
LSI Insight

Directors'/Managerial Personnels' Liability



Background:

The Directors/Managerial Personnel control the company's affairs and act as its agent. A company is a legal person; hence, the Directors/Managerial Personnel are not personally liable for acting on behalf of it. They have a fiduciary relationship with the company and its shareholders. However, if the Directors/Managerial Personnels act beyond their power, they can be held personally liable. Liability can be classified into two categories namely - (i) Personal Liability and (ii) Criminal Liability.



In several cases relating to the liability attracted by merely holding the designation of “Director”, the Supreme Court has held that the liability depended on the role one played in the affairs of the company and not on the mere designation or status. Similarly, in a significant matter, SAT had also held that “...the mere fact that a person is a Director would not make him automatically responsible for refund of monies...”



Further, it is pertinent to mention that the Supreme Court, High Courts and NCLT/NCLAT follow the settled principle that Directors/Managerial Personnel cannot be held liable unless specific averments are made against them. However, in a few SEBI cases, it is seen that the Directors were held to be jointly and severally liable for violation

of certain SEBI norms, as well as the Companies Act.

In this context, we bring to you various noteworthy judicial rulings of the Supreme Court, High Courts, NCLT/NCLAT, SEBI/SAT and PMLA Court that have adjudicated on the liability of Directors/Managerial Personnel.

*****Note: This compilation contains updates till March 21, 2022.**

Sr. No.	Headline	LSI Citation	Summary
<u>Supreme Court Rulings</u>			
1.	SC: Liability for offence depends on role in Company; Quashes order penalizing part-time Director	[LSI-511-SC-2020(NDEL)]	SC set aside adjudicating officer's order imposing penalty on Company's part-time Director ('Appellant') for alleged offence under the Foreign Exchange Regulation Act along with the Appellate Tribunal and HC judgments affirming the said order, and ruled that <i>"The liability to be proceeded with for offence under Section 68 of FERA, 1973 depends on the role one plays in the affairs of the company and not on mere designation or status."</i>
2.	SC: Managing Director, not company, liable u/s 138 for cheque issued from personal account	[LSI-660-SC-2015-(NDEL)]	SC set aside Bombay HC order and directed Respondent (Managing Director of Salvi Infrastructure Pvt. Ltd.) to undergo simple imprisonment for 5 months and orders for payment of compensation to the extent of twice the cheque amount along with interest for non-compliance of Section 138 of Negotiable Instrument Act. Further, rejecting Respondent's contention that appellant-company and its Directors ought to have been made liable u/s 138, the Apex Court held that <i>"where the cheque drawn by the employee of the appellant company on his personal account, even if it be for discharging dues of the appellant-company and its Directors, the appellant-company and its Directors cannot be made liable under Section 138"</i> .
3.	SC: Summons to Company's Directors justified in cheque-dishonour proceedings when complaint specifically avers involvement	[LSI-805-SC-2021(NDEL)]	SC dismissed appeal challenging HC order rejecting Company Directors' ('Appellants') plea challenging Trial Court order summoning them to answer to a charge of Sec. 138 of Negotiable Instruments Act against the Company, on finding that the complaint specifically avers that the Appellants were involved in and responsible for all the affairs of the Company at the relevant time. Further referring to previous judgments on this issue, Court reiterated that <i>"...it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors</i>

			<i>were in charge of and were responsible for the conduct of the business of the company.”.</i>
4.	SC: Chairman/MD not vicariously liable for offences committed by Company unless specific role attributed	[LSI-751-SC-2021(NDEL)]	SC upheld orders passed by Karnataka HC and Sessions Court quashing summons issued by Judicial Magistrate, First Class against the Accused Companies, their Chairman, Directors and top employees (‘Respondents’) in a complaint filed under various IPC provisions inter alia alleging that the Accused have jointly committed an act of criminal breach of trust and cheating. The Apex Court remarked that “ <i>Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6 (Accused Companies), without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.</i> ”.
5.	SC: Non-signatory of dishonoured cheque not liable for prosecution; Quashes criminal complaint	[LSI-126-SC-2021(NDEL)]	SC allowed an appeal challenging Delhi HC order rejecting the Appellant’s plea for quashing a criminal complaint for cheque dishonour u/s 138 of the Negotiable Instruments Act, inter alia observing that she was not liable to be convicted for the offence, as the dishonoured cheque was signed by her husband and drawn on his bank account.
6.	SC: Raises bar for Company Director’s prosecution, quashes charges absent “criminal intent”/ “active role”	[LSI-446-SC-2019(NDEL)]	SC ruled that no individual can be made accused along with the Company, unless there was sufficient evidence of his active role with criminal intent, and reversed Delhi HC order.
7.	SC: “Person can’t be prosecuted merely due to status as Director”; Quashes summoning-order under Minimum Wages Act	[LSI-908-SC-2021(NDEL)]	SC quashed the summoning order issued against a Director and another official of a company alleging non-compliance with the provisions of the Minimum Wages Act (‘Act’), on the ground that the Company had not been made an accused or summoned for the offence so committed. Referring to Sec. 22C of the Act, which stated that where an offence is committed by a company, every person who at the time the offence was committed was in-charge of and was responsible to the company for the conduct of the business, as well as the company itself shall be deemed to be guilty of the offence, Court highlighted that however, a person who

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			was liable shall not be punished if he proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
8.	SC: CLB a 'court', violation of its order to attract contempt proceedings	[LSI-29-SC-2014-(DEL)]	SC allowed appeal, set aside HC's Division Bench order and restored Single Judge's order in contempt case against Managing Director ('MD') <i>inter alia</i> for willful disobedience & breach of undertaking made to CLB that directed repayment of deposits accepted u/s 58A of Companies Act, 1956. Observed that MD was also the Promoter-Director of the Defaulter Company and responsible for issuance of advertisement inviting deposits and willful non-repayment. Noted that MD's resignation subsequent to submission of undertaking to CLB demonstrated dishonest attempt to avoid repayment that amounted to 'contempt'. SC relied on its ruling in Canara Bank vs. Nuclear Power Corporation of India Ltd. & Ors. and held that CLB was a "Court" and within the ambit of Contempt of Courts Act. Directed the MD to repay the entire amount to the Appellant as directed by CLB.
9.	SC: Quashes cheque-dishonour proceedings against Corporate-Debtor, given no natural person arrayed as accused	[LSI-1092-SC-2021(NDEL)]	SC quashes pending proceedings initiated against the Corporate Debtor ('Appellant') u/s 138 of the Negotiable Instruments Act, on the ground that no natural person was arrayed as accused. SC distinguished the instant matter from its decision in P. Mohanraj & Ors. and highlighted that in the present case, complaint was filed only against the corporate entity and none of the natural persons who were stated to be the in-charge of and responsible for the affairs of the corporate entity were arrayed as accused. Thus, concludes that the Appellant could not be proceeded against u/s 138.
10.	SC: IBC moratorium applicable to cheque dishonour proceedings against Corporate Debtor	[LSI-108-SC-2021(NDEL)]	SC, while disposing a batch of petitions, wherein cases were filed against Corporate Debtors for dishonour of cheques u/s 138 of the Negotiable Instruments Act, ruled that "...a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC." Clarified that however, such a bar would apply only to the Corporate Debtor, and elucidated that "...the

			<i>moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.”.</i>
11.	SC: NI Act Sec. 138 applicable when debt incurred after drawing cheque, but before encashment	[LSI-1128-SC-2021(NDEL)]	SC dismissed appeals filed by the Managing Director along with four Directors of a Company challenging Gujarat HC order that rejected Appellants’ petition to quash the criminal complaint instituted against them by a power supplier for dishonour of a post-dated cheque. SC observed that HC did not quash the complaint since it was <i>prima facie</i> established that the directors were triable for dishonour of cheque. SC rejected the contention that the cheque was issued by way of security rather than a legally enforceable debt or liability, and held “...the term debt also includes a sum of money promised to be paid on a future day by reason of a present obligation. A post-dated cheque issued after the debt has been incurred would be covered by the definition of ‘debt’.”
<u>High Court Rulings</u>			
12.	HC: Quashes cheque dishonour proceedings against non-executive Directors, absent specific allegations in complaint	[LSI-332-HC-2020(DEL)]	Delhi HC quashed the Metropolitan Magistrate's order to summon the Petitioners, who were independent non-executive Additional Directors of a company, for offence u/s 138 of the Negotiable Instruments Act. The Court held that such a generalized averment without any specific details as to how and in what manner, the Petitioners were responsible for the control and management of affairs of the company, was not enough to fasten Criminal liability on them.
13.	HC: Director who resigned prior to dishonored cheques issuance, not vicariously liable u/s 138	[LSI-1040-HC-2021(DEL)]	Delhi HC quashed summoning orders issued against the Petitioner pursuant to complaints u/s 138 r/w/s 141 of the Negotiable Instruments Act, on noting that he had ceased to be a Director of the accused company prior to the issuance of the cheques in question. Court held that “...he could not be attributed vicarious liability for the offence punishable under Sections 138/141 NI Act.”; HC held that “...regardless of a guarantee deed being

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			<i>executed as part of the impugned transaction, no criminal liability would be attributable to a Director of the accused company who executed such deed if he resigned therefrom prior to the issuance of the cheques in question.”.</i>
14.	HC: Director liable for offences during his tenure; No escaping via subsequent resignation	<u>[LSI-1163-HC-2016-(MAD)]</u>	Madras HC dismissed criminal petition filed by director of company, rules on director's liabilities for non-compliance of Section 207 of Companies Act, 2013 ('conduct of inspection and inquiry'). Perusing proviso u/s 168, Court stated that even if a person has resigned from the directorship, he will be liable for the offences committed during his tenure
15.	HC: Quashes notices/bank attachment initiated against ex-Director for recovery of Company-dues	<u>[LSI-803-HC-2020(DEL)]</u>	Delhi HC held that the Petitioner (an ex-Director), even if having knowledge of affairs of the company, was not vicariously or jointly liable for the dues of the company under the Finance Act, 1994, in the absence of a specific provision and given a company's separate legal personality.
16.	HC: Discharges DHFL from CBI case, quashes order prosecuting its ex-Directors	<u>[LSI-926-HC-2021(BOM)]</u>	Acknowledging DHFL's submission that the Directors were ousted from the Board of Directors by the RBI and they had no control over DHFL's management, and as per Sec. 32A of IBC, DHFL's erstwhile Directors, ought not to have been prosecuted, given that the Corporate Debtor had undergone insolvency process, Court opined that there was no reason to discard this submission, and held that the Special Judge, CBI has committed an error by permitting DHFL's prosecution through its Directors who were ousted by the RBI 2 years ago.
17.	HC: Independent director not vicariously liable for cheque dishonor, absent specific role attribution	<u>[LSI-39-HC-2020(DEL)]</u>	HC quashed Trial Court's order to the extent of summons issued to an Independent, Non-Executive Director of a Company for alleged offence u/s 138 of Negotiable Instruments Act ('NI Act'), and ruled that “...in the absence of any specific role attributed...for his active participation in the day to day affairs of the company and...where the petitioner was not a signatory to the cheques in question, vicarious liability cannot be fastened on the petitioner...”.
18.	HC: Director responsible for ante-dated cheques issued during tenure,	<u>[LSI-1082-HC-2016-(BOM)]</u>	Bombay HC held that relevant period for deciding director's liability for the act committed by company was not only

	resignation date irrelevant, dismisses writ		when cheque was dishonoured, but also when disputed transaction was entered into, time of issuance of cheque, presentation of cheque in bank etc., and observed that transaction was entered into in 2010, and cheques were issued in 2012-2013. Court further held that the petitioner (former director of private co.) cannot get rid of her liability as post-dated cheques were issued when she was a director.
19.	HC: Sec 138 complaint not maintainable against non-signatory director, absent specific averment against her	[LSI-947-HC-2016-(MAD)]	Noting that the director of accused co. was not even a signatory to the cheque that bounced back, HC stated that, <i>"In the absence of such averments, the complaint is not maintainable as against such person, especially when such person is not a signatory to the subject cheques."</i>
20.	HC: Proceedings against company u/s 48 includes proceedings against key-persons, no separate proceedings required	[LSI-356-HC-2015(DEL)]	HC ruled against petitioners (directors of company) challenging CCI order u/s 48 (which stipulates that when a company contravenes any provisions of Competition Act (the Act), its key-persons shall be proceeded against and be made punishable), contending that process u/s 48 was premature as CCI did not return a finding vis-a-vis contravention of the Act, thus, no proceedings against petitioners could be initiated. Court held that, <i>"It is no doubt true that the petitioners can only be held liable if, the CCI, were to come to a conclusion that they were the key-persons, who were in-charge and responsible for the conduct of the business of the company"</i> , however, <i>"In the course of the proceedings qua a company, it would be open to the key-persons to contend that the contravention, if any, was not committed by them"</i> .
21.	HC: Director responsible for ante-dated cheques issued during tenure, resignation date irrelevant, dismisses writ	[LSI-1082-HC-2016-(BOM)]	Bombay HC dismissed criminal writ petition filed by former director ('Petitioner') of private co. ('Respondent Co.') and upheld Metropolitan Magistrate's order for issuing process against petitioner for offence punishable u/s 138 and 141 of Negotiable Instruments Act ('NI Act'). The Court observed the evidence, documents produced on record and stated that the resignation letter and other documents prima facie prove that resignation was not tendered on Jan. 1, 2013. Thus, HC held <i>"just in order to escape from clutches of Sec. 141 of NI Act, it is shown ante-dated.... if petitioner had</i>

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			<i>really tendered her resignation on Jan. 1 2013 itself, on the receipt of statutory demand notice dated April 4, 2013, she would have immediately replied to it bringing on record the fact that she has already resigned from co. and hence no more liable for prosecution”.</i>
22.	HC: Immunity from cheque-dishonour proceedings to Corporate Debtor, cannot be extended to ex-Director	[LSI-1084-HC-2021(P & H)]	HC dismissed a petition filed by a Corporate Debtor’s erstwhile Director (‘Petitioner’) challenging the order passed by learned Magistrate issuing summons against the Petitioner in proceedings u/s 138 of the Negotiable Instruments Act. Referring to SC ruling in P. Mohanraj wherein it was inter alia held that the moratorium u/s 14 of the IBC was applicable to cheque dishonour proceedings against the corporate debtor, HC remarked that “... <i>verdict covers with immunity any corporate debtor hence a juristic person, against rearings of proceedings under Section 138 of the Negotiable Instruments Act, and, does not likewise cover any natural person, working as a Director in the corporate entity concerned nor covers erstwhile directors.</i> ”.
23.	HC: IBC moratorium no bar on wilful defaulter proceedings against promoter	[LSI-473-HC-2021(CAL)]	Calcutta HC stated that mere apprehension of resolution of the corporate insolvency in future, by way of a prospective resolution plan which was yet to be materialized, could not absolve the Petitioner, in the capacity of either guarantor or promoter/whole-time Director, from the liability for such default, HC held that an act of wilful default, if committed by a promoter/whole-time director/guarantor of the Corporate Debtor who were in charge of the affairs of the defaulting company at the relevant period, was not absolved automatically by filing of an application u/s 7 of IBC.
24.	HC: Quashes compliant implicating Directors for defamation; “No provision for ‘vicarious liability’ under IPC”	[LSI-26-HC-2022(KER)]	HC quashed criminal proceedings initiated u/s 499 of the IPC (Defamation), against 3 Directors (the Chairman and Managing Director, Chief Executive Officer, and the owner of India Today Ltd.), and TV Today Network Ltd. for having allegedly telecasted a news item that displayed the photograph of Respondent with the wrong description (portrayed as main accused in murder case), and held “... <i>it is not possible to</i>

			<p><i>implicate the Directors, in the absence of specific averments indicating their role in commission of the offence...there is also no provision in the IPC, providing for vicarious liability upon the Directors of the Company.”</i></p> <p>Observing that all the allegations in the complaint were general in nature, and conspicuously, the persons who were directly responsible for airing the programme and had presented the news item, were not made as accused persons, Court remarked, “...the question that emerges here is whether merely because of the fact that the accused persons were holding high positions in the company, which is running the news channel, can they be implicated for the offence alleged.”.</p>
25.	HC: Cannot quash Sec. 138 proceedings against Directors basis IBC moratorium; Follows P. Mohanraj precedent	[LSI-59-HC-2022(MAD)]	<p>Madras HC dismissed criminal petition filed by the Directors of the accused company i.e. undergoing CIRP, that sought to quash proceedings initiated u/s 138 of the Negotiable Instruments Act. HC relied on SC ruling in P. Mohanraj and held that prosecution initiated by the Respondent against Petitioners could not be quashed on the basis of moratorium imposed under IBC. Thus, Court ruled that, the director of the company, had to be prosecuted as per the said SC judgment.</p>
26.	HC: Upholds order summoning Director in cheque-dishonor proceedings, given case at “nascent stage”	[LSI-1119-HC-2021(DEL)]	<p>Delhi HC upheld order of Trial Court that summoned the Respondent-Director of the accused company in a complaint u/s 138 of the Negotiable Instruments Act. Noted that Respondent-Director was responsible for the day-to-day affairs of the accused company, and that no material had been placed on record to establish that Respondent-Director was in fact not responsible for the day-to-day affairs of the accused company, Court held that the requirements of Sec. 141 N.I. Act were <i>prima facie</i> satisfied. HC quashed Revisional Court’s order that set aside Trial Court’s summoning order and concluded “...what role, if any, was played by respondent No. 2 at the time when the offence was committed shall be a matter of trial and may be discerned by the concerned Court once both parties have led evidence.”.</p>

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27.	HC: Dissolution can't absolve Promoters, if culpable, of their liability to pay company's dues	[LSI-128-HC-2022(P & H)]	Punjab & Haryana HC ruled that dissolution of a company shall not absolve its promoters/directors of their liability to pay the dues of the company, if any, provided they were culpable qua the same. Court held that <i>"Stakeholders are at liberty to take steps to recover their dues in accordance with law from the promoters of the Company (under liquidation), in case, they are found liable."</i>
28.	HC: Director liable to face trial when company accused of PMLA offences	[LSI-1106-HC-2021(MAD)]	Madras HC rejected petition filed by a Director/shareholder of a company accused of committing offences under PMLA that sought to quash summons issued by Additional District Judge for CBI cases w.r.t. his attendance to answer charges of the offences. Held that <i>"...even assuming the finding of the adjudicating authority has reached finality, the summons issued to the petitioner herein cannot be treated as premature or illegal, since the petitioner is liable to face the trial both in his individual capacity as well as a person in-charge and responsible for the conduct of the business of...Company, which has alleged to have contravened the provisions of the PMLA."</i>
29.	HC: Quashes PMLA proceedings against Andhra Bank's ex-Branch Manager, absent ingredients to fasten criminal-liability	[LSI-77-HC-2022(MAD)]	Madras HC quashed PMLA proceedings against the former Branch Manager of Andhra Bank, allegedly guilty of money laundering, having found that there was no shred of material to show that Petitioner had directly or indirectly assisted an individual in projecting the proceeds of crime as untainted money for him to be prosecuted u/s 3 and 4 of the PMLA. Relied on the SC ruling in Nikesh Tarachand Shah vs. UOI & Anr., and held that criminal liability u/s 3 r.w.s. 4 of the PMLA required commission of a scheduled offence, generation of proceeds of crime by commission of the scheduled offence and projection of proceeds of crime as untainted property. Whereas, Branch Manager's role was only limited to helping said individual to get huge loans from Andhra Bank by abusing his official position and nothing beyond that, HC opined that the prosecution of the Petitioner could not be sustained.
30.	HC: Denies bail to Avantha Group Founder	[LSI-130-HC-2022(DEL)]	Delhi HC dismissed application filed by Gautam Thapar, Founder and Chairman of

	Gautam Thapar in money laundering case		Avantha Group seeking regular bail in complaint filed by ED u/s 44/45 of PMLA, ruled that “...considering the parameters of Section 45(1) PMLA as well as the gravity of the alleged offences, it cannot be held that the applicant is not guilty of the alleged offences or that he is not likely to commit any such offence while on bail.”. HC observed that the Applicant was instrumental in the generation of the proceeds of crime of over Rs. 500 Cr. as he possessed the knowledge that the term loan was being taken from the bank on the basis of sham agreements and that the funds were going to be utilized for purposes other than sanctioned. HC observed that public money under the garb of aforesaid term loan was siphoned off, resulting in generation of ‘proceeds of crime’ as well as its layering and ultimate projection as untainted money, thus, denied the bail application despite the Applicant having satisfied the triple test for grant of bail.
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SEBI/SAT Rulings

31.	SAT: Quashes SEBI order debaring Non-executive Director, absent involvement in fraudulent GDR issue	[LSI-933-SAT-2020(MUM)]	SAT set aside SEBI order to the extent it debarred Company’s non-executive director (‘Appellant’) from accessing the securities market for 5 years for violating SEBI Act and PFUTP Regulations and held that “ <i>There is no finding that the appellant, being a director for more than 10 years, was deemed to be involved in the day-to-day affairs and management of the Company...</i> ”.
32.	SEBI: Penalizes Directors for diverting IPO proceeds, making manipulative disclosures in prospectus	[LSI-907- SEBI-2020(MUM)]	SEBI imposed a penalty of Rs. 45 lakh on the Managing Director and 2 Whole-Time Directors (‘Noticees’) of a Company for diverting proceeds from Company’s IPO and making wrong disclosures in violation of PFUTP Regulations and ICDR Regulations, and ruled that “ <i>by making reckless and careless representation...and manipulative disclosures in the prospectus, the Noticees misled the investors and induced them to subscribe to the shares in the IPO...</i> ”.
33.	SEBI: Issues ex-parte order restraining Company, Directors for	[LSI-696- SEBI-2020(MUM)]	SEBI issued ex parte directions against Company and its Directors (‘Noticees’), and inter alia restrained Noticees from buying, selling or otherwise dealing in securities, either directly or indirectly, or

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	prima facie violating public issue norms		associate themselves with securities market, on finding prima facie violation of various provisions of SEBI Act, Companies Act, ICDR Regulations, regarding public issue of equity shares and CRPS.
34.	SEBI: Imposes Rs. 20 Cr. penalty on Pancard Clubs, Directors for illegally mobilizing funds	[LSI-546- SEBI-2020(MUM)]	SEBI rejected Noticees' contention that there should be no action against them as they were non-executive independent Directors and did not take part in day to day business, in absence of any evidentiary proof that they did not attend the Board meetings during which the said schemes were launched. The Regulator further remarked that <i>"In terms of section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors shall be responsible for the conduct of the business of a company and liable for any non-compliance of law and such liability shall devolve on individual directors"</i> .
35.	SEBI: Restrains market access of Company and Directors, Promoters for non-compliance with public issue norms	[LSI-266- SEBI-2020(MUM)]	SEBI restrained Trinity Tradelink Ltd. ('Trinity') and its Promoter, Directors from accessing security market for 3 years for non-compliance with public issue norms as prescribed under the Companies Act, 1956 and ICDR Regulations, in a deemed public issue of equity shares to around 978 allottees prior to Trinity's merger with Omnitech Petroleum Ltd. Noting that the shareholders in the deemed public issue had opportunities to exit, SEBI opined that these shareholders have not been caused any substantial prejudiced due to non-compliance with provisions of the Act and thus, held that directions relating to buy-back of securities and providing exit option to investors were irrelevant and considered time consumed in initiation and completion of proceedings as a mitigating factor.
36.	SEBI: Directs Company, Directors to refund money raised through OCDs violating public issue norms	[LSI-247- SEBI-2020(MUM)]	SEBI held a company and its 8 Directors jointly and severally liable for refund of all the money collected through issuance of optionally convertible debentures along with interest @ 15% p.a, and clarified that liability of the directors shall be for the moneys collected during their respective directorship period.

37.	SAT: Quashes SEBI order restraining ex-MD, CEO from market, absent evidence	[LSI-231-SAT-2020(MUM)]	SAT allowed appeals filed by ex-MD and CEO ('Appellants') of Ricoh India Ltd. ('the Company') challenging SEBI order restraining Appellants from accessing/dealing in the securities market, citing no evidence against Appellants. Further, finding that the Company itself was under liquidation and the Appellants were not in-charge of the said Company and were therefore not in a position to influence its decisions, SAT pondered as to "...how long the Appellants would be kept out of the market through directions contained in an interim order and confirmatory order which are based on only a prima facie suspicion and vicarious liability attributable to a MD /CEO".
38.	SAT: Vicarious liability not automatic; Quashes SEBI order making inactive Director responsible for refund	[LSI-440-SAT-2019(MUM)]	SAT held that the mere fact that a person was a Director would not make him automatically responsible for refund of monies under Sec. 73(2) of the Companies Act, 1956.
39.	SEBI: Orders Directors, Company to refund sums raised for contravening public issue norms	[LSI-467- SEBI-2018(MUM)]	SEBI initiated actions against Company and its past and present Directors ('Noticees') for violating various Public Issue norms stipulated u/s 56, 60 and 73 of the Companies Act, 1956 ('Companies Act'), while mobilizing funds from public through issuance of Redeemable Preference Shares. SEBI further observed that offers and allotment of Redeemable Preference Shares, made by the Company during FYs 2011-2012 & 2012-2013 qualified as an offer made to the public in terms of Sec. 67(3) of the Companies Act, thereby mandating compliance with 'public issue' norms under the Companies Act.
40.	SEBI: Confirms restraint order against Sharepro & top management for illegal share-transfers/ dividend siphoning-off	[LSI-2051- SEBI-2017-(MUM)]	SEBI confirmed restraining of Registrar & Share Transfer Agent – Sharepro Services (I) Pvt. Ltd. and Mr. Govind Raj Rao (Promoter & MD), Mrs. Bhagyalaxmi Rao (Majority shareholder & director), Mrs. Indira Karkera (Vice President & Client Manager) and others (collectively 'Noticees') for grave lapses in transferring dividend and shares belonging to rightful investors.
41.	SEBI: Exonerates Independent-Directors from 'public issue' norms	[LSI-1767- SEBI-2017-(MUM)]	SEBI absolved 3 independent directors of a Company from contravention of provisions of Cos. Act, 1956 / SEBI (Issue

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	compliance, absent participation in daily affairs		of Capital and Disclosure Requirements) Regulations relating to public issue, however, imposed restrictions and directed Company and its executive directors to jointly and severally refund money to investors.
42.	SEBI: Penalises listed co., MD/WTD for failing to redress investor grievances, absolves independent directors	[LSI-1120- SEBI-2016-(MUM)]	SEBI penalizes listed co., its MD and WTD under SEBI Act for failing to redress investor grievances and failing to comply with its earlier directions. Exonerating two promoters from the proceedings as they do not hold any office as director nor in capacity of any officer bearer, SEBI stated <i>“it is settled law that to charge a person for the commission of an irregularity by co. or on behalf of co., he should be shown as in charge of and responsible for the conduct of the business of the company”</i> . Further absolving independent directors from the proceedings, the Regulator perused their appointment letters, and observed that they were not responsible for the work relating to SEBI, investors, public shareholders and auditors.
43.	SEBI: Imposes Rs.7,269 Cr. penalty on Pearls Agrotech & top-management for illegal fund mobilization	[LSI-736- SEBI-2015-(MUM)]	SEBI imposed penalty of Rs. 7,269 crores on Pearls Agrotech Corporation Limited ('PACL Ltd.') and directors (collectively referred to as 'Noticees') for illegal fund mobilization from general public by sponsoring and carrying on Collective Investment Schemes ('CIS'), without obtaining SEBI registration. The Regulator stated that amount of penalty commensurate with the default committed by Noticees, and clarified that liability to pay the penalty was joint and several (PACL Ltd. and directors).
44.	SEBI: Directs Company, MD to refund money unlawfully collected from debenture holders	[LSI-35- SEBI-2020(MUM)]	SEBI directed a Company and its MD to jointly and severally refund Rs. 11.41 Cr., collected through offer and allotment of Secured Redeemable Debentures to 9402 debenture holders within 90 days, having found that the Company mobilized the aforesaid funds without complying with provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations ('ILDS Regulations'). SEBI remarked that Noticees had merely claimed to have made necessary compliance of the provisions of the ILDS Regulations for issuance of the debentures, however, Noticees had failed to provide any

			documents or evidence to prove and substantiate the same, thus, SEBI opined that as per Sec. 73(2) of the Companies Act, the obligation to refund the amount with interest that was collected from investors under the Offer of Secured Redeemable Debentures, was mandatory on the Company and the officer in default i.e. Company's MD.
45.	SEBI: Lifts corporate veil, directs Noticee to disgorge Rs. 2.3 Cr. for insider trading	[LSI-553- SEBI-2020(MUM)]	SEBI lifted corporate veil, directed a company's Promoter and MD (who traded through the company's account) to disgorge the unlawful gains made/loss avoided to the tune of Rs. 2.3 Cr. Noted that Noticee dealt in shares of Ricoh India Ltd. ('RicoH') while being in possession of UPSI relating to RicoH's misstated accounts, in violation of insider trading norms. SEBI disagreed with the contention that no action could be taken against the Noticee as the company underwent CIRP and held " <i>...the liability of the Noticee in the present case stands established in his individual capacity. The fact of pending proceedings in IBC...will not absolve the liability of the Noticee</i> ".
46.	SEBI: Imposes Rs. 2,423 Cr penalty on PACL for illegal floating of 'Collective Investment Scheme'	[LSI-1849- SEBI-2017-(MUM)]	SEBI imposed a penalty of Rs. 2,423 Crores on PACL Ltd. and its directors ('Noticees') for illegally mobilizing funds from general public by having sponsored and carried out collective investment scheme ('CIS') without obtaining registration from SEBI, that contravened SEBI Act, 1992 ('Act') and SEBI (Collective Investment Scheme) Regulations, 1992 ('CIS Regulations'). SEBI rejected the argument of Noticees Nos. 2 to 5 that they being merely salaried directors, were not managing day-to-day affairs of the company, and their reliance on principles of corporate jurisprudence that a director was not personally liable for the acts of the company to hold that Noticee Nos. 2 to 5. SEBI further opined that directorship of a person was sufficient to fasten liability when allegations revolve around the company's main business activity, and specific role or participation of each director in the decision-making process was not required. SEBI further remarked that PACL, being a legal person, had to act through its directors, who could not escape liability as they were directly

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			involved and instrumental in illegal mobilization of money under the Scheme, without obtaining registration under SEBI. Thus, held PACL and its directors jointly and severally liable for violation of the Act and CIS regulations.
47.	SEBI: Bars Reliance Home Finance, Anil Ambani from market for allegedly siphoning-off funds	[LSI-70- SEBI-2022(MUM)]	SEBI restrained Reliance Home Finance Ltd. ('Company'/'RHFL') and Anil D. Ambani (Chairman of Reliance Group) along with 3 other KMPs of the Company from the securities market, until further orders, for their fraudulent conduct involving swindling huge sums of borrowed funds of RHFL for the benefit of promoter linked entities of the Company in flagrant violations of all canons of corporate governance. The Regulator remarked <i>"Looking at the conduct and propensity of the Company to indulge in...activities of diversion of funds and misrepresentation of books of accounts, falsification of financial statements resulting into non-disclosure of true & fair information to the public at large, and also considering the collective misconduct exhibited by the Key Managerial Persons of the Company, there is an urgent need that the Company should be prevented from pursuing such despicable activities which are visibly in violation of securities laws."</i>
48.	SEBI: Company's Directors cannot be held responsible for fund-mobilisation, given appointment done without consent	[LSI-1126- SEBI-2021(MUM)]	SEBI disposed of the proceedings against 3 purported Promoters/Directors of a Company having allegedly engaged in fund mobilising activity from the public through issue and allotment of Secured NCDs, on finding that the Noticees were fraudulently appointed as Directors without their consent. Observed that the purported Promoters/Directors took immediate steps to ensure action by the ROC and the Company for rendering such appointment invalid upon obtaining knowledge of their fraudulent/illegal appointment as Directors of Company. SEBI concluded <i>"Noticees cannot be held to be responsible for repayment to investors on account of the illegal fund mobilization ..."</i>
49.	SEBI: Directs MD of company under liquidation, to refund money collected by	[LSI-1130- SEBI-2021(MUM)]	SEBI directed a company's Managing Director ('MD') to refund money collected by a company, undergoing liquidation, for failure to comply with obligations of filing prospectus pertaining

	contravening public-issue norms		to issuance of Redeemable Cumulative Preference Shares ('RCPS'), that contravened public issue norms. SEBI noted that the company was undergoing liquidation and remarked "...in the peculiar facts of the present case, when the main culpable entity viz., the Company is now under a statutory shield, the other persons who are also holding "joint and several" liabilities under law, viz., the Directors of the Company, deserve no relaxation from the liability so fastened of them by law."
<u>NCLT/NCLAT Rulings</u>			
50.	NCLAT: No "sleeping directors" concept under IBC; Upholds NCLT order requiring Independent Directors' cooperation	[LSI-721-NCLAT-2020(NDEL)]	NCLAT upheld NCLT order allowing Resolution Professional's application seeking that Corporate Debtor's suspended Directors be directed to cooperate in the conduct of insolvency proceedings, while rejecting Independent Directors' ('Appellants') 'sleeping directors' defence. NCLAT remarked that, "...one cannot find the term 'Sleeping Directors' either under the Companies Act, 2013 or under the 'I&B' code, 2016. Therefore, the contra contentions advanced on behalf of the Appellants are unworthy of acceptance...". Contrary to Appellants' reliance on a recent clarification issued by MCA regarding prosecution against Independent Directors, NCLAT stated that the said MCA circular can be taken advantage of by the 'Independent Directors' only under the Companies Act, 2013, as per Section 149(12)(ii) of the Act. Pointing out that Sec. 19 of IBC casts an obligation on the personnel and promoters of the Corporate Debtor to extend all assistance and cooperation which RP requires in conducting CIRP, NCLAT held that Sec. 19 was not only restricted to managing/executive Directors, and discards contentions raised by the Appellants.
51.	NCLAT: Erstwhile MD of Company under liquidation to face criminal trial in 'personal capacity'	[LSI-380-NCLAT-2020(NDEL)]	NCLAT held that even after Corporate Debtor's liquidation began, its former MD would have to face criminal trial in his personal capacity, wherein if the offence was proved, the MD would be punished.

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52.	NCLAT: Pending SFIO investigation, NCLT can't give clean chits; Quashes Gitanjali Gems order	[LSI-378-NCLAT-2018(NDEL)]	Noting that Serious Fraud Investigation Office ('SFIO') was investigating into affairs of the Respondent Company, NCLAT opined the NCLT's interim order could not restrict any particular individual or person if investigation for alleged fraud was pending. Opined that the Tribunal's power was wide enough u/s 242 of the Act to 'make such order as it thinks fit', to bring to an end the matters complained of. Further opined that the Tribunal can u/s 339 and 340 of the Act, take action against any past or current director, manager or officer of the Company, if found to be guilty of misfeasance or breach of trust in relation to the Company.
<u>PMLA</u>			
53.	AT PMLA: Appellate Tribunal invokes 'proportionality' doctrine, spares Rajasthan Royals owners FEMA penalty blushes	[LSI-477-AT PMLA-2019(NDEL)]	Appellate Tribunal upheld FEMA violation w.r.t. Rs. 33 Cr. payment made to BCCI by various individuals/entities connected to Rajasthan Royals for bidding of IPL franchise, however struck down the penalty imposed on several individual directors of the concerned entities and substantially reduced the penalties on others, invoking "doctrine of proportionality". Further, the Tribunal accepted the ED's contentions that in each of the 3 tranches of payments made to BCCI, the remitter of funds was different from the 'investor' (a Mauritius based entity) to whom shares were sought to be issued.

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