

Deeming Provisions in the Indian Insolvency Law

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A fiction is intended to escape the consequences of an existing, specific rule of law.

— Lon Fuller¹

INTRODUCTION

Sir William Blackstone considered legal fictions to be of ‘...*beneficial character, made to advance the interests of justice*.² While what is posited by Fuller is partially right, the scheme of interpretation of law and adjudication is much more constructive and not confined to merely ‘fictionalising’ the statutes. For this reason, clearly, legal scholars have been ambivalent about the utility of legal fictions.³ And the judiciary while resorting to several, nested fictions proceeds with prudence in extending their applicability to the factual matrix before it. Overall, interpretation of a statute depends on text and context.⁴ The text is the texture; context is what ascribes colour to the legislation.⁵ It is well established that a statute is best interpreted when one can retrieve with ease why it was enacted. For this reason, it must be interpreted in a way that gives effect to its purpose or object. Legal interpretation, in its hermeneutic character, endeavours to crystallise the historical will of the legislator,⁶ or the normative or objectively clear meaning of the law⁷ or a blend of both in terms of ascertaining the latter on the basis of the former. In fact, judicial deference to legislative judgment is oftentimes evident in the beneficial construction afforded by the Courts to the various provisions of both the principal and the subordinate legislation.

While legal narratives abound in fabrications, relatively few of them are considered as showing the inventive or creative attributes, that deserve the label of a ‘legal fiction’. These so-called fabrications exhibit the kind of creativity, that one conjoins with literary writings. Alf Ross, in his classical exposition on the types of ‘legal fictions’ and their utility, noted that a ‘creative legal fiction’ is ‘no more than a peculiar technique for the analogical extension of legal rules.’⁸ One of the widely known legal doctrines grounded in a legal fiction includes the common criminal law maxim, ‘*ignorantia juris non excusat*’ translating to ‘ignorance of the law is no excuse’. It is based on the legal fiction that ‘believes’ or ‘deems’ that all persons know the law.⁹ Some of these ‘deeming provisions’ are codified in our laws and are generally thought of as creating a legal fiction, i.e. positing that a legislation is to be applied as if something were different from what it ‘actually’ is. However, their construction has unveiled varied meanings, including, but not limited to being a ‘statutory fiction’.

Deeming provisions are a common attribute of legislative enactments worldwide. The term ‘deem’ is derived from the old English word ‘*domas*’ which meant ‘judgment or law’. The Concise Oxford

Dictionary, (8th ed.), defines the verb 'to deem' as 'believe, consider, judge, or count, to be.' Webster's Ninth New Collegiate Dictionary provides the following meanings: 'to come to think or judge: consider; to have an opinion: believe.' Black's Law Dictionary (9th ed.), gives as the main definition of the verb 'deem' 'to treat (something) as if (1) it were really something else, or (2) it had qualities that it does not have.' Bennion Statutory Interpretation (3rd ed. 1997, p. 735), states: '*Deeming provisions Acts often deem things to be what they are not. In construing a deeming provision, it is necessary to bear in mind the legislative purpose.*'

The Parliament of India has used 'deem' in varied legal instruments, including the Insolvency and Bankruptcy Code, 2016 (Code/ IBC). The verb 'deem', and its variants feature numerous times in the Code, and the rules and regulations made thereunder. But what does it actually mean when it incorporates deeming provisions in a statute? Reflect on the following examples:

The Chairperson, Members, officers and other employees of the Board shall be **deemed**, when acting or purporting to act in pursuance of any of the provisions of this Code, to be public servants within the meaning of section 21 of the Indian Penal Code¹⁰; (emphasis added)

...an application shall be **deemed to be** false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.¹¹; (emphasis added)

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he **deems** fit from a creditor for substantiating the whole or part of its claim.¹²; (emphasis added)

Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), **shall be deemed to be** a fresh issue and shall be subject to timeline under sub-regulation (3).¹³(emphasis added)

If the authority is satisfied, after such scrutiny, inspection or inquiry as it **deems necessary**, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for...;¹⁴ (emphasis added)

the appropriate regulator may, where **deemed** necessary, constitute an Advisory Committee, within 45 days of the insolvency commencement date¹⁵...; (emphasis added)

Taking into consideration the aforesaid examples of the statutory deeming provisions in the Indian insolvency law regime, it is clear that the word 'deem' can have diverse meanings. In the first, second, and fourth statutory specimens, the word 'deem' denotes 'considered or regarded as or reckoned' for explicitly treating something or someone to be or think of it or her/ him as something else. In the third, fifth, and sixth samples, it is used in the nature of a 'determination or 'judgement', as in the exercise of discretion while making a decision.

It bears emphasis that the meaning to be attached to the word 'deemed' must depend upon the context in which it is used. The usage of the term does not invariably and necessarily implies an introduction of a legal fiction, but it must be read and understood in the context of the whole statute.¹⁶ In fact, deeming provisions take a variety of forms and perform different functions. For example, they may,

inter alia: (a) appear in the interpretation sections of a statute to modify a definition;¹⁷ (b) relate to the legal, jurisdictional¹⁸ or geographical status of particular persons;¹⁹ (c) be used to regulate contractual terms;²⁰ (d) be used to affect the basis for the calculation of payments such as tax²¹ or compensation; or (e) stipulate when something has been done,²² or regulate whether it has been done in time.²³

In this milieu, Sullivan classifies deeming rules into four broad categories according to their purpose:²⁴

- to create a legal fiction by declaring that something exists or has occurred regardless of the truth of the matter;
- to declare the law;
- to create a legal presumption by declaring that certain facts are to be taken as established; and
- to confer discretion.

From a compendious reading of the aforesaid, one can deduce that a deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail. However, in each case it would be a question as to with what object the legislature has made such a deeming provision.²⁵ In the discussion that ensues, the author explains each class in further detail by alluding to relevant examples from the Code.

CREATION OF STATUTORY FICTIONS

*'A deeming provision is a statutory fiction...A deeming provision artificially imports into a word or expression an additional meaning which they would not otherwise convey besides the normal meaning which they retain where they are used; it plays a function of enlargement analogous to the word "includes" in certain definitions...'*²⁶

Statutory fictions are well-known in law. It is widely believed that deeming provisions create legal fictions. Deeming provisions are often used in statutes to give the subject-matter a meaning not ordinarily associated with it.²⁷ In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Ltd.*,²⁸ (*Anuj Jain*) the Supreme Court of India (SC) discussed the ambit of 'deemed preferences' in the scheme of the Code. By referring to section 43 of the Code, it observed that legal fictions were created whereby preference is deemed to have been given; and is deemed to have been given at a relevant time, if the stated requirements are satisfied. It placed reliance on its own judgment in *Pioneer Urban*²⁹ (discussed infra) and *Hindustan Cooperative Housing Building Society Limited v. Registrar, Cooperative Societies and Anr.*³⁰

Both the sub-sections (4) and (2) of section 43 were held to be 'deeming provisions', and upon the existence of the ingredients stated therein, the legal fiction would come into play. Any such transaction entered into by a corporate debtor (CD) would be regarded as a preferential transaction with the attendant consequences as per section 44 of the Code, irrespective of whether it was in fact intended or even anticipated to be so.³¹ It held that any transaction that answers to the descriptions contained in sub-sections (4) and (2) of section 43 will be presumed to be a preferential transaction at a relevant time, even though it may not be so in reality. This conclusion was based on their finding on the principal purpose of 'deeming provisions' viz. *'to deem what may or may not be in reality, thereby requiring the subject-matter to be treated as if real.'*

For the construction of a 'deeming fiction', the SC referred to *Pioneer Urban* to cull out some settled principles from the judgment of Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*³²:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it -. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

Some pre-independence case laws are also relevant to understand the judicial stewardship in this area. In *Commissioner of Income Tax, Bombay v. Bombay Corporation*,³³ Lord Dunedin observed:

Now when a person is 'deemed to be' something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were.³⁴

Lord Justice James in *Ex parte, Walton: In re, Levy*,³⁵ observed:

When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

In effect, a normatively desirable outcome was reached in *Anuj Jain* by reading a legal fiction into a deeming provision. To take another example, the fiction of corporate personality creates a legal entity with its own powers, rights, duties, and liabilities. It allows the corporations to function and exist independently of its shareholders and directors as a separate juristic person.³⁶ This facet is relevant vis-à-vis section 32A of the Code. In *Tata Steel BSL Limited & Anr. v. Union of India & Anr.*,³⁷ the High Court of Delhi held that the CD would not be liable for any offence committed prior to commencement of the corporate insolvency resolution process (CIRP). It also clarified that due to the application of section 32A of the Code, the order will not affect the prosecution of the erstwhile promoters or any of the officers of the CD who may be directly responsible for committing the offences.³⁸

DEEMED APPROVALS

In project development and management, "deemed approvals" means that if a project does not get approval from a Government agency within the period stipulated, then it is deemed to be approved. The Uttar Pradesh Real Estate Regulatory Authority (UPRERA) issued an order,³⁹ according to which the authority shall order possession to the allottees in case the occupancy certificate is pending for approval beyond stipulated time. The authority shall consider the situation as deemed approval. To apprise, section 11 (4) (b) of the Real Estate (Regulation and Development) Act, 2016 (RERA) makes it mandatory for the promoter to obtain Occupancy or Completion Certificate from the competent authority, as the case may be. Upon submission of the intimation by the developer regarding the completion of project, the authority has to take a decision within seven days and intimate the deficiencies to the developer.

Deemed approvals are in the nature of proactive steps taken by the regulators generally to reduce bureaucratic red-tapism and affix responsibility on the concerned public official. For example, section 31 of the Competition Act, 2002, empowers the Competition Commission of India (CCI) to afford

approval to certain proposed combinations on the pedestal of a determination whether they entail any ‘appreciable adverse effect on competition’. Pertinently, sub-section (11) of section 31 comprises the provision regarding ‘deemed approval’ of the CCI to a combination⁴⁰. An example of a deemed renewal is encompassed in regulation 12A of the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. It stipulates that if the authorisation for assignment is not issued, renewed or rejected by the Insolvency Professional Agency within fifteen days of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be, by it.

In a similar vein, in the Indian insolvency law framework, the Circular (dated January 28, 2020) by the Insolvency and Bankruptcy Board of India (IBBI), as an Authority designated under the Companies (Registered Valuers and Valuation) Rules, 2017 is relevant. The Circular encapsulates ‘deemed no objection for transfer’ of the membership of a professional member from one Registered Valuer Organisation (RVO) to another. The issuance of a ‘deemed no objection’ sought for by the professional members (valuers) for the transfer ensures the processing of such applications in a time-bound manner by the concerned RVO. For this purpose, the Circular classifies the timeline for transfer in two categories, namely, transfer of membership before registration as a valuer with the IBBI and transfer of membership of a registered valuer.

Similarly, rule 5 (d) of the IBBI (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 provide for affording a ‘deemed no objection’ to persons who would be in control or management of the financial service provider (FSP) after approval of their resolution plan by the committee of creditors under section 30 (4) of the Code and by the Adjudicating Authority (AA) under section 31 of the Code. Upon a ‘no objection’ being sought by the Administrator, the appropriate regulator shall issue ‘no objection’ on the basis of the ‘fit and proper’ criteria applicable to the business of the Financial Service Provider. Where the appropriate regulator does not refuse the “no objection” within 45 days of the receipt of such application from the Administrator, it shall be deemed that the “no objection” has been granted.

DEEMING RULES CONFERRING DISCRETION

The provisions that empower a certain entity or a Government agency to, *inter alia*, ‘deem fit’ or ‘deem necessary’, are in the nature of conferring discretion on the said entity or agency. Statutory powers of all forms are often exercisable when an authorised holder of the power ‘deems’ something. In this context, ‘deem’ is employed to confer a discretionary power and is synonymous with the words ‘consider’ or ‘decide.’⁴¹

The Code and the rules and regulations, made under its auspices, contain a few examples of the word “deem” being used in this manner. One instance is sub-section (2) of section 207 empowering the IBBI to ‘specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit.’ Regulations 10 and 23 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and IBBI (Liquidation Process) Regulations, 2016, respectively, provide that in the matter of substantiation of claims, the interim professional (regulation 10) or the liquidator (regulation 23), may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

DEEMING RULES THAT DECLARE CERTAIN FACTS AS BEING CONCLUSIVE

Deeming rules that declare certain facts as established create a presumption that accepts something as a fact without the benefit of evidence. The presumption created by such a deeming provision may be either conclusive or rebuttable. The latter type may be useful to deal with an evidentiary gap. The purpose of the former is rather to create a legal rule: since legal consequences attach to a set of facts, if the facts are conclusively presumed, the legal consequences follow automatically in all the circumstances.

Our normative texts encompass a plethora of deeming rules. One of the main reasons for incorporating them is to ascribe equal treatment to two scenarios or transactions that are different in legal substance but analogous in economic or commercial effect. For instance, in *Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India and Others*,⁴² the SC deliberated upon the constitutional validity of the amendment, in respect of the categorisation of the home buyers as financial creditors (FC), by the insertion of an *Explanation* to section 5(8)(f) of the Code. It observed that the deeming provision contained in the *Explanation* is only clarificatory of the initial legal position as was enunciated at the time of the inception of the Code. The effect of the deemed categorisation of a home buyer as an FC in section 5(8)(f) is that any amount raised from an allottee under a real estate project would have the commercial effect of a borrowing and treated the same way as a ‘financial debt’ disbursed against the consideration for the time value of money, to the extent that such amount should be raised under any other transaction, including any forward sale or purchase agreement. The logic behind the legal fiction of section 5 (8) (f) appears patent: although any amount raised from a real estate allottee is not technically the same as a financial debt, economically it has the same effect and therefore, equivalent to a ‘financial debt’.

The SC placed reliance on Stroud’s Judicial Dictionary of Words and Phrases (Seventh Edition, 2008), that defines ‘deemed’ as

to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage or an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words ‘deem’ and ‘deemed’ when used in a statute thus simply state the effect or meaning which some matter or things has- the way in which it is to be adjudged; this need not import artificiality or fiction; it may simply be the statement of an indisputable conclusion.

The said reference was grounded in traversing a path of divergence from the usual stride of interpretation. While recognising that ‘*a deeming provision is to deem what is not there in reality, thereby requiring the subject matter to be treated as if it were real...*’, the departure was made palpable by the SC in that a ‘*deeming fiction can also be used to put beyond doubt a particular construction that might otherwise be uncertain.*’⁴³ The SC, thus, observed that the deeming fiction that is used by the *Explanation* is to put beyond doubt the fact that real estate allottees are to be regarded as FCs in terms of the operative part of section 5(8)(f) of the Code.

The Code ‘declares the law’ by the utilisation of ‘deemed’ provisions. For example, the provision enunciating a ‘deemed withdrawal’ as contained in the third proviso to sub-section (1) of section 7 of the Code deserves mention. The first and second provisos provide for the initiation of the CIRP against a CD by creditors in a class, referred to in clauses (a) and (b) of sub-section (6A) of section 21 and allottees in a real estate project. The third proviso builds upon the first two in stipulating that the non-

admission of an application under either of the two provisos for the CIRP by the AA before December 28, 2019 (the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020) would necessitate modification by the applicants to ensure compliance with the requirements of the first or second provisos, within thirty days thereof. And, upon failure to undertake the said modification, the application shall be deemed to be withdrawn before its admission.

Consider further the declaration encompassed in section 33 (7) of the Code regarding an order for liquidation to be deemed to be a notice of discharge to the officers, employees, and workmen of the CD. This deeming provision cannot be seen to create a legal fiction. It may be quite realistic to state that an order of liquidation effectively discharges all the stakeholders and particularly the officers, employees, and the workmen of the CD.

VALIDATING STATUTES

Sometimes the legislature uses ‘deeming provisions’ to validate certain laws. For instance, while repealing the Presidency Towns Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920), the Code in clause (iii) of sub-section (2) of section 243 states-

anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments **shall be deemed valid**; (emphasis added)

CONCLUSION

Deeming provisions while frequently resorted to by the Courts must be utilised prudently. Since such provisions are not operative components of a legislative enactment their interpretive import is limited. Therefore, while enacting such provisions the legislature needs to assess the consequences of such an automatic conferment of status. Some determination would be required to be conducted before the conferment of such a status on the concerned persons. It may, unknowingly, lead to excessive delegated legislation, thereby twisting the real legislative intent. Despite these concerns, deeming provisions, at least the ones that facilitate understanding about the law and its functions and impart justice are sometimes indispensable to legal thinking. With deemed approvals unequivocal responsibility could be affixed with the decision makers and relevant agencies, to allocate their resources appropriately and fulfil their roles within the expected time frames. The expectation is that, following this, social and economic benefits flow, with greater clarity and certainty for the applicants as well as speedier on-the-ground provision.

Just as musical renditions are composed on staves with bars signalling timing, the legal provisions should have a coherent framework for their component parts such as, sections, sub-sections, and other segments. Structural conventions, for music and for statutory provisions, provide a framework for both the readers, judges, lawyers, and the users of the law. The framework aids in communicating the intent of the adjudicator and the legislators. Jerome Frank holds that judges while interpreting the myriad statutory provisions may be likened to musical performers when playing the musical symphonies. Inevitably, judges like musical performers are to some extent creative artists who communicate the intent, the meaning, and spectacle of the law to varied audiences.⁴⁴

Having said that, it is also important to be taken note of that the vitality of drafting to the practice, propagation and understanding of law is underrated. Legislative drafting is not a form filling exercise. Any legal analysis involves a dexterous interpretation of the different components of a piece of law enacted by the legislative body of a country. While judicial deference to the legislative intent is the interpretive norm, any legislative action is subject to the power of judicial review. This entails testing it on the touchstone of legislative competence and generally, in constitutional democracies, on the parameter of not being *ultra vires* the constitutional provisions. This gives an indication that makes the task of legislative drafting a difficult one.



NOTES

¹ Quinn, Michael (2013), *Fuller on Legal Fictions: A Benthamic Perspective*, Chapter 4, pp. 55 - 81, Cambridge University Press, in Maksymilian Del Mar and William Twining (Eds.), *Legal Fictions in Theory and Practice, Law and Philosophy Library*, Vol. 110. Springer, https://doi.org/10.1007/978-3-319-09232-4_8 (Del Mar and Twining, 2015).

² Alina Ng Boyte (2014), "The Conceits of our Legal Imagination: Legal Fictions and The Concept of Deemed Authorship", 17, *Legislation and Public Policy*, 712, pp. 707-762.

³ *Id.* at p. 718.

⁴ Randy D. Gordon (2013), "Fictitious fraud: Economics and the Presumption of Reliance", *International Journal of Law in Context*, 9 (4): pp. 506-519.

⁵ As observed by the Supreme Court in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, [1987 SCR (2) 1].

⁶ Subjective theory of legal science- O. Merezko, *Legal hermeneutics and Methodology of Law. European Political and Law Discourse*, 1(2), 4-10. (2014).

⁷ Objective theory of legal science- *ibid.*

⁸ Simon Stern (2015), *Legal Fictions and Exclusionary Rules*, Chapter 8, pp. 157-174, in Del Mar and Twining.

⁹ Nancy J. Knauer, *Legal Fictions and Juristic Truth*

(2010), 23, *St. Thomas Law Review*, 1, 2; Also see Craig Allen Nard (2016), "Legal Fictions and the Role of Information in Patent Law", 69 *Vanderbilt Law Review*, 1517, pp. 1519-1520.

¹⁰ Section 232, IBC.

¹¹ Section 77, IBC.

¹² Regulation 10 (Substantiation of claims) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

¹³ Sub-regulation (5) of the Regulation 36B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

¹⁴ Sub-rule (6) of Rule 6 of the Companies (Registered Valuers and Valuation) Rules, 2017.

¹⁵ Clause (c) of Regulation 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

¹⁶ *State of Karnataka v. Shri Ranganatha Reddy*, (1977) 4 SCC 471: AIR 1978 SC 215: (1978) 1 SCR 647.

¹⁷ See the definition of "managing director" in section 2 (54) of the Companies Act, 2013; *Also See* clause (2) of Article 110 of the Constitution of India; *Also See* definition of "promoter" in section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016.

¹⁸ Section 30 of the Mines and Minerals (Development

and Regulation) Act, 1957- “...the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a public prosecutor.”

¹⁹ For example- section 12 of the Hindu Adoption and Maintenance Act, 1956 states that an adopted child from the date of his adoption will be deemed to be the child of his adoptive parents and all his ties with his natural family will be severed.

²⁰ Sections 22(1) and 25, Companies Act, 2013.

²¹ Section 115J, Income-tax Act, 1961 creating a deeming fiction.

²² Explanation I to section 42, Companies Act, 2013.

²³ See Article 109 of the Constitution of India pertaining to the procedure in respect of Money Bills- Clause (5) provides that (5) *if a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People; Also See section 5 (2) of the RERA regarding the “grant of registration”- “If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered,...”*; Also section 9 (4) of the RERA- Registration of real estate agents; section 31 (5) and (9) of the Competition Act, 2002- deemed appreciable adverse effect on competition.

²⁴ Ruth Sullivan (2008), *Sullivan on the Construction of Statutes*, 5th ed., Markham, ON: Lexis Nexis Canada, pp. 85 - 91.

²⁵ *Consolidated Coffee Ltd. v. Coffee Board*, (1980) 3 SCC 358: AIR 1980 SC 1468: (1980) 3 SCR 625.

²⁶ Beetz, J. (1978), in *R. v. Verrette*, 2 SCR 838 (Supreme Court of Canada) at p. 845.

²⁷ *Assign Services (Pty) Limited v. National Union of Metalworkers of South Africa and Others* (July 26, 2018 - SACC).

²⁸ 2020 SCC Online SC 237.

²⁹ 2019 SCC OnLine SC 1005.

³⁰ (2009) 14 SCC 302.

³¹ Para 19.3/ p. 72- supra note 28.

³² (1951) 2 All ER 587.

³³ AIR 1930 PC 54.

³⁴ Also see *M/s Ispat Industries Ltd. v. Commissioner of Customs, Mumbai* (2006) 202 ELT 561 (SC).

³⁵ (1881) 17 Ch D 746.

³⁶ Supra note 2.

³⁷ W.P. (CRL) 3037/2019- Judgment dated March 16, 2020.

³⁸ *Id.* at p. 5.

³⁹ Order dated September 16, 2019- <https://www.up-rera.in/pdf/CCorOC.PDF>.

⁴⁰ If the CCI does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

⁴¹ Michael N. Kandev and John J. Lennard (2012), “Interpreting and Applying Deeming Provisions of the Income Tax Act”, *Canadian Tax Journal / Revue Fiscale Canadienne*, 60:2, pp. 275 – 303.

⁴² 2019 SCC OnLine SC 1005.

⁴³ Para 83/ p. 178- *ibid.*

⁴⁴ Jerome Frank (1948), “Say it with Music”, *Harvard Law Review*, Vol. LXI, pp. 921 - 957.