Director’s personal guarantee—A void agreement

Directorâ€™s personal guaranteeâ€”A void agreement
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Cite as: (2011) PL March. S-9 Evolution of concept of legal entity A Division Bench of the Delhi High Court in J.B. Exports Ltd. v. BSES Rajdhani Power Ltd.1 observed that:

12. â€¦ The concept that a company is a distinct legal entity apart from its shareholders, vide Salomon v. Salomon & Co. Ltd.2 had a historical purpose. Its main purpose was to encourage entrepreneurs to start new business ventures and, thus, help in the process of industrialisation.

This background is so important that it merits consideration in detail as follows.

The Delhi High Court further observed that:

13. In every business there is a risk that the business may fail due to recession, competition, etc. Hence, businessmen were reluctant to set up new industrial ventures out of fear that if it failed, recovery would be issued in respect of the loans they had taken and thereupon even their household and personal effects may be sold in connection with the recovery. Hence, businessmen were reluctant to take risks and start new industrial ventures. To get over this hurdle and to encourage industrialisation the legal principle was created that if a company is incorporated under the Companies Act, the liability of the shareholders becomes limited because the shareholders, directors, etc. are legally treated as being different from the company. A company was held to be a distinct legal entity separate from its shareholders and directors. This legal principle gave protection to businessmen who were otherwise reluctant to start new industrial ventures due to the risk involved. Thus, this legal principle was of great help to industrialisation in Europe (where industrialisation first began during the Industrial Revolution) and thereafter all over the world.2a

Effect of incorporation: Company as a separate legal person As per Section 34 of the Companies Act, 1956 one of the characteristics of a company is that it is an incorporated body of persons. It is constituted into a distinct and independent person in law and is endowed with special rights and privileges. The Honâ€™ble Supreme Court in TELCO v. State of Bihar3 observed as follows:

24. â€¦ The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly the creditors of the members have no right to the assets of the corporation. This position has been well established ever since the decision in Salomon v. Salomon & Co. Ltd.4 was pronounced in 1897 and indeed, it has always been the well recognised principle of common law.

Limited liability Section 13(2) of the Companies Act, 1956 provides that, â€œ[t]he memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.â€• (emphasis supplied) This means that no member can be called upon to pay anything more than the nominal value of the shares held by him, or so much thereof as remains unpaid; and if his shares be fully paid up his liability is nil.

â€œThe privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation.â€• The company, being a separate person, is the owner of its assets and bound by its liabilities. Members, even as a whole, are neither the owners of the companyâ€™s undertaking, nor liable for its debts. Where the subscribers exercise the choice of registering the company with limited liability, the membersâ€™ liability becomes limited or restricted to the nominal values of the shares taken by them or the amount guaranteed by them. No member is bound to contribute anything more than the nominal value of the shares held by him [J.H. Rayner (Mincing Lane) Ltd. v. Deptt. of Trade and Industry6]. In a partnership, on the other hand, the liability of the partners for the debts of the business is unlimited. They are bound to meet, without any limit, all the business obligations of the firm. The whole fortune of a partner is at stake, as the creditors can levy execution even on his private property. Speaking of the advantage of trading with limited liability, Buckley, J. observed (London & Globe Finance Corpn. Ltd., In re7, Ch at p. 731):

â€¦ The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country. They have, to the advantage as well of the investor as of the public, allowed and encouraged the aggregation of small sums into large capitals which have been employed in undertakings of great public utility largely increasing the wealth of the country. (emphasis supplied)

General powers of Board Sub-section (1) of Section 291 of the Companies Act, 1956 provides as follows:

291. General powers of Board.â€”(1) Subject to the provisions of this Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Borrowing Section 292(1)(c) of the Companies Act, 1956 provides that:

292. Certain powers to be exercised by Board only at meeting.â€"(1) The Board of Directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board:
(a)-(b) * * *
(c) the power to borrow moneys otherwise than on debentures; (emphasis supplied)

A company cannot borrow money unless it is so authorised by its memorandum. In the case of a trading company, it is not, however, necessary that the objects clause of its memorandum should expressly authorise it to borrow. As borrowing is incidental to trading, such a company has implied power to borrow. Other companies must have a borrowing power clearly specified in the memorandum.

Finances The company is the only medium of organising business which is given the privilege of raising capital by public subscriptions either by way of shares or debentures. Further, public financial institutions lend their resources more willingly to companies than to other forms of business organisation. The facility of borrowing and giving security by way of a floating charge is also an exclusive privilege of companies. In New Horizons Ltd. v. Union of India8, Comp Cas at p. 802 the Honâ€™ble Delhi High Court has observed that â€œcapital in many cases is the lifeblood of a concern, and it is always great misfortune where the development of a business is arrested or restricted by want of capitalâ€•.

Directors as agents It was clearly recognised as early as 1866 in Ferguson v. Wilson9 that directors are in the eye of the law, agents of the company. The Court said:

The company â€¦ has no person; it can act [only] through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent.

The general principles of agency, therefore, govern the relations of directors with the company and of persons dealing with the company through its directors. Where the directors contract in the name, and on behalf of the company, it is the company which is liable on it and not the directors.

Share qualification Section 270(1) of the Companies Act, 1956 provides as follows:

270. Time within which share qualification is to be obtained and maximum amount thereof.â€"(1) Without prejudice to the restrictions imposed by Section 266, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director. (emphasis supplied)

By necessary implication it follows that a director may not hold any share qualification at all, if he is not required by the articles of the company to hold a specified share qualification.

Directors, etc. with unlimited liability in limited company Section 322(1) of the Companies Act, 1956 provides as follows:

322. Directors, etc., with unlimited liability in limited company.â€"(1) In a limited company, the liability of the directors or of any director or manager may, if so provided by the memorandum, be unlimited. (emphasis supplied)

By necessary implication it follows that a directorâ€™s liability is limited.

As aforesaid9a Section 13(2) the Companies Act, 1956 provides that:

13. (2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited. (emphasis supplied)

Further, Section 270(1) of the Companies Act, 1956 provides that if not required by the articles a director may not hold any share qualification. Therefore, a director may not have at all even a limited liability for the debts of the company, as a member as provided in Section 13(2) of the Companies Act, 1956. This view has already been upheld by the Delhi High Court in Indian Overseas Bank v. R.M. Mktg. and Services (P) Ltd. 10 The Court observed, inter alia, that â€œâ€¦ simply because they were directors of Defendant 1 they could not be fastened with the liability as Defendant 1 which is a company incorporated under the Companies Act is a separate legal entityâ€•.

Registration of charges Section 125 of the Companies Act, 1956 (hereinafter referred to as â€œthe Actâ€•) is reproduced below for ready reference:

125. Certain charges to be void against liquidator or creditors unless registered.â€”(1) Subject to the provisions of this part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the companyâ€™s property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within thirty days after the date of its creation: (emphasis supplied)

As per Section 125 of the Act the power to borrow includes the power to mortgage the companyâ€™s assets or to create a charge upon them. The reason is that lenders always insist on some security and the only security that a company can give is to charge its assets. Any charge or mortgage created on certain specified assets of a company must be registered with the Registrar of Companies under Section 125 of the Act.

Section 139 of the Act is reproduced below for ready reference:

139. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.â€”The Registrar [i.e. the Registrar of Companies] may, on evidence being given to his satisfaction with respect to any registered charge,â€”
(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the companyâ€™s property or undertaking;
enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the companyâ€™s property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company. (emphasis supplied)

By necessary implication it follows that any charge/mortgage created by the banks on the Directorâ€™s personal property/property of a third party, even if unconsciously registered by ROC, is illegal being without the authority of the Act, and therefore unenforceable in law.

Directorâ€™s personal guarantee Since long the banks and public financial institutions (hereinafter collectively referred to as â€œthe banksâ€•) have unilaterally and arbitrarily developed a practice, without the authority of law, to execute personal guarantee agreements with the directors of a company to secure the debts of the company. This view is supported by the following latest judgment of the Supreme Court.

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Recently, the Supreme Court in Karnataka State Financial Corpn. v. N. Narasimahaiah11 has observed as follows (in SCC pp. 188-89, para 24):

24. Banking practice may enable a financial corporation to ask for a collateral security. Such security, we would assume, may be furnished by the Directors of a Company but furnishing of such security or guarantee is not confined to the Directors or employees or their close relatives. They may be outsiders also. The rights and liabilities of a surety and the principal borrower are different and distinct. (emphasis supplied)

Therefore, it stands concluded, without any doubt, that the banks have developed the practice to execute personal guarantee agreements with the directors of a company to secure the debts of the company without the authority of law. This practice is against the principle of limited liability of the shareholders as well as directors of the company as provided in the Companies Act, 1956. Accordingly, it is clearly against the letter and spirit of the Companies Act and therefore unlawful.

What agreements are contracts Section 10 of the Contract Act, 1872 provides that:
An agreement between two or more parties becomes a contract when the following conditions are satisfied:
(1)-(2) * * *
(3) The partiesâ€™ consent is free.
(4) The partiesâ€™ object is lawful.

â€œFree consentâ€• defined 14. â€œFree consentâ€• defined.â€”Consent is said to be free when it is not caused by:

(1) * * *
(2) undue influence, as defined in Section 16, or

(3)-(5) * * *
Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake. (emphasis supplied)

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Object is lawful In P. Ramanatha Aiyarâ€™s The Law Lexicon, 2nd Edn., 2007 the term â€œobjectâ€• is defined:

Object.â€”As a noun, the end aimed at; the thing sought to be accomplished (as) object aimed at; the aim or purpose (as) object not authorised by law; the thing sought to be attained (as) object of the law. (emphasis supplied)

The Honâ€™ble Supreme Court in Gurmukh Singh v. Amar Singh12 has held that:

2. â€¦ The word â€œobjectâ€• would mean the purpose and design which is the object of the contract, if it is opposed to public policy which tends to defeat any provision of law or purpose of law, it becomes unlawful and thereby it is void under Section 23 of the Contract Act.

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Further, in P. Ramanatha Aiyarâ€™s The Law Lexicon, 2nd Edn., 2007 the term â€œlawfulâ€• is defined as:

Lawful.â€”By lawful, it means not contrary to law, public policy or void ab initio, or unlawful.

(Order 23 Rule 3 CPC, S.G. Thimmappa v. T. Anantha13, AIR at p. 4)

Undue influence Section 16 of the Contract Act provides that:

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16. â€œUndue influenceâ€• defined.â€”(1) A contract is said to be induced by â€œundue influenceâ€• where the relations subs between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) * * *

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. (emphasis supplied)

Position of dominance necessary for presumption to arise The Privy Council in Raghunath Prasad v. Sarju Prasad14 pointed out the conditions for presumption to arise. Referring to sub-section (3) of Section 16, which provides for presumption of undue influence, Lord Shaw observed as follows:

â€¦ By that section three matters are dealt with. In the first place, the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached, namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. â€¦ the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.

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Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other? (emphasis supplied)

Inequality of bargaining power The presumption of undue influence may also arise from the fact that there is such an inequality of bargaining power between the parties that one can cause economic duress to the other. The decision of the Court of Appeal in Lloyds Bank Ltd. v. Bundy15 is a remarkable illustration of the concept of inequality of bargaining

power.

A contractor borrowed a sum of money from a bank. He could not pay back in time. The banker pressed for payment or for security. He suggested that his father might mortgage the familyâ€™s only residential house. The bank officer visited the father and obtained his signatures upon readymade papers. The contractor still could not pay and the banker sought to enforce the mortgage which might have meant throwing out of the family from its only residence. Accordingly, Mr Bundy relied upon the unfair character of the mortgage. He was allowed to set aside the mortgage.

Judicial intervention for rescuing parties from unreasonable terms In Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly16 (SCC at p. 206) the Supreme Court has noted that the word â€œunconscionableâ€• means something as shows no regard for conscience and which is irreconcilable with what is right or reasonable. The matter before the Court was a service contract. A clause in the contract empowered the employer (a government undertaking) to remove an employee by three monthsâ€™ notice or pay in lieu. The employee, who contested the validity of this clause, was removed by handing him over a three monthsâ€™ pay packet. The Supreme Court regarded the clause to be constitutionally as well as contractually void. The Court added that any term which is so unfair and unreasonable as to shock the conscience of the Court would be opposed to public policy therefore also void under Section 23 of the Contract Act. The contract was not based upon a real consent. It was rather an imposition upon a needy person. The term was unconstitutional because it was so absolute that any officer could be made a target irrespective of his conduct, good or bad. (emphasis supplied)

Commenting upon this expanding power of the court to relieve a party from the consequences of his own contract, a learned writer J.H. Baker says that â€œfreedom of contract turns out to be a misleading guide when so many contracts are not free in the economic sense. The notion of contract as private legislation appears less attractive when legislation is always drawn up one-sidedly. Judges are empowered to read in terms which are not there, or read out terms which are there. They are to impose reasonableness. Whatever is not reasonable is not law. If the parties have agreed to something unreasonable, they should be treated as if they have not agreed at all and released. (emphasis supplied)

Serious terms of a contract must be specifically brought to the notice of the parties The Bombay High Court in Road Transport Corpn. v. Kirloskar Bros. Ltd.17 said that it is for the carrier to plead and prove that the print on the receipt was brought to the notice of the consignor and that he had agreed to and accepted the same. The Court held that it is necessary that serious terms of a contract must be specifically brought to the notice of the parties whose rights are sought to be curtailed.

In Oriental Fire and General Insurance Co. Ltd. v. New Suraj Transport Co. (P) Ltd.18 the consignment note was not even signed by the booking party or his agent, the Allahabad High Court held that the consignor was not bound by a printed term about the exclusive jurisdiction. The Court said that something more must be done than merely printing the terms on consignment documents. (emphasis supplied)

In Road Transport Organisation of India v. Barunai Powerloom Weaverâ€™s Coop. Society Ltd.19 the Calcutta High Court held that the law requires that before making a person bound by any such term (a clause in a consignment note as to exclusive jurisdiction) it must be proved that the same was brought to the knowledge of the consignor in such a way that it should seem to be the result of a mutual assent.

In Grandhi Pitchaiah Venkataraju & Co. v. Palukuri Jagannadham & Co.20 where a consignment way bill contained the words â€œsubject to Calcutta jurisdictionâ€•, the Andhra Pradesh High Court ignored it since it was not one to which the plaintiff assented. Following these principles in East India Transport Agency v. National Insurance Co. Ltd. 21 the Andhra Pradesh High Court came to the conclusion that a term as to the place of suit was not binding on the insurer who had paid out the consignee and who was then suing the carrier for the negligent loss of the goods unless it could be proved that the insurer too was made or was otherwise aware of the terms.

The law plays in this respect the role of a parent. It has been opined by the learned author Anthony T. Kronman, in Paternalism and the Law of Contracts22, â€œA person who would give away too much of his own liberty must be protected from himself, no matter how rational his decision or compelling the circumstancesâ€•. Therefore, it is expected that DRT/courts shall take suo motu cognizance of the legal gimmick being played by the banks in drafting their documents regarding the Directorâ€™s personal guarantee agreement and if the borrower/director has agreed to something unreasonable, he should be treated as if he has not agreed at all and released23.

What considerations and objects are lawful, and what not Section 23 of Contract Act provides as follows:

23. What considerations and objects are lawful, and what not.â€”The consideration or object of an agreement is lawful, unlessâ€”
it is forbidden by law; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or (emphasis supplied)

Defeat any law Sometimes the object of, or the consideration for, an agreement is such that though not directly forbidden by law, it would, if permitted, defeat the provisions of any law. Such an agreement is also void.

Undercutting of statutory privileges A term in a contract of carriage requiring that notice of loss must be given within 30 days of the arrival of the goods has been held by the Supreme Court to be contrary to and defeating Section 10 of the Carriers Act, 1865, which prescribes a period of six months for the purpose. (M.G. Bros. Lorry Service v. Prasad Textiles24)

In V. Raghunadha Rao v. State of A.P.25 It was held that:

the clauses in question were an attempt to relieve the State of its liability and the Court said that a State is not free to impose arbitrary or unjust clauses in a public contract. (emphasis supplied)

Conclusion In view of the above discussion the following inferences may be drawn:

(1) The Companies Act provides that the directors of a company are not liable for the debts of the company. This view has been upheld by the Delhi High Court in Indian Overseas Bank v. R.M. Mktg. and Services (P) Ltd.26 and subsequently by a Division Bench of the Delhi High Court in J.B. Exports Ltd. v. BSES Rajdhani Power Ltd. 27
(2) It stands concluded that the agreement of personal guarantee of a director being executed by the banks as a prerequisite, amounts to making the liability of a director unlimited towards the debts of a company, which is absolutely prohibited by the provisions of the Companies Act, 1956.
(3) Further, the consent of a director is not free being obtained by the banks by undue influence, because the company is in need of funds for its working capital requirements and the banks have made the execution of agreement of personal guarantee by a director a prerequisite for obtaining the working capital limits from the banks.
(4) Section 23 of the Contract Act provides that every agreement, of which the object or consideration is unlawful, is void. Therefore, the agreement of personal guarantee executed by a director is a void agreement, because its object is unlawful as it defeats the provisions of the Companies Act, 1956.
(5) Public servant disobeying law, with intent to cause injury to any person. Section 166 of the Penal Code, 1860 provides as follows:
166. Public servant disobeying law, with intent to cause injury to any person.â€”Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. (emphasis supplied)

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The insistence of the banks for execution of personal guarantee by a director amounts to disobeying the provisions of Companies Act, 1956, and therefore, the officers of the banks have committed an offence punishable under Section 166 IPC.

Now let us examine some provisions of the DRT Act, 1993 and Securitisation Act, 2002.

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as â€œthe DRT Actâ€•) 34. Act to have overriding effect.â€”(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

Section 2(g) of the DRT Act provides as follows:

2. (g) â€œdebtâ€• means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application; (emphasis supplied)

Admittedly, by the letter and spirit of the DRT Act, 1993 it means â€œa debtâ€• is due from a company and not from its directo or promoter.

When does the overriding effect operate As per the rules of interpretation the provisions of an Act are to be interpreted keeping in view the object of enactment of that Act. The important aspect to notice is that the overriding effect of the

provisions of the Act, scheme or rules made thereunder would be only when there is anything inconsistent in the said Act or rules or scheme vis-Ã -vis the other laws or provisions. If the rules or schemes made under the Act are silent on any particular subject-matter and the other law requires any particular action being taken in respect thereof, such a law would have to be complied with. As held by the Honâ€™ble Supreme Court in the important decisions rendered in M. Karunanidhi v. Union of India28; Hoechst Pharmaceuticals Ltd. v. State of Bihar29 and other cases, the material test of inconsistency is that both the provisions under consideration should not be able to stand together i.e. if one is followed, the other, in the result, would be violated. This may arise by reason of direct conflict or indirectly by the later law occupying the same field, as the earlier one. It is in this context that in several schemes of BIFR where fresh issue of share capital in case of merger or other cases is envisaged, the approval of the Controller of Capital Issues earlier required under the Capital Issues (Control) Act, 1947 has been specifically put out of the way.

The Honâ€™ble Supreme Court in Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd.30, held that the special legislation SICA, 1985 was to prevail over the provisions of the earlier special legislation, the State Financial Corporations Act, 1950. Therefore, it would be a case of misdirecting oneself, if he assumes that the DRT Act, 1993 shall override each and every law for the time being in force in India. For example the mandate of Section 22(1) of SICA, 1985 had always an overriding effect on the initiation or continuance of proceedings before DRT under the DRT Act, 1993, whereas the DRT Act, 1993 is a later special Act than SICA, 1985 and also has a non obstante clause in Section 34 of the DRT Act, 1993. It is pertinent to note that subsequently SICA, 1985 has been included in Section 34(2) of the DRT Act, 1993 by the Amendment Act, 2000 with effect from 17 1 2000.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as â€œthe Securitisation Act, 2002â€•) 2. (1)(f) â€œborrowerâ€• means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance; (emphasis supplied)

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17. Right to appeal.â€”(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

(2)-(6) * * *

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

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37. Application of other laws not barred.â€”The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force. (emphasis supplied)

Conclusion and recommendations From the above the following inferences may be drawn:

(1) DRT, while hearing appeals under Section 17 of the Securitisation Act, 2002, cannot override provisions contained in any other law for the time being in force, as DRT has to act in accordance with Section 17(7) of the Securitisation Act, 2002, which provides: â€œSave as otherwise provided in this Actâ€• and Section 37 of the Securitisation Act, 2002 provides: â€œApplication of other laws not barredâ€•.

(2) The director should immediately file a declaratory suit in a civil court to get cancelled the directorâ€™s personal guarantee, because Section 2(f) of the Securitisation Act, 2002 provides that, â€œ â€˜borrowerâ€™ means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee .â€•(emphasis supplied)

(3) Similarly, the director should immediately file an application before the Registrar of Companies to get cancelled the charge created on the personal property of director/any third party, because Section 2(f) of the Securitisation Act, 2002 provides that, â€œ â€˜borrowerâ€™ means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institutionâ€• (emphasis supplied). And as per Section 139 of the Companies Act, 1956 the Registrar has power to enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the companyâ€™s property.

(4) However, some grounds of defence may also be raised by the guarantors as per the latest judgment of the Supreme

Court in Karnataka State Financial Corpn. v. N. Narasimahaiah31 in which the Court has observed as follows:

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24. â€¦ Apart from the defences available to a principal borrower under the provisions of the Contract Act, a surety or a guarantor is entitled to take additional defence. Such additional defence may be taken by the guarantor not only against the corporation but also against the principal debtor. He, in a given situation, would be entitled to show that the contract of guarantee has come to a naught. Ordinarily, therefore, when a guarantee is sought to be enforced, the same must be done through a court having appropriate jurisdiction. In the absence of any express provision in the statute, a person being in lawful possession cannot be deprived thereof by reason of default on the part of a principal borrower. (emphasis supplied)

(5) The Supreme Court in the latest judgment in Karnataka State Financial Corpn. v. N. Narasimahaiah32 has further observed as follows:

40. Right to property, although no longer a fundamental right, is still a constitutional right [Article 300 A]. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation. â€¦

41. A surety may be a Director of the Company. He also may not be. Even if he is a close relative of the Director or the Managing Director of the Company, the same is not relevant. A Director of the Company is not an industrial concern. He in his capacity as a surety would certainly not be. A juristic person is a separate legal entity. Its veil can be lifted or pierced only in certain situations. (See Salomon v. Salomon and Co. Ltd.33, Dal Chand and Sons v. CIT, Juggilal Kamlapat v. CIT35 and Kapila Hingorani v. State of Bihar36.)

(6) Law declared by the Supreme Court to be binding on all courts.â€” Article 141 of the Constitution of India provides that:

141. Law declared by Supreme Court to be binding on all courts.â€”The law declared by the Supreme Court shall be binding on all courts within the territory of India.

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Therefore, the ratio of the judgment of Supreme Court in Karnataka State Financial Corpn. v. N. Narasimahaiah37 given above, is binding on the Debts Recovery Tribunals and other authorities under the DRT Act, 1993 and the Securitisation Act, 2002 respectively.

Dena Bank â€” A case study (Letter of guarantee) An extract of Para 1 of the letter of guarantee of Dena Bank is reproduced below for ready reference:

In consideration of Dena Bank (hereinafter called â€œthe Bankâ€•) giving/having given credit accommodation or granting/having following credit facilities viz. â€¦â€¦.to â€œM/s Pâ€• â€¦â€¦by making, opening, continuing a loan/overdr credit account or the discounting put on â€¦â€¦.and/or negotiating bills with or without security and/or in consideration of Bank opening and giving the credit and/or trust receipt in favour ofâ€”on terms and conditions that may be settled between you and the saidâ€”at any time and from time to time with reference to me â€œMr Kâ€• residing atâ€”jointly and severally and irrevocably hereby agree with and guarantee to you the due payment and discharge (within) two days after demand and writing, without demur or protest of all amounts due and payable to you by â€œM/s Pâ€• (hereinafter called â€œthe Principalâ€• timeâ€¦.

An extract of Para 3 of letter of guarantee of Dena Bank is reproduced below for ready reference:

â€¦ The guarantee shall continue in force notwithstanding the discharge of the Principal by operation of law or my death or the death of any of us and shall cease only on payment of the amount guaranteed hereunder either by me or any of us.

Comments What considerations and objects are lawful, and what not

Section 23 of the Contract Act, 1872 provides as follows:

23. What considerations and objects are lawful, and what not.â€”The consideration or object of an agreement is lawful, unlessâ€”

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or (emphasis supplied)

Defeat any law Sometimes the object of, or the consideration for, an agreement is such that though not directly forbidden by law, it would, if permitted, defeat the provisions of any law. Such an agreement is also void.

The object of Para 3 of the letter of guarantee is unlawful, because it seeks to make the guarantor liable for payment of the amount guaranteed even if the principal is discharged by operation of law i.e. by operation of the Companies Act, 1956 and any other applicable law. Therefore Para 3 is void as per Section 23 of the Contract Act, because if permitted it would defeat the provisions of the Companies Act, 1956.

An extract of Para 4 of the letter of guarantee of Dena Bank is reproduced below for ready reference:

â€¦ I/We also agree that I/We shall not be discharged from my/our liability by your releasing the principal or by any act or omission of yours the legal consequence of which may be to discharge the principal or by any act of yours which would but for this present provision be inconsistent with my/our rights as surety or by your omission to do any act, which, but for this present provision your duty to me/us would have required you to do. I/We hereby consent to each and every of the acts mentioned above as you may think fit. Moreover though as between the borrower and me/us, I am/We are sureties only, I/We agree that as between yourselves and me/us I am/We are borrowers jointly with him accordingly I/We shall not be entitled to any of the rights conferred on sureties by Sections 133, 134, 135, 139 and 141 of the Indian Contract Act.

Comments Surrender of rights The consent of the guarantor is obtained by undue influence by the Bank therefore, Para 4 of the letter of guarantee is voidable.

In Muniammal v. Raja38, the Honâ€™ble Madras High Court held that a wife who is entitled to maintenance can give up her right in consideration of a lump sum payment, but the surrender of the right to claim revision of the amount in the context of rising prices would be opposed to public policy and therefore, would be void under Section 23 of the Contract Act.

In Bhaskar Tanhaji Dhokrat v. Parwatabai Bhaskar Dhokrat39 the Honâ€™ble Bombay High Court held that a custom to the effect that legal right to maintenance would become surrendered would be contrary to law if it is destructive of those rights without alternative security.

Ordinarily, an agreement to give up oneâ€™s legal right is not hit by Section 23 of the Contract Act. The Honâ€™ble Supreme Court in B.O.I. Finance Ltd. v. Custodian40 held that what makes an otherwise legal agreement to be void is that its performance is impossible except by disobedience of law. It is submitted that, in the authorâ€™s view, performance of Para 4 of letter of guarantee is not possible except by disobedience of the provisions of the Companies Act, 1956; further the performance of Para 4 of the letter of guarantee is not possible except by disobedience of the provisions of the Contract Act, because it coerces the guarantor to act in dual legal capacity, firstly as surety, and, secondly as borrower jointly with the principal, simultaneously.

The Honâ€™ble Karnataka High Court in City Municipal Council v. C. Ramu41 and Suresh Mahajan v. Myveneers42 held that in order to attract Section 23 of the Contract Act, it is not necessary that the contract should be tainted with illegality. It would be enough if it contains terms which are so unfair and unreasonable that they shock the conscience of the court.

However, in a subsequent judgment the Karnataka High Court in T. Raju Setty v. Bank of Baroda43, held that this general observation is not applicable where a guarantor agrees not to claim the benefit of Sections 133, 134, 135, 139 and 141 of the Contract Act which give to the guarantor certain protective rights. Such rights being variable with the consent of the surety, there is no violation of the Contract Act if he agrees not to claim any of those rights. (It is respectfully submitted that this judgment is distinguishable and not applicable in the context of the case in hand, because the initial consent of the guarantor is obtained by undue influence and therefore, his rights as surety being variable only with his free consent, however subsequent consent is also obtained by undue influence and therefore, such terms of the letter of guarantee are voidable under Section 10 of the Contract Act.)

The conduct of the Bank in inserting such onerous terms, which are contradictory to each other, in the same Para 4 of letter of guarantee amounts to approbate and reprobate at the same time, which is unlawful and therefore such terms of the letter of guarantee are void under Section 23 of the Contract Act. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

An extract of later part of Para 4 of letter of guarantee of Dena Bank is reproduced below for ready reference:

â€¦ And for all the purposes of this claim the principal is empowered to give consent on my/our behalf and any consent given by the principal shall be deemed to have been given by me/us in all respects as if the same had been expressly given by me/us in writing.

Comments Surrender of rights It is evident as the daylight that the principal is empowered to give consent on behalf of surety, which appears quite illogical, the inescapable conclusion is that the consent of the guarantor is obtained by undue influence by the Bank therefore, Para 4 of the letter of guarantee is voidable. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

An extract of Para 5 of letter of guarantee of Dena Bank is reproduced below for ready reference:

The Bank may recover against me/us to the extent hereinbefore mentioned notwithstanding that the principal or his agents, partners, directors or officers may have exceeded his or their powers or that the arrangements with the Bank may have been ultra vires and without being bound to enforce its claim against the borrower of any other person or other security held by the Bank. The Bank shall not be bound to inquire into powers of the principal or his agents or partners, directors or officers purporting to act on behalf of the borrowers and all moneys dues or liabilities incurred shall be

deemed to form part of the present guarantee notwithstanding that the principal or his agents, partners, directors and officers may have exceeded his or their powers or the arrangement with the Bank may have been ultra vires.

Comments Surrender of rights The consent of the guarantor is obtained by undue influence by the Bank therefore, Para 5 of the letter of guarantee is voidable. Further, it is clearly against the principles contained in Section 13(1) of the Companies Act, 1956, as for ultra vires acts of his agents, directors and officers the principal itself is not liable. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

An extract of Para 6 of letter of guarantee of Dena Bank is reproduced below for ready reference:

I/We waive in the Bankâ€™s favour all or any of my/our rights against the Bank or the principal as may be necessary to give effect to any of the provisions of this guarantee.

Comments Surrender of rights The consent of the guarantor is obtained by undue influence by the Bank therefore, Para 6 (and also Para 7) of the letter of guarantee is voidable. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

An extract of Para 10 of letter of guarantee of Dena Bank is reproduced below for ready reference:

â€¦ if the principal shall become insolvent or go into liquidation or compound with his creditors, the Bank shall be at liberty without discharging my/our liability to make or assent to any compromises, compositions or arrangements or prove and to rank as creditor in respect of the amount claimable by the Bank or any items thereof â€¦ to the entire exclusion and surrender of my/our rights as sureties in competition with the Bank (and) any rule of law or equity to the contrary notwithstanding. And I/We shall not be paying off the sum guaranteed or any part thereof or upon any other ground prove or claim to prove in respect of the sum guaranteed or any part thereof or take advantage of any securities held by the Bank until the whole of your claim against the principal has been satisfied.

Comments Surrender of rights The consent of the guarantor is obtained by undue influence by the Bank therefore, Para 10 (and also Para 11) of the letter of guarantee is voidable. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

Further, Section 28 of the Contract Act provides that:

28. Agreements in restraint of legal proceedings void.â€”Every agreement,â€”
(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce is rights; (emphasis supplied)

The use of the words â€œâ€¦ to the entire exclusion and surrender of my/our rights as sureties in competition with the Bank (and) any rule of law or equity to the contrary notwithstandingâ€• in Para 10 violates Section 28 of the Contract Act, hence Para 10 of the letter of guarantee is void.

An extract of Para 15 of letter of guarantee of Dena Bank is reproduced below for ready reference:

The guarantee hereby given is independent and distinct from any security that the Bank has taken or may take in any manner whatsoever whether it be by way of hypothecation/pledge and/or mortgage and/or any other charge over goods, movables, â€¦ and I/We (and) the guarantor will not claim to be discharged to any extent because of the Bankâ€™s failure to take any of other such security or in requiring or obtaining any or other such security or losing for any reason whatsoever, including reasons attributable to its default and negligence, benefit of any or other security or any of rights to any or other such security that have been or could have been taken.

Comments Surrender of rights The consent of the guarantor is obtained by undue influence by the Bank therefore, Para 15 of the letter of guarantee is voidable. It contains terms which are so unfair and unreasonable that they would certainly shock the conscience of the court.

Public policy An agreement is unlawful if the court regards it as opposed to public policy. The term â€œpublic policyâ€• in its broadest sense means that sometimes the courts will, on considerations of public interest, refuse to enforce a contract (Thomson-CSF v. National Airport Authority of India44). The normal function of the courts is to enforce contracts; but considerations of public interest may require the courts to depart from their primary function and to refuse to enforce a contract (see Lord Wright in Fender v. St. John Mildmay45, AC at p. 38).

Explaining the scope of the expression â€œpublic policyâ€• and the role of the Judge, C. Reddy, J. of the Andhra Pradesh High Court observed in Ratanchand Hirachand v. Askar Nawaz Jung46:

19. â€¦ the twin touchstones of â€œpublic policyâ€• are advancement of the public good and prevention of public mischief and

these questions have to be decided by judges not as men of legal learning but as â€œexperienced and enlightened members of the communityâ€• â€œrepresenting the highest common factor of public sentiment and intelligenceâ€•. (emphasis supplied)

Endorsing this view, the Supreme Court in Ratan Chand Hira Chand v. Askar Nawaz Jung47, added that going by prevailing social values, an agreement having tendency to injure public interest or public welfare is opposed to public policy.

Unfair or unreasonable dealings Where the parties are not economically on equal footing and there is a wide gap in the bargaining power of the parties, where one of them is in a position to exploit and the other is vulnerable and the contract made with that other is apparently unfair, it can in circumstances be also regarded as opposed to public policy. For example, the Supreme Court laid down in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly48 that a government corporation imposing upon a needy employee a term that he can be removed just by three monthsâ€™ notice or pay in lieu of notice and without any ground is exploitation and every ruthless exploitation is against public policy.

In reference to the conduct of public financial institutions holding shares in companies, it has been held by the Supreme Court in N. Parthasarathy v. Controller of Capital Issues49, arising out of the L & T mega issue, that a surreptitious transfer of a bulk shares in one company without caring to see whether it would result in the creation of a monopoly adverse to public interest, if it is done with a mala fide intention, the deal would be illegal.

The officers of the Bank have committed an offence punishable under Sections 166 and 167 IPC

(i) Section 166 of the Penal Code, 1860 provides:

166. Public servant disobeying law, with intent to cause injury to any person.â€”Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

(ii) Further, Section 167 of the Penal Code, 1860 (hereinafter called â€œIPCâ€•) provides:

167. Public servant framing an incorrect document with intent to cause injury.â€”Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. (emphasis supplied)

Firstly, the preparation of illegal document by the Bank for execution of personal guarantee by a director amounts to disobeying the provisions of the Contract Act, 1872 and therefore, the officers of the Bank have committed an offence punishable under Section 167 IPC. Secondly, the insistence of the Bank for execution of personal guarantee by a director amounts to disobeying the provisions of the Companies Act, 1956, and therefore, the officers of the Bank have committed an offence punishable under Section 166 IPC.

Bank is â€œStateâ€• under Article 12 of the Constitution of India The Bank is a body corporate under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Central Government acting through RBI (in short for Reserve Bank of India) is the major shareholder and hence owner of the Bank. It is, therefore, an instrumentality of the Central Government acting through RBI. Therefore, the Bank is â€œStateâ€• under Article 12 of the Constitution of India, consequent to which it has to act reasonably and in the interest of the country, economy, its borrowers as well as safeguarding interest of its depositors. It has to act in rational manner and can not act in arbitrary manner depending on the fancy and whims of itâ€™s officers.

In this regard some case laws of Supreme Court merit consideration (i) Common Cause v. Union of India50. This Court referred Ramana Dayaram Shetty v. International Airport Authority of India51.

12. â€¦ It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norms and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down. (emphasis supplied)

(ii) Common Cause v. Union of India52 (It follows Ramana Dayaram Shetty v. International Airport Authority of India53):

This Court has authoritatively laid down in Nilabati Behera v. State of Orissa54 that damages can be awarded by this Court in proceedings under Article 32 of the Constitution of India. In the Privy Council judgment in Rookes v. Barnard55, Lord Devlin in his opinion has held that exemÂ¬plary damages can be awarded for â€œoppressive, arbitrary and unconstitutional action by the servants of the Governmentâ€•.

The Government is a Government of Law and not of men. Activities of the Government have a public element and therefore there should be fairness and equality. State need not enter into any contract with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Exclusion of a member of public from dealing with the State in a sales transaction has the effect of preventing him from doing a lawful trade. Reputation is a part of personâ€™s character and personality. Blacklisting tarnishes that reputation. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purpose of gains. This privilege arises because it is the Government which is trading with the public and a democratic form of government demands equality and absence of arbitrariness and discrimination in such transactions. The fact that disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is to be on the black list. (emphasis supplied)
(Erusian Equipment and Chemicals Ltd. v. State of W.B. 56, SCC p. 75, paras 17-20.)

Summing up It is difficult to define and delineate definitely the parameters of the executive power and we will have to be content with a negative definition by saying that whatever function is not legislative or judicial can be said to be executive, subject to the law of land in general and provisions of the Constitution in particular. While the scope and content of the executive power is coterminus with the scope and content of the legislative power of Parliament, it is not confined to the laws already placed on the statute book but extends to the laws that can be made consistent with the Constitution. And, further, it embraces the implied powers as well. The Government functions are a reflection of the activities of the State and must, therefore, necessarily be flexible. As the State takes on more functions, or enlarges the scope of existing functions, inevitably the impact is manifested in governmental activities. It is, therefore, that the executive functions cannot be listed with any degree of finality. As government activity in the economic sphere increases, the contracting power enables the Government to control many hitherto unregulated activities of contracting parties through the imposition of conditions. The Government, unlike private individual, is limited in its ability to contract by the Constitution.

The State is devoid of power to impose unconstitutional conditions. Unless the objectives sought by terms and conditions of government contracts requiring the surrender of rights are constitutionally authorised, the conditions must fail as ultra vires exercise of power. It must be shown that the conditions imposed are necessary to secure the legitimate objectives of the contract, ensure its effective use, or protect society from the potential harm which may result from the contractual relationship between the Government and the individual. As right to livelihood is right to life which is protected by the Constitution, right of the State to choose a person with whom to enter into a contract for supplies or services, is in ultimate analysis, the power to deny livelihood (life) to the rejected party and therefore, the exercise of that power has to be constitutionally correct. The Court can relieve the citizen from unconstitutional contractual obligations, unjust, unfair, opÂ¬pressive and unconscienable conditions as the citizen is unable to meet on equal terms with the State.

The power of the Court is traceable to the trinity of the Constitution (1) Preamble; (2) Fundamental Rights, Part III; (3) Directive principles, Part IV. The Court, as a court of constitutional conscience is zealously to project and uphold new values in establishing the egalitarian and socialist order. The Court has to find whether the citizen, when entering into contracts was in distress, need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to â€œtake it or leave itâ€• and if it finds to be so, the Court would not shirk striking down the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social conditions.

While on the one hand contract calls for certainty in commercial affairs, the need for striking down a contract or a clause in a contract because of inequality of bargaining power, etc. calls for action in aid of doctrine of public policy. â€œThe present attitude of the Courts represents a compromise between the flexibility inherent in the notion of public policy and the need for certainty in commercial affairs.â€• (DTC v. Mazdoor Sangh57, SCC p. 748, para 291, quoting from Law of Contract by G.H. Treitel, 7th Edn., at p. 366.) Wherever, therefore, there is arbitrariness in State action whether it be of legislature or of the executive or of an â€œauthorityâ€• under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

*Ex-General Manager (Legal) Kalani Group of Industries.
- (2006) 134 Comp Cas 106 (Del) at p. 109, para 12.
- 1897 AC 22 : (1895-99) All ER Rep 33 (HL).
- Supra, n. 1 at pp. 109-10, para 13.
- AIR 1965 SC 40, at p. 46, para 24 : (1964) 34 Comp Cas 458.
- Supra, n. 2.

- Cadman, The Corporation in New Jersey, 327 (1949).
- (1990) 2 AC 418 : (1989) 3 WLR 969 : (1989) 3 All ER 523 (HL).
- (1903) 1 Ch 728 : (1900-03) All ER Rep 891.
- (1997) 89 Comp Cas 785 (Del).
- (1866) 2 Ch App 77 at p. 89 : 15 LT 230 : 36 LJ Ch 67.
- See under heading â€œLimited liabilityâ€•.
- (2001) 107 Comp Cas 606 (Del) at p. 608.
- (2008) 5 SCC 176.
- (1991) 3 SCC 79 at p. 82, para 2.
- AIR 1986 Kant 1.
- (1923-24) 51 IA 101 at p. 105 : AIR 1924 PC 60.
- 1976 QB 326 : (1974) 3 WLR 501 : (1974) 3 All ER 757 (CA).
- (1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103.
- AIR 1981 Bom 299.
- AIR 1985 All 136.
- (1994) 84 Cal LT 174.
- AIR 1975 AP 32.
- AIR 1991 AP 53.
- (1988) 32 Yele Law Journal 763.
- J.H. Baker, Sanctity of Contract to Reasonable Expectation, Current Legal Problems, 1979.
- (1983) 3 SCC 61.
- (1988) 1 Andh LT 461.
- Supra, n. 10.
- Supra, n. 1.
- (1979) 3 SCC 431 : 1979 SCC (Cri) 691.
- (1983) 4 SCC 45 : 1983 SCC (Tax) 248.
- (1993) 2 SCC 144.
- See under headings, â€œDRT Act, 1993â€•, â€œAct to have overriding effect; When does the overriding effect operateâ€•, â€
Securitisation Act, 2002â€•.
- Supra, n. 11 at p. 189, para 24.
- Ibid, at pp. 192-93, paras 40-41.
- Supra, n. 2.
- (1944) 12 ITR 458 (Lah).
- AIR 1969 SC 932 : (1969) 1 SCR 988 : (1969) 73 ITR 702.
- (2003) 6 SCC 1 : 2004 SCC (L&S) 586.
- Supra, n. 11, paras 4 & 5.
- AIR 1978 Mad 103.
- (1996) 1 Bom CR 311.
- (1997) 10 SCC 488.
- ILR 1989 Kant 2138.
- ILR 1990 Kant 2910.
- AIR 1992 Kant 108.
- AIR 1993 Del 252.
- 1938 AC 1.
- AIR 1976 AP 112, p. 118, para 19.
- (1991) 3 SCC 67.
- Supra, n. 16.
- (1991) 3 SCC 153.
- (1996) 6 SCC 530.
- (1979) 3 SCC 489 at p. 506, para 12.
- (1996) 6 SCC 593.
- Supra, n. 51.
- (1993) 2 SCC 746 : 1993 SCC (Cri) 527.
- 1964 AC 1129 at p. 1226 : (1964) 2 WLR 269 : (1964) 1 All ER 367 (HL).
- (1975) 1 SCC 70.
- 1991 Supp (1) SCC 600 : 1991 SC (L&S) 1213.