

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

appointment or 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 Dolby Title Court

the facts of each case. The court thus upheld the view of the Delhi High Court in its judgment, Action Ispace Covs Shyam Metalics. 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. SBL, asceured creditor, opposed it contending that discretion is now vested in the court to transfer the proceedings to NCLT.

Court can't

second-gu on tenders

The Supreme Court has reiterated that "unless arbitrari-

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# Udaan soars on adversity

results in a significa age of products be

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

#### PEERZADA ABRAR ngaluru, 5 Ja

A selection of key court orders Balancing powers of NCLT and HCs

The begar 2020 posed one of the biggest leadership tests for three friends and former Flipkart executives, Amod Malviya, Sujeet Kumar, and Vaibhav Gupta, who founded Udaan, a business-to-business e-commerce testaru in 2016

Valuate Value, who balances evaluation of the second second second evaluation of the second second second marguese investors in October 2019 and gaining recognition as India's fasteset growing unicorn, Udaan's business model found itself severely disrupted by the coronavirus pandemic. At one stage during the lock-down, 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 con-tract staff, leading to the loss of around 3,000-3,500 jobs. But the founders and their team have been able to pull Udaan out of the been able 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

Covid-30 has accelerated the shift to e-commerce. Thanks to the growing demand, the company is now in talks to raise about SISO million \$200 million from existing investors, including Lightspeed Venture Partners, DST Global, Tencent, Altimeter, Footpath Ventures, Hillhouse, GGV Capital, and Crit Ventures, to scale up its ventures, Hilliouse, GGV Capital, and Citi Ventures, to scale up its operations. After last year's financing round, Udaan's valua-tion was at \$2.8 billion. "Udaan's

tion 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 reach over three million retailers with an everyddy delivery cycle spread over 900 clites and more than 12.000 pin codes. The lack of a strong and reli-able logstics network often the consumption of countries such and Norway.

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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

Udaan USPs

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

ness finance and analytics at Flipkart in 2015. All three wanted to start a company that would have an impact on a large number of peo-ple, and where technology could play a disruptive role. The aim wasto solve the problems of small businesses, especially in "Bharat", or smaller towns and rural areas, using technology. The funders

businesses, especially in "Bhard", or smaller twoms and rural areas, using technology. The founders then decided to build a large-scale e-commerce distribution plat-form, which would be based on mobile, internet and e-commerce technology. Udaan has built inclusive tech tools for Bharat. They cater specially to the needs of brands, providing them with a level play-ing field to scale, trade and grow their business. For example, analysing real-time marketing feedback through app data ana-ptites is enabling brands and manufacturers to make well-informed decisions about prod-uct launches and the testing of may based pricing system may based pricing system of works the different mar-kets. If app based pricing sys-tem globaset pricing control-ting advertisements and in app devertisements encourage man-ufacturers to reach their target-divertisements encourage man-ufacturers to reach their target-

advertisements encourage man-ulacturers to reach their target-ed, ready-to-purchase retailers on the platform. Then there is UdaanExpress, which enables logistics focused on D2B trade. UdaanCapital, the company's non-banking finan-cial company, is focused on small and medium enterprise financing services, and pro-vides financial productso seli-ers and buyers to grow their businesses.



## should not second-guess the valuation of the tender. This is par-ticularly so in the matter of technical evalu-ation. The court stated so in its judgment, *Galaxy Transport, Agencies vs. New, K. Road-*ways, while quashing the decision of the high court. The IGP of Kashmir invited - tenders from transporters to supply vehicles to carry troops. *Galaxy* won, but the decision was Moratorium & restructuring requests in select sectors 22

from transporters to supply vences or cars, troops, Galaxy won, but the decision was challenged in the high court. The single judge stated that it would not be in public interests to cancel the contract. However, the division bench reverse 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 *Statev SUPS State Bridge Court*. Set as developed the fact that its bridge in Varanasi had collapsed, killing Is and injuring many others.

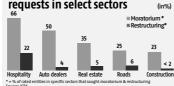
#### Count 'future prospects' for compensation

for compensation """" Several curst have been found to omit the "future prospects" in income of youth who die in read accidents while calculating compensation. In the latest Supreme Court tribunal and the Rajasthan high court for not computing future prospects in the case of 34-year-old sales executive. In this appeal, Autia Sharmav New India Assume, the court enhanced the compensation by 40 per cent, taking into consideration in sfuture cent, taking into com prospects in career.

Pre-deposit before DRAT mandatory Pre-deposit before DRAT mandatory The Delih High Court has underlined that the Deht Recovery Appellate Tribunal (DRAT) cannot waive the requirement of SOper cent pre-deposit of the amount due to a secured creditor under Section 18 of the Securitisation ("Sarfaest") 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 nule is mandatory and combardivent to 5 Supercent of hard recovering

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 Industries, DKA1 waved 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.

SC analogy on state of legal proceedings "Alot of noise but no music!" was an unusual starto 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 sense his the start has a the filter of the oversense here. yetthe 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 that is all. The case, Indian Commodity Exchange Ltd vs Neptune Oversoas Ltd was under the repealed Forward Contracts (Regulation) Act. The long story narrated in the judgment started with a journalist alleging irregularities agains the journalist alleging Irregularities against t vice-chairman of the National Multi Commodity Exchange of India Ltd. The curtain has not fallen yet, as the suit has been dropped in the lap of Sebi.



requests down

abled SMEs and MSMEs to carry enabled SMEs and MSMEsto carry on with their business." As for companies, they were anyway already stressed. A sub-stantial portion of the weaker com-panieshad already slipped over the last five years. Over these years, banks also have been cautious in their incremental lending by avoid-ing weak borrowers." Agarwal says. "Further, there is a concern that restructuring could impede future availability of funds to them."

No Air Surch

By the time the loan restructuring window closed on December 31, 2020, banks had received such

ABHIJIT LELE & ANUP ROY

Mumbai, 5 January

19 dislo

2020, banks had received such requests for barly 2 per cent of the loan book — and not in double dig-its, as was initially feared. According to bankers and ana-lysts, overall, the requests might cover 22 trillion, or even less. And in the case of retail loans, especially, ese are hardly enough to cause th

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 resulted in these are hardly enough to cause any worry. There are multiple reasons for this. Indian Bank MD and CEO Padmaja Chunduru says that though lenders reached out to cus-tomers to make them aware of the restructuring options, there were some "apprehensions and stigma" related to restructuring. Customers are also worried that their credit score might godown if they availed of the benefit. The recovery is com-ing well. As long as most companies not requiring any restructuring," says Nitin Aggarwal, senior analyst, Motilal Oswal. "In retail, as such, the recovery "In retail, as such, the recovery has been sharp, and for most busihas been sharp, and for most bus-nesses, macro data points are show-ingstrongrecovery', Aggarwal says, adding that in the case of private burst show that the show the show

of the benefit. The recov ing well. As long as borrowers are able to pay and asset quality remains good, it is ok, Chunduru says. Indian Bank expected restructur-ing proposals worth \$4,000 crore from the corrorate side but capected restructur-ing proposals of control of the second secon

turing low. The response was much

of ₹3,000 crore, the bank received proposals of only ₹300 crore. The filters used by the Kamath committee on restructuring also lower than previously estimated due to sharper than expected improvement in economic activi-ties and liquidity support through the ECLGS. committee on restructuring also proved to be restrictive, preventing many companies from availing of the benefit.

Most impacted by the Covid-dislocations were micro, small 19 dislocations were micro, small and medium enterprises (MSME) as well as SMEs, The Emergency Credit Line Gua-rantee Scheme (ECLGS), howev-er, kept them afbat. "The ECLGS scheme played a very big role in providing liquidity to the sector," says Prakash Agarwal, director and head-financial Institutions at India Ratings & Research. "The system pumped in morehan 2L5 trillion of liquidity to the sector, and that

ties and liquidity support through the ECLGS. The analysis showed that 27 percent of entities inits rated port-folio had sought a moratorium ellefbetween March1 and August 2020. But the intention of borrow-ers to restructure their loans remained low at only 2 per cent; says Anil Gupta, sector head-Financial Sector Ratings, ICRA. There is also hesitation on the part of borrowers to cede control voer their cash hows. Upon restruc-turing all the business receipts and repayments are mandated to be channelled through an escrow account to be maintained with one of the lenders.

The concerns that kept moratorium

Judian has products across tronics, home and kitchen. The other categories such as lifestyle, elec-tronics, home and kitchen. The other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit able to provide its partner FMCG other categories are staples, fruit access to millions of *Kiranas* access to millions of *Kiranas* include Coca Cola, Reckitt which are leveraging Udaan's storng distribution netwicks with are leveraging Udaan's storng distribution netwicks with are leveraging Udaan's store gater than the daily food consumption of countries such able to provide its partner FMGS companies with direct and easily access to millions of kranss and retailers. Today, the transac-tion volume of today the transac-tion volume of the country. The vol-ume iggreater than the dailytoo consumption of countries said and Norvay. The foods tusiness is, in fact the company to tiggest success the country to the garst also this year showed that site the transaction of the tor the company to tiggest success the country are now a key mark

ry. It grew over 500 per cent in lume in the last two years and the number of buyers went up by over 50 per cent in only the last six months

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 opportunihad identified these opportuni-ties 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 alumnus of IT-Wein Kanagaur, Malviya was the chief technology officer of Filipkart before he quit the firm in 2015. He is considered to be the one who built Filipkart's technology backbone. Kumar, an alumnus of IT-Delhi, played a key role in building the supply

key role in building the supply chain at Flipkart. And Gupta, who is also an alumnus of IIT-Delhi,

n s, DLF Cyber City

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