



BRIEFCASE

M J ANTONY
A selection of key court orders
Balancing powers of NCLT and HC
The interplay of the power of the Company Court and the National Company Law Tribunal (NCLT) in winding up proceedings of a defaulting company has been a subject of several judgments in the past two years. In a comprehensive judgment two weeks ago, the Supreme Court clarified in detail when such proceedings can be transferred by the court to the tribunal. It ruled that even after the appointment of a liquidator, discretion is vested in the Company Court to transfer such petition to NCLT. It is only when the proceedings have reached a stage where it would be irreversible should the Company Court go ahead with the winding up. Whether that stage has reached would depend upon the facts of each case. The court thus upheld the view of the Delhi High Court in its judgment, Action Ipsum Cows Shivam Metals. Action, which faced winding up proceedings, had argued that once a winding up order has been passed by the Company Judge, those proceedings must continue only before the High Court. SBI, a secured creditor, opposed it contending that discretion is now vested in the court to transfer the proceedings to NCLT.



Many courts have been found to omit the "future prospects" in income of youth who die in road accidents while calculating compensation

Court can't second-guess on tenders
The Supreme Court has reiterated that "unless arbitrariness or mala fide on the part of the tendering authority is alleged", a writ court should not second-guess the valuation of the tender. This is particularly so in the matter of technical evaluation. The court stated in its judgment, Galaxy Transport Agencies vs New J.K. Roadways, while quashing the decision of the high court. The IGP of Kashmir invited e-tenders from transporters to supply vehicles to carry troops. Galaxy won, but the decision was challenged in the high court. The single judge stated that it would not be in public interest to cancel the contract. However, the division bench reversed the ruling. Galaxy's appeal against it was allowed. In a similar judgment, the Supreme Court set aside the judgment of the Madhya Pradesh High court in Statevs UP State Bridge Corpn. The UP corporation was disqualified because it had suppressed the fact that its bridge in Varanasi had collapsed, killing 15 and injuring many others.

Count 'future prospects' for compensation
Several courts have been found to omit the "future prospects" in income of youth who die in road accidents while calculating compensation. In the latest Supreme Court judgment, it faulted the Sikar road accident tribunal and the Rajasthan high court for not computing future prospects in the case of a 34-year-old sales executive. In this appeal, Anita Sharma vs New India Assurance, the court enhanced the compensation by 40 per cent, taking into consideration its future prospects in career.

Pre-deposit before DRAT mandatory
The Delhi High Court has underscored that the Debt Recovery Appellate Tribunal (DRAT) cannot waive the requirement of 50 per cent pre-deposit of the amount due to a secured creditor under Section 18 of the Securitisation ("Safesit") Act. According to this provision, a defaulting borrower who appeals against the debt recovery tribunal order must first pre-deposit half of the due amount to be entitled to be heard by DRAT. This rule is mandatory and can be relaxed to 25 per cent after recording the reasons in a particular case. In this judgment, Prudent Arc Ltd vs Sidha Paper Industries, DRAT waived the rule without valid explanation, relying on an invalid judgment of the same high court. Therefore, the appeal of Prudent Arc, which was assigned the debt by Andhra Bank, was allowed.

Scalancing on state of legal proceedings
"61 of notes but no music" was an unusual start to a recent Supreme Court judgment. It explained: "The present case is a classic one where multiple proceedings have been initiated but have resulted in no culmination over a period just short of a decade. And this not so because of any interdicts from the courts in preventing these legal proceedings, yet the proceedings have hardly moved. The result is that the culpability of two persons has not been determined—thus, a cloud hangs over their conduct and business." The case, Indian Commerce Exchange Ltd vs Neptune Overseas Ltd, was under the repealed Forward Contracts (Regulation) Act. The long story narrated in the judgment started with a journalist alleging irregularities against the vice-chairman of the National Multi Commodity Exchange of India Ltd. The curtain has not fallen yet, as the result has been dropped in the lap of Sibi.

Udaan soars at university

B2B e-commerce platform bounces back after Covid-19 doldrums; in talks to raise \$150-200 million

PEERZADA ABBAR
Bengaluru, 5 January

The year 2020 posed one of the biggest leadership tests for three friends and former Flipkart executives, Amod Malviya, Sujeeet Kumar, and Vaibhav Gupta, who founded Udaan, a business-to-business e-commerce start-up in 2016. After raising \$85 million from marquee investors in October 2019 and gaining recognition as India's fastest-growing unicorn, Udaan's business model found itself severely disrupted by the coronavirus pandemic. At one stage during the lockdown, the Bengaluru-based firm is learnt to have lost almost 60 per cent of its business. It had to lay off 10-15 per cent of its contract staff, leading to the loss of around 3,000-3,500 jobs. But the founders and their team have managed to pull Udaan out of the carnage. Udaan is once again growing rapidly, more so because Covid-19 has accelerated the shift to e-commerce. Thanks to the growing demand, the company is now in talks to raise about \$150 million-\$200 million from existing investors, including Lightspeed Venture Partners, DST Global, Tencent, Altimeter, Footpath Ventures, Hillhouse, GGV Capital, and Citi Ventures, to scale up its operations. After last year's financing round, Udaan's valuation was at \$2.8 billion. "Udaan's business has recovered and it is now in the process of raising fresh funds," said an industry expert. The company did not respond to an email query till the time of going to press, however.



Udaan co-founders Amod Malviya, Vaibhav Gupta and Sujeeet Kumar

Udaan has products across categories such as lifestyle, electronics, home and kitchen. The other categories are staples, fruit and vegetables, fast-moving consumer goods, pharma, toys and general merchandise. The platform has over 500,000 products curated across 2,500 national and regional brands. It has partnerships with leading brands such as HUL, P&G and ITC. The other brands include Coca Cola, Refreshit, Beck's, Colgate, Apple and LG, which are leveraging Udaan's strong distribution network to reach over three million retailers with an everyday delivery cycle spread over 900 cities and more than 12,000 pin codes. The lack of a strong and reliable logistics network often results in a significant percentage of products being wasted. Udaan is addressing this gap. It is able to provide its partner FMCG companies with direct and easy access to millions of kiranas and retailers. Today, the transaction volume of Udaan's foods business comprising FMCG, staples and fresh products has crossed 8,000 tonnes per day. This makes Udaan the largest grocery platform in the country. The volume is greater than the daily food consumption of countries such as Singapore, Denmark, Finland and Norway. The foods business is, in fact, the company's biggest success story. It grew over 500 per cent in volume in the last two years and the number of buyers went up by over 50 per cent in only the last six months. On an average, Udaan receives over three million orders a month in the food category across 50 cities, and delivers over 150,000 orders daily, spread over all business verticals. It has over 1.5 million kirana shops, HoReCa (hotels, restaurants and cafes) and farmers, who place orders and supply food products. The booming online retail sales this year showed that smaller cities and rural areas of the country are now a key mar-

Udaan USPs

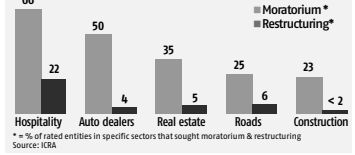
- 500,000 products curated across 2500 national and regional brands
> 3 million retailers, small businesses and buyers
8,000 tonnes per day transaction volume of the foods business
> 3 million orders per month received in the foods category across 50 cities
500 per cent growth in volume for the foods business in the last two years
50 per cent increase in the number of buyers in the foods business in past 6 months
1.5 million kiranas, HoReCa, farmers on the platform

ket for e-commerce companies. These markets are not far behind metro and tier-1 cities in terms of consumption. Udaan's founders Malviya, Kumar, and Gupta, who are all IIT engineers, had identified these opportunities long ago. They themselves hail from small towns in the states of Uttar Pradesh and Bihar, where, growing up, they had to travel to the nearest big city for large purchases. An alumnaus of IIT-Kharagpur, Malviya was the chief technology officer of Flipkart before he quit the firm in 2015. He is considered to be the one who built Flipkart's technology backbone. Kumar, an alumnaus of IIT-Delhi, played a key role in building the supply chain at Flipkart. And Gupta, who is also an alumnaus of IIT-Delhi, was senior vice-president for bus-



The concerns that kept moratorium requests down

Moratorium & restructuring requests in select sectors



*% of total entities in specific sectors that sought moratorium & restructuring Source: ICA

As for companies, they were anyway already stressed. "A substantial portion of the weaker companies had already slipped over the last five years. Over these years, banks also have been cautious in their incremental lending by avoiding weak borrowers," Aggarwal says. "Further, there is a concern that restructuring could impede future availability of funds to them."

Banks replaced corporate loan book with retail lending, and that helped. "In the last few years of cleansing, and focus on granular lending or to retail has required in most companies not requiring any restructuring," says Nitin Aggarwal, senior analyst, Motilal Oswal.

In retail, as such, the recovery has been sharp, and for most businesses, macro data points are showing strong recovery," Aggarwal says, adding that in the case of private banks, the restructuring requests would be even lower at 11.5 per cent. Rating agency ICRRA said disintegrated behaviour, borrowing, business recovery have kept references for restructuring low, ICRRA said

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tingling. The response was much lower than previously estimated drops of sharper than expected improvement in economic activities and liquidity support through the ECLGS. "The analysis showed that 27 per cent of entities in its rated portfolio had sought a moratorium relief between March 1 and August 2020. But the intention of borrowers to restructure their loans remained low at only 2 per cent," says Anil Gupta, sector head, Financial Services Ratings, ICRRA. There is also hesitation on the part of borrowers to cede control over their cash flows. Upon restructuring, all the business receipts and repayments are mandated to be channelised through an escrow account to be maintained with one of the lenders.

KERALA WATER AUTHORITY e-Tender Notice
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e-Procurement System: www.kwa.co.in

CSB Bank NOTICE
Notice is hereby given that pursuant to Regulation 29 read with Regulation 47 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, a meeting of the Board of Directors of the Bank will be held on Tuesday, January 19, 2021.

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