

INDIA JURIS

Relevant Turnover, Not Total Turnover must be the basis for imposing penalty for Anti-Trust Violations: Supreme Court

The Supreme Court of India, delivering a judgment on 8th may, 2017 in Excel Crop Care Limited v. Competition Commission of India, has held that penalty imposed by the anti-trust regulator under Section 27 of the Competition Act for anti-trust violations should be based on turnover of relevant product or services under enquiry and not on the total turnover. The Supreme Court also observed that penal provisions in the Competition Act is drafted with a view to 'teach a lesson' and not to 'finish off' industries.

At present, the Competition Commission of India imposes a penalty of 10 per cent of the average three years turnover of a company.

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Winding-up petition can't be relied as a remedy for payment disputes

In the case of M/s Uttam Industrial Engineering Ltd vs M/s Shree Basaveshwar Sugars Ltd, the Karnataka High Court on 23rd may, 2017 has held that a winding-up petition has serious ramifications on the financial standing of a company and cannot be used in cases where there is a bona fide disagreement regarding the amount owed by one party to the other and in such cases the company court should transfer the matter either to the civil court or arbitral tribunal.

In this case, there was a dispute regarding the amount to be paid by the respondent company to the petitioner company. However, though the respondent company had initially agreed to pay a specified amount upon reconciliation of their accounts, they subsequently refused to pay the same. Therefore, a winding-up petition was filed before the high court. The contract between the parties was governed by an arbitration clause and proceedings before an arbitral tribunal were pending.

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Interpretation of dispute by National Company Law Appellate Tribunal, Delhi under Insolvency and

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Asia Europe USA UK Middle East Africa

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In this issue:

- **Relevant Turnover, Not Total Turnover must be the basis for imposing penalty for Anti-Trust Violations: Supreme Court**
- **Winding-up petition can't be relied as a remedy for payment disputes**
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Bankruptcy Code “Code”

Under the Insolvency and Bankruptcy Code, 2016 “Code”, an operational creditor can initiate a corporate insolvency resolution process “CIRP” of the corporate debtor by filing an application before the relevant National Company Law Tribunal “NCLT”

The question that has arisen before various NCLTs is whether a corporate debtor can raise all kinds of disputes in the notice of dispute or can the notice of dispute only refer to pendency of a suit or arbitration before receipt of the demand notice.

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