.

Judgment- As per the MP High Court, If the assessee is a member of an AOP or BOI and the income earned by that AOP or BOI has been subject to tax, then the share that the assessee receives from the AOP or BOI after the payment of due taxes cannot be taxed again in the hands of the recipient assessee, according to clause (a) of the proviso to Section 86 of the Act read with Section 67A of the Income Tax Act, 1961. Agreeing with CIT (A), the Bench held that syndicates have the status of Association of Persons (AOP) or Body of Individuals (BOI), which are individually and explicitly included in the Act's section 2(31) definition of the term "person." Such syndicates are distinct taxable legal entities and are subject to separate taxation under Section 4 of the Ac, under CIT(A).

Conclusion- It is a well-established legal position that According to clause (a) of the proviso to section 86 of the Act read with section 67A of the Act, if the assessee is a member of an AOP or BOI and income from that AOP or BOI has been offered for tax, the share that the assessee receives from that AOP or BOI after paying the required taxes cannot be taxed again in the recipient assessee's hands. The case was decided in favour of the assessee.

INTERVIEW COLUMN

RECENT KARNATAKA HC RULING – MS. X V. INTERNAL COMPLAINTS COMMITTEE, ANI TECHNOLOGIES PVT. LTD. & ORS.

***INTERVIEWEE:* BHAGWATI TIWARI, SENIOR ASSOCIATE, LAKSHMIKUMARAN AND SRIDHARAN**
***INTERVIEWER:* ANANYA JOSHI, MEMBER CBLT**

Q1. The Karnataka HC allowed a writ petition to be heard against a private entity. How did the court establish the maintainability of a writ against OLA for its alleged negligence and default under the PoSH Act, 2013 and the Aggregators Rules, 2016?

Answer: OLA challenged the prima facie validity of the writ petition, arguing that it being neither a statutory body nor an instrumentality of the state, cannot be an object of a writ petition. The court, however, rejected this argument by reminding OLA its statutory obligations to the general public under the PoSH Act and Aggregators Rules.
While writs under Article 226 are typically understood to be maintainable against persons or bodies discharging public duties or functions, (mostly state entities and their extensions). However, there is a bit more nuance to the scope of Writs that this. This is because the phrase "any person or authority" in Article 226 can encompass any entity performing a public duty imposed by statutory obligation, regardless of whether it's an extension of the state or not. If a statute imposes a positive public obligation on OLA, a writ can be maintained against it.

The PoSH Act, particularly through Sections 4, 9, 11, and 13, imposes statutory obligations on OLA. Given that these obligations relate to women's safety and security, they carry a public law element to it too. Consequently, the court held that, OLA's failure to address the aggrieved woman's complaints can be challenged through a writ petition.

Similarly, the Aggregator Rules 2016 place certain statutory obligations on OLA regarding passenger safety and reporting of mis happenings to the regulatory body.

Emphasizing these positive statutory obligations that OLA has towards the public under both the PoSH Act and Aggregators Rules 2016, the High Court ruled that a writ against OLA is indeed maintainable.

Q2. In your opinion, is the Karnataka High Court correct in ruling that the Transport Service Provider is, for the purpose of the PoSH Act, an "employee" of OLA despite the fact that the relationship created by the Transport Service Provider Terms & Conditions is that of independent contractors, and keeping in view? Does this have any implications on the independence conferred to these providers by the T&C?

Answer: The Karnataka High Court's reasoning and legal analysis in deciding that the transport service providers (drivers) are employees of OLA, rather than independent contractors, seems to be legally sound and logically well-supported. The court identified several key elements in OLA's Subscription Agreement with its drivers that demonstrate OLA's supervision and control, leading to the conclusion that the drivers are indeed OLA employees:

a) Mandatory installation of an OLA device (or OLA-controlled device) in all cabs, without which drivers cannot work with OLA.

b) Drivers' lack of autonomy in the operational process, including booking, route selection, refusal to on-board a passenger, and mode of payment. OLA's control extends as far as regulating driver-passenger conversations.

c) Drivers' absence of input in financial bargaining, such as revenue models, rate setting, surge pricing, tax payments, and commission division.

d) Drivers' relinquishment of control over passenger data management (names, contact details, destinations, etc.) to OLA.
Based on these factors in the Subscription Agreement, the Court has wholesale rejected the notion of independence purportedly conferred on these drivers.

By classifying the drivers as employees rather than independent contractors, the court effectively overrides the contractual relationship established by the T&C. This decision suggests that the actual working relationship and level of control exercised by OLA take precedence over the formal contractual terms in determining the nature of the employment relationship.

Q3. Is the payment of incentives by OLA to the Transport Service Provider commercial terms segment of the Terms & Conditions, done at the sole discretion of OLA, a crucial or significant factor in proving an employer-employee relationship between the two?

Answer: It can be observed through the perusal of landmark judicial precedents in India that the flow of money has consistently been a crucial factor in establishing employer-employee relationships.

This includes various forms of compensation such as wages, commissions, bonuses, and incentives. The traditional understanding is that the master pays the servant. In the case of OLA and its drivers, the payment of incentives, sharing of commissions, and other bonuses were pivotal in determining their employer-employee relationship. These financial arrangements significantly influenced the court's decision to classify the drivers as employees rather than independent contractors.

Q4. What is the role of the recent Karnataka HC judgment in the ANI Technologies Case in establishing the liability of employed persons working on a contractual basis for OLA? Can it be said that the ambit of what constitutes an "employee" under the POSH Act, 2013, has been expanded?

Answer: The bench has shied in declaring the existence of an employer-employee relationship between OLA and its drivers for all intents and purposes, and has designated the drivers as OLA employees specifically for the limited purpose of fulfilling the objectives of the PoSH Act.

Regarding the definition of "employee", the court has indeed shed some light on an expanded interpretation of the term. It's important to note that the PoSH Act itself already provides a very broad scope for the definition of an employee (in fact widest under any statute). While the judgment doesn't necessarily attempt to widen the definition under the PoSH Act, it does offer insight into how the term might be applied in the context of modern work

arrangements, particularly in the gig economy and platform-based businesses.

Q5. Generally, the role of a technology-based platform facilitating interaction between a consumer and a provider, with little or no control over either party, is that of an intermediary. In what circumstances can liability be affixed onto such an intermediary?

Answer: It's generally accurate to classify a technology-based platform that facilitates interaction between consumers and providers, with minimal control over either party, as an intermediary. However, in practice, we often observe that these arrangements are structured in ways that it conceals a principal-agent relationship by portraying it as principal-to-principal understanding. In such agreements, liability can be affixed to the intermediary when it assumes tasks of control, supervision, or acts as a master. In these cases, the principle of vicarious liability may apply, making the intermediary responsible for the defaults of its "servants" (in this context, the drivers or service providers).

Q6. In the recent judgment given by the Karnataka HC in the ANI Technologies case, the Internal Complaints Committee's handling of the petitioner's complaint was scrutinized. According to you, what are some of the challenges faced by ICC and how can they be empowered to function more effectively?

Answer: Internal Complaints Committees (ICCs) often find themselves in a precarious position, balancing the risk of exceeding their jurisdictional mandate against the possibility of being deemed negligent. Section 11 of the PoSH Act grants ICCs the authority to investigate complaints from aggrieved women when the respondent is an employee. However, in some cases, the preliminary question itself involves determining whether the respondent falls within the definition of an 'employee' as per Section 2(f) of the Act.

This creates a dilemma for ICCs:

1. If they proceed with the complaint and later find the respondent is not an employee, they risk operating beyond their jurisdictional scope.

2. If they reject the complaint based on a prima facie assessment that the respondent doesn't fit the employee definition, they may be held liable for negligence, as seen in this case OLA drivers.

Beyond this jurisdictional challenge, ICCs face other common issues:
a) Ensuring statutory compliance
b) Adhering to prescribed time limits
c) Upholding principles of natural justice
d) Conducting unbiased disciplinary proceedings
To address these challenges, the law mandates that ICCs include an external member, typically someone well-versed in law or experienced in managing sexual harassment complaints. This provision aims to equip ICCs with the necessary expertise to navigate complex cases effectively.

Q7. With the rise of the gig economy, many companies, like OLA in the present case, have argued that their workers are independent contractors and not employees. Is there a need for changes in legal definitions to address these new labour dynamics? In what ways can better protection be given to workers and consumers in the gig economy?

Answer: The gig economy is set to play a major role in the Indian economy in the coming years. Some reports suggest that by 2030, nearly 24 million gig workers will be supporting the Indian economy. With this significant increase in gig workers and supporting platforms, there's a growing need to provide them with statutory protections and social security benefits.

The statutory recognition of gig workers in India is still in its early stages. The Social Security Code, 2020 is the first nationwide legislation to recognize the concept of gig workers. This code provides a definition for "gig worker" that effectively differentiates them from regular employees or workers. Importantly, it also introduces the much-anticipated social security benefits for gig workers in India.

While this legislation is a step in the right direction, it's important to note that the said Code (along with three other Labour Codes) is yet to be implemented and put into effect. The recognition of gig workers and the provision of social security benefits in the Social Security Code, 2020 represent progress, but the practical application of these measures remains a crucial next step.

Q8. In your opinion, what long-term impact might the Karnataka HC ruling have on corporate policies related to workplace harassment and public safety in India, as well as responsibility under the POSH Act, 2013?

Answer: This Karnataka High Court judgment serves as yet another wake-up call for corporate India, reminding companies of their crucial role in preventing sexual harassment of women at the workplace. This pronouncement echoes the sentiments expressed recently by the Supreme Court in the *Aureliano Fernandes v State of Goa & Ors*., where the Apex Court voiced its dismay over the lackluster implementation of the PoSH Act. The Court didn't just criticize; it took action, issuing clear guidelines and directives to the Centre, State, and employers across the board, urging them to embrace both the letter and the spirit of the PoSH Act.

This latest judgment from Karnataka HC reinforces that message, potentially spurring corporate houses into action. It may well be the catalyst that prompts companies to take a hard look at their existing policies on workplace harassment and public safety, pushing them to strengthen these safeguards. The ruling could have far-reaching effects, encouraging businesses to not just comply with the PoSH Act superficially, but to truly internalize its principles. We might see companies taking more proactive steps, broadening their interpretation of who qualifies as an employee under the Act, fine-tuning their Internal Complaints Committee procedures, and ramping up awareness and training programs. In essence, this judgment could be the impetus for a significant shift in corporate India's approach to workplace safety and harassment prevention, and in creating a workplace where all employees, particularly women, feel secure and respected.

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