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**APRIL 2024**

## Legal Updates, Insights and Summary Judgements

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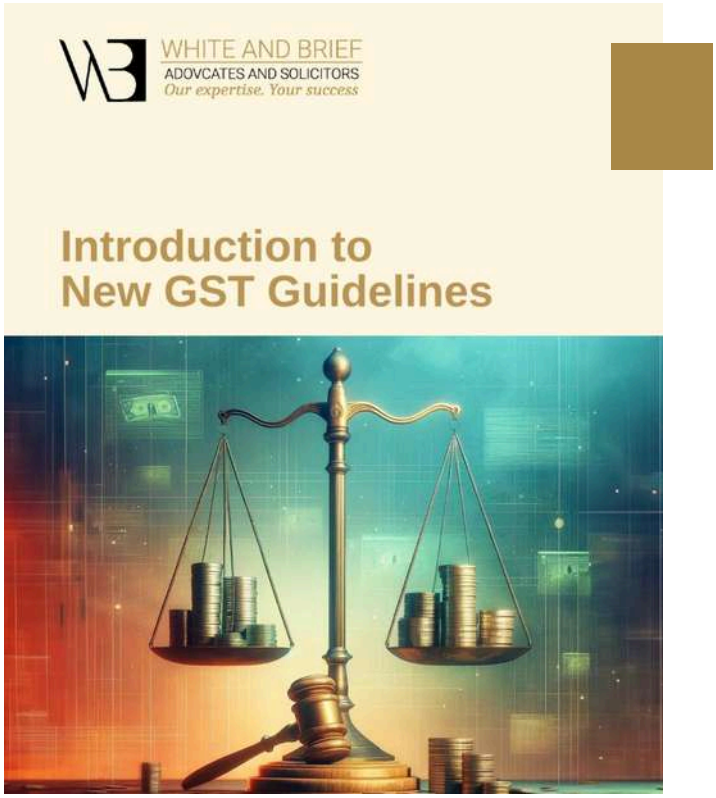
# Insight and Foresight: our perspective on key global developments




## The Central Board of Indirect Taxes & Customs (CBIC) has recently released new GST guidelines aimed at enhancing the ease of doing business across India.

**Key Highlights**

The new guidelines are designed to ensure that GST assesses face investigations from only one office, significantly reducing redundancy and streamlining the process.

A groundbreaking approach has been introduced for investigations against multinationals and big industrial houses, with a firm deadline of one year set to conclude investigations.

To consolidate investigations under one office, enhanced coordination is encouraged across Commissionerate's, including the DGGI and State GST departments. This initiative aims to simplify the process, especially when multiple investigations on different subjects are ongoing.

A new approval process requires the Principal Commissioner's consent for investigations in all cases, with certain categories necessitating the approval of Zonal Principal Chief Commissioners.

The guidelines also emphasize a respectful approach to compliance. Initial communications detailing investigation reasons are sent through official letters to designated officers of listed companies, PSUs, and government bodies.

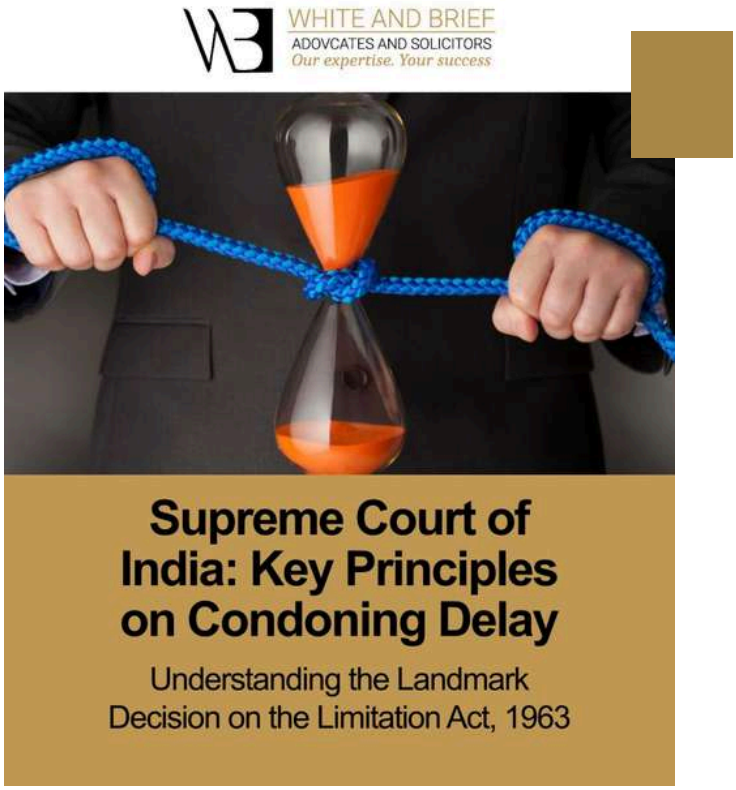
Furthermore, there's a push towards utilizing digital information effectively, discouraging the request for information already available on the GST portal.
These changes mark a significant move towards simplifying GST processes, encouraging fair practices, and supporting the ease of business. Discuss how these guidelines could impact our businesses and the broader economy.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7181702463803072514

## New Ruling Alert: Supreme Court of India on Condoning Delay

The Supreme Court recently delivered a pivotal decision that clarified the interpretation of Sections 3 and 5 of the Limitation Act of 1963. Justices Bela M. Trivedi and Pankaj Mithal have provided a nuanced understanding that balances the scales between strict legal timelines and the broader pursuit of justice.



**key takeaways**

The ruling reinforces the foundational principles of limitation laws, emphasizing that rights not exercised within a stipulated time may cease, reflecting a commitment to public policy.

It distinctly interprets the stringent application of Section 3 versus the more liberal approach under Section 5, navigating the delicate balance between adhering to the letter of the law and achieving substantive justice.

The discretionary power of courts in condoning delays is highlighted, stressing that diligence by parties and the merits of the case do not impact decisions on condonation.

**Implications for legal practice**

This decision is a crucial reminder for all legal professionals and litigants to maintain diligence and adhere to prescribed timelines. The Supreme Court's commitment to fairness and judicial efficiency serves as a guidepost for handling cases with prolonged delays.

**Why This Matters**

The landmark decision is a win for maintaining legal sanctity and ensures that justice prevails without unnecessary delays. It's a significant ruling that every legal practitioner should be aware of, as it will influence how delay condonations are approached.

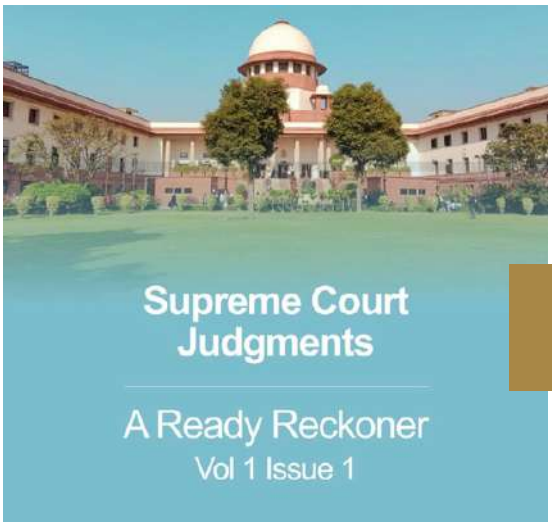
To delve into the specifics , please review the information provided in the following link:

https://www.linkedin.com/feed/update/urn:li:activity:7186319272158081024

## We are delighted to announce that White & Brief has formed a new partnership with PhonePe marking a significant expansion of our client portfolio.


We are honored to be entrusted with the comprehensive litigation work across India for PhonePe. This endeavor will be spearheaded by our Managing Partner, NILESH TRIBHUVANN and our Associate Partner , Kanan Chawda . We are confident that this collaboration will lead to outstanding achievements and we look forward to a fruitful partnership.

# SC Important Cases - Some pivotal judgments that have shaped Indian jurisprudence recently




In our latest issue of "SC Important Cases," we delve into some pivotal judgments that have shaped Indian jurisprudence recently. Here are a few notable mentions:

**Arbitration and Conciliation Act, 1996** - The decision in S.V. Samudram v. State of Karnataka reiterates the supervisory role of courts in arbitration, emphasizing minimal interference and the significance of arbitration as a preferred dispute resolution method.

**Criminal Procedure Code 1973** - A landmark ruling clarified the conditions under which an appellate court might interfere with an acquittal, setting a high bar for such reviews and underscoring judicial restraint.

**Election Integrity** - In cases like Kuldeep Kumar v. State (UT of Chandigarh), the focus on the security of the electoral process and misconduct by election officers highlights the ongoing efforts to uphold the sanctity of our democratic processes.

**Food Safety and Standards Act, 2006** - The case of Ram Nath v. State of U.P. explored the intricacies of food safety laws versus the IPC and CrPC, with a focus on preventing the sale of adulterated food.

Each of these cases not only impacts the legal landscape but also provides deeper insights into the dynamics of law and enforcement. Stay informed and engage with us as we explore these developments and their implications for society.
To delve into the specifics, please review the information provided in the following link :
https://www.linkedin.com/feed/update/urn:li:activity:7189601091137794048

## Rana Kapoor, the co-founder of Yes Bank, who has recently been granted bail after four years of incarceration without trial


Here's significant update on Rana Kapoor, the co-founder of Yes Bank, who has recently been granted bail after four years of incarceration without trial. This decision marks a crucial moment in corporate governance and judicial fairness.

**Case background:** The allegations against Kapoor centered on a loan transaction with Avantha Realty, which he maintained was conducted following standard banking procedures.

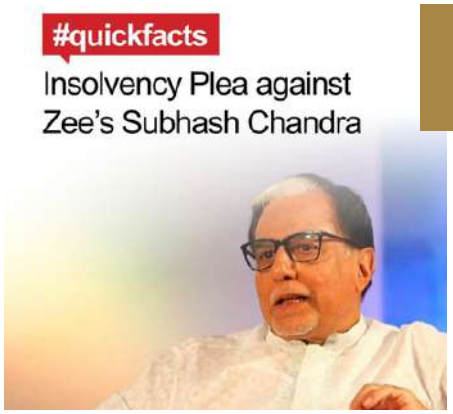
**Judicial insight:** The court highlighted that Kapoor wasn't solely responsible for the bank's operations, as decisions were made collectively by the Management Credit Committee. This underlines the importance of collective accountability in corporate settings.

**Significant remarks:** The Chief Justice of India, D Y Chandrachud, raised concerns about the reluctance of district courts in granting bail, stressing judicial integrity. This case could set a precedent for future corporate governance cases, emphasizing individual accountability within larger corporate structures.

**Financial recovery:** Interestingly, the court noted that Yes Bank had recovered the total outstanding loan amount by 2017, declaring the fraud amount as 'nil'—indicating no significant financial loss as previously alleged.

This case sheds light on the intersections of legal proceedings and corporate operations, and it is a landmark in understanding the dynamics of corporate accountability. Let's discuss what this means for the future of corporate governance and legal standards in the financial sector!
To delve into the specifics, please review the information provided in the following link : https://www.linkedin.com/feed/update/urn:li:activity:7189310563582177281

# Insolvency plea against Zee's Subhash Chandra




In a landmark decision, the National Company Law Tribunal (NCLT) has admitted an insolvency plea against Mr. Subhash Chandra, the chairman of Zee, highlighting critical aspects of personal guarantors under the Insolvency and Bankruptcy Code (IBC).

**Background**

The case emerged when IBHF moved NCLT in 2022 to initiate personal insolvency proceedings following a loan default worth Rs 170 crore by Vivek Infracon, for which Mr. Chandra was a personal guarantor.

**NCLT's decision:**

The plea was admitted on April 22, rejecting counter appeals by IDBI Trusteeship and Axis Bank. This pivotal decision underscores the tribunal's authority to adjudicate personal insolvency matters.

**Supreme Court's Ruling:**

In a recent turn of events in November 2023, the Supreme Court upheld the IBC provisions related to personal guarantors, allowing companies to revive cases and potentially seize personal assets if the company fails to repay debts.
This case sets a significant precedent and serves as a crucial reminder of the responsibilities and risks associated with being a personal guarantor.

**For business leaders and legal professionals:**

This development is a must-watch as it could influence future dealings and the structuring of corporate loans and guarantees.
Stay updated with us for more insights and detailed analyses on how this evolves and impacts the business and legal landscapes.

To delve into the specifics, please review the information provided in the following link : https://www.linkedin.com/feed/update/urn:li:activity:7188788396633317377

# Recent Judgements

## CIVIL

### 1. Thangam v. Navamani Ammal, 2024 SCC OnLine SC 227

The Apex Court in the present case highlighted the importance of para-wise reply to Plaint, and further stated that a general or evasive denial would not be sufficient. The matter was pertaining to the genuineness of a registered Will executed by the testator in favour of his brother's daughter without any mention of his widow or daughter in the same. After considering the evidence, the Court did not find any error in the High Court's decision holding the Will genuine.

The Hon'ble Court highlighted that the Plaint filed by the Respondent in the instant matter contained 10 paragraphs besides prayer, while the written statement filed by the Appellants did not contain a para-wise reply but depicted their own story containing 15 paragraphs besides prayer. The Court expressed that "in the absence of para-wise reply to the Plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the Plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras."

The Apex Court made reference to Court referred to Order VIII Rules 3 and 5 of the Civil Procedure Code, 1908 regarding specific admission and denial of the pleadings in the Plaint. Further, the Court placed reliance on Badat and Co. v. East India Trading Co., and Lohia Properties (P) Ltd. v. Atmaram Kumar and clarified that a general or evasive denial is not treated as sufficient and it further added that "In the absence thereof, the Respondent can always try to read one line from one paragraph and another from different paragraph in the Written Statement to make out his case of denial of the allegations in the Plaint resulting in utter confusion ."

Consequently, the Hon'ble Court re-affirmed these already well-established position that the allegations made in the Plaint are deemed to be admitted unless the same has been specifically denied in the Para-wise reply of the Plaint.

## 2. Bloomberg Television Production Services India (P) Ltd. v. Zee Entertainment Enterprises Ltd., 2024 SCC OnLine SC 426

ZEE Entertainment Enterprises Ltd

The Apex Court in the present case discussed the ramifications of the right to freedom of speech of the author and the public's right to know in a pre-trial injunction granted against the publication of an article. The present case is a special leave to appeal against the decision of the Delhi High Court upholding the ex-parte ad interim order of the Additional District Judge (ADJ), South Saket Courts directing Bloomberg Television Production India Private Limited ("Bloomberg") to take down an article allegedly against the Zee Entertainment Enterprises Limited ("Zee"). Further, Bloomberg was also restrained from posting, circulating or publishing the article in respect of Zee on any online or offline platform till the next date of hearing.

The Court relied on the well-established three-fold test for granting an interim relief which is (i) a prima facie case; (ii) balance of convenience; and (iii) irreparable loss or harm. Furthermore, the Court stated that in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind. The Court said that the constitutional mandate of protecting journalistic expression cannot be understated, and Courts must tread cautiously while granting pre-trial interim injunctions. The Court said that the 'Bonnard standard', laid down in Bonnard v. Perryman must be followed while granting of interim injunctions in defamation suits.

The Court held that an ex-parte injunction should not be granted without establishing that the contents sought to be restricted are 'malicious' or 'palpably false'. The Court stated that Injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the Respondent is given a chance to make their submissions. The Court further stated that the grant of an interim injunction, before the trial, often acts as a 'death sentence' to the material sought to be published and hence the court should be mindful before granting such injunctions.

The Apex court held that neither had the Trial Court considered the merits of the Plaintiff's case, nor did it deal with balance of convenience or irreparable hardship caused. The Trial Court also did not analyze as to why such an ex-parte injunction was essential. The High Court had mechanically upheld the order without assessing whether the three-fold test was correctly implemented. Hence the Apex Court set aside the orders of the lower courts.

# ARBITRATION

## 1. 2NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd., (2024 SCC OnLine SC 323)


In the present case, the Apex Court drew the distinction between 'reference' and 'incorporation' of arbitration clause in agreements. The Court discussed the law laid down in the case of MR Engineers and Contractors Private Limited vs. Som Datt Builders Limited and discussed its points of distinctions from Inox Wind Limited vs Thermocables Limited.

Based on the judgment passed in the case of MR Engineers and Contractors Private Limited [supra], the Court observed that sub-section (5) of Section 7 of the Arbitration Act and opined that a reference to the document in the contract should be such that it shows intent to incorporate the arbitration clause contained in the document into the contract. In Inox Wind Limited, though the Apex Court agreed with the view held in MR Engineers and Contractors Private Limited, it has differed and held that though a general reference to an earlier contract is not sufficient for the incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for the incorporation of the arbitration clause. Further, in Inox Wind Limited, the Apex Court held that it was a case of a 'single-contract' and not 'two-contract case' and, therefore, the arbitration clause as mentioned in the terms and conditions would be applicable.

The Apex Court opined that the present case was was a 'two-contract' case and not a 'single contract' case. It is not a case of 'incorporation' but a case of 'reference.' As such, a general reference would not have the effect of incorporating the arbitration clause of the other contract, especially since Clause 7.0 of the LOI i.e. the first contract clearly stated that the redressal of the dispute between the parties has to be only through civil courts having jurisdiction of Delhi alone. Consequently, the Delhi High Court's decision was overturned and the Appeals were allowed.

## 2. Avitel Post Studioz Ltd. v. HPEIF Holdings 1 Ltd., (2024 SCC OnLine SC 345 )

The present case is a pivotal judgemnt whein the Apex Court allowed the enforcenment of a foreign arbitral award and held that only under exceptional cases an enforcement of foreign arbitral award can be declined on the grounds of bias. The Appellants in the present case contested the enforcement of a foreign award under Section 48 of the Arbitration Act. The High Court upheld the enforcement, allowing attachment orders to continue. Thereafter, the Respondnets alleged fraud in securing a US$ 60 million investment, leading to arbitration where damages were awarded. The Apex Court affirmed the arbitrability of fraud under Section 9. When the Appellants failed to comply, contempt proceedings ensued, resulting in imprisonment.

The Apex Court assessed objections under Section 48(2)(b), focusing on arbitral bias and public policy violations. Referring to Vijay Karia v. Prysmian Cavi E Sistemi SRL and Shipowner (Netherlands) v. Cattle and Meat dealer (Germany), the Apex Court stressed that challenges to enforcement have limited scope and should be justified only in exceptional cases of blatant disregard of Section 48. Further, the Court stated that the objection of bias must be first raised in the country of origin of award and not directly at the time of enforcement.

The Court made a reference to the New York Convention and citedits decision in Ssangyong Engg. & Construction Co. Ltd. v. NHAI and concluded that the most basic notions of morality and justice under the concept og 'public policy' would include bias.

The Apex Court highlighted the need for adopting international best practices in determining bias and emphasized that enforcement should only be refused in exceptional circumstances. After examining the implications of IBA Guidelines, the Court found no bias that violated fundamental notions of morality and justice. Consequemtly, the Apex Court upheld the High Court's decision.

# GENERAL CORPORATE

## 1. Mahakali Sujatha V. The Branch Manager, Future Generali India Life Insurance Company Limited & Another Civil Appeal No. 3821 Of 2024


The Supreme Court, in its ruling on April 10, 2024, emphasized the responsibility of each party to discharge the burden of proof specific to them. Regarding insurance contracts, it highlighted that the insurer bears the burden of proving any alleged non-disclosure of material facts, especially if fraudulent, rather than shifting this burden onto the insured or any other party.

.....the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden.

The court in the instant revision petition overturned the 2019 decision of the National Consumer Disputes Redressal Commission (NCDRC) and instructed the insurance company to honor the appellant, Mahakali Sujatha's claim under both policies. The amounts due, totaling Rs 7,50,000 and Rs 9,60,000 respectively, were to be paid with an interest rate of 7% per annum from the date of filing the complaint until fully settled.

The case involved insurance claims denied for the appellant's father following his death in a train accident in 2011. The deceased had two policies from Future Generali India Life Insurance Company Limited. The company alleged the deceased had withheld information about existing life insurance policies from other insurers, citing fifteen policies from various insurers besides theirs. However, the court found the evidence presented insufficient to validly reject the claim.

The court stressed the fundamental principles of burden and onus of proof, asserting that the burden rests on the party making the claim until adequately discharged. It criticized the NCDRC for accepting the insurer's claims without demanding substantial evidence and relying solely on a table indicating fifteen policies bought by the deceased.

No officer of any other insurance company was examined to corroborate the table of policies said to have been taken by the deceased policy holder, father of the appellant herein. Moreover, the table produced is incomplete and contradictory as far as the date of birth of the insured is concerned. Therefore, in our view, the NCDRC could not have relied upon the said tabulation and put the onus on the appellant to deal with that issue in her complaint and thereby considered the said averment as proved or proceeded to prove the stance of the opposite party.

Furthermore, the court deemed the insurer's repudiation of the policy unjustified, lacking a factual basis. It concluded that the insurer failed to sufficiently demonstrate fraudulent suppression of information about existing policies by the insured.

The court stated that any documentary evidence on which the respondent relies, should have been produced before the District Forum but it was not done. Further no oral or documentary evidence was produced by the respondents to prove their assertion. Their application to annex certain documents to support their claim before the state commission was also declined because of the unauthenticated nature of the documents. In the views of court, this all proves that the respondents have failed to adequately prove the fact that the insured-deceased had fraudulently suppressed the information about the existing policies with other insurance companies while entering into the insurance contracts with the respondents herein in the present case. Hence, the repudiation of the policy was without any basis or justification.

Referring to the legal principle of "Uberrimae fidei" governing insurance contracts, the court highlighted the reciprocal duty of full disclosure between both parties. It emphasized the importance of complete disclosure to enable informed decision-making and fair contract formation, cautioning against the suppression of material facts affecting the insured risk and decision-making process. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged as per the rules stated in the aforementioned judgment.

Accordingly, the Court, while setting aside the order passed by the NCDRC, directed the Insurance Company to pay the insurance claim to the Nominee of the deceased insured person along with interest.

## 2. Magnum Steels Ltd v. Asset Reconstruction Company (India) Ltd, WP(C) 5278 of 2024

The High Court of Delhi, while dealing with a case titled Magnum Steels Ltd v. Asset Reconstruction Company (India) Ltd held that the proceedings under SARFAESI Act and RDDB Act are complementary to each other and the proceedings for both can continue parallelly.

The court further opined that since the two proceedings are complimentary, the principle of election of remedies will not be applicable, and the secured creditor can enjoy both the remedies together.

The issue in the instant case arose when the Petitioner took a loan of Rs. 2,97,00,000/- from the Respondent-Bajaj Finance Limited, against a mortgage of secured asset. Later, the account of the petitioner was declared as Non Performing Asset ('NPA').

Thereafter, the respondent issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') seeking repayment of the alleged debt with interest, Section 19 of Recovery of Debts and Bankruptcy Act, 1993 ('RDDB Act') for the recovery of the amount and Section 14 of SARFAESI Act seeking appointment of receiver to take possession of the secured asset.

The Debt Recovery Tribunal (DRT) allowed the application of the respondent filed under Section 19 of RDDB Act and directed petitioner to pay the loan amount. Aggrieved thereby, the petitioner filed the writ petition challenging the order as well as the maintainability of the proceedings under both the Act together.

The High Court while deciding the issue, placed reliance on Supreme Court judgements including Transcore v. Union of India and Another (2008) 1 SCC 125, Mathew Varghese v. M. Amritha Kumar and Ors. (2014) 5 SCC 610, M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd. (2017) 16 SCC 741.

The Court stated that in Transcore (supra), the Supreme Court has held that the application of provisions of RDDB Act and SARFAESI Act are complementary to each other.

In Mathew Varghese (supra) as well this issue was discussed and the Supreme Court held that a closer reading of the acts indicate that SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act.

Subsequently, in M.D. Frozen Foods Exports Pvt. Ltd. (supra) the Supreme Court, yet again reiterated that the RDDB Act and SARFAESI Act are thus, complementary to each other and hence no question of election of remedy can arise.

After holding that the SARFAESI Act and RDDB Act are complementary to each other, court further emphasized that there is no question of election of remedy hence the remedy under both the acts can be availed by the petitioners.

**Questions of law:**

Whether the Company Law Tribunal can intervene in the removal of a person as a Chairman of a Company in a petition filed under Section 241 of the Companies Act, 2013, if the removal is oppressive, mismanaged, or done in a prejudicial manner harming the company, its members, or the public at large.

**Judgement:**

The judgement went in the Tata Group's favour.

The bench dismissed all of Cyrus Mistry's allegations of persecution and mismanagement levelled against Tata Sons Limited. A Supreme Court bench led by Chief Justice S A Bobde, Justice V Ramasubramanian, and Justice A S Bopanna made the judgement.

On December 18, 2019, the Supreme Court postponed the ruling of the National Company Law Appellate Tribunal (NCLAT) to reinstate Cyrus Mistry as executive chairman of Tata Sons.

The court decided that removing a person as Chairman of the Company is not a subject matter under Section 241 of the Companies Act unless it is proven to be "oppressive or harmful." Sections 241 and 242 of the Companies Act of 2013 do not specifically give reinstatement authority, according to the court.

As a result, on December 18, 2019, the Supreme Court overturned the National Company Law Appellate Tribunal's (NCLAT) order to reinstate Cyrus Mistry as executive chairman of Tata Sons.

Accordingly the court dismissed the petition.

# CRIMINAL

## 1. Shiv Prasad Semwal Versus State Of Uttarakhand And Others

The Supreme Court in a recent case of Shiv Prasad Semwal v. State of Uttarakhand & Ors., has held that for the application of Section 153A of the Indian Penal Code, 1860(IPC) the presence of two or more groups or communities is necessary.

The issue in the present case arises when the complainant formed a trust, by the name Savara Foundation. He is the founder and also the Chairman of the Board of Trustees.

The complainant wanted a foundation stone laying ceremony of Matra Ashraya-A collection museum to be done by the Hon'ble Chief Minister of Uttarakhand.

However, the appellant published a news article in the e-newspaper, wherein it was stated that the proposed to be laid was Government land which had been unlawfully occupied/encroached upon by the complainant. As per the complainant even the invitation was published in the defamatory way with the intent and knowledge that the same would irreparably tarnish the reputation of the complainant and his standing in the public domain. The complainant asserted that the sole objective of the publication was to incite breach of peace.

Lack of proper research and fact-finding exercise has resulted into this inappropriate information by which the accused has caused serious damage to the goodwill, reputation and standing of the complainant in the society. Hence, the complainant invoked Sections 153A, 500, 501, 504 read with Sections 34 and 120B IPC. When the appellant came to know about the same, he filed a Criminal Writ Petition in the High Court of Uttarakhand claiming to be completely innocent and taking a plea that the allegations made under Section 153A of the IPC did not disclose commission of any cognizable offence.

The High Court proceeded to dismiss the criminal writ petition filed by the appellant. Thereafter, an appeal was filed before the Supreme Court which was later allowed. After hearing the rival contention of the parties, the Supreme court bench was of the believe that as per the language of Section 153A IPC, in order to constitute such offence, the prosecution must must prove that the words 'spoken' or 'written', created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc., or that the acts so alleged were prejudicial to the maintenance of harmony.

Thereafter, upon careful perusal of the offending news article, the court found no reference to any group or groups of people. Rather the essence of the publication was found on imputing that the respondent had encroached upon public land where the foundation stone laying ceremony was proposed.Court could not find the words to have any connection whatsoever with a group or groups of people or communities. Hence, it held that the foundational facts essential to constitute the offence under Section 153A IPC are totally lacking from the allegations.

Court placed reliance on Manzar Sayeed Khan v. State of Maharashtra and Anr. (2007) 5 SCC 1, wherein it was held that for the application of Section 153A IPC, the presence of two or more groups or communities is essential, whereas in the present case, no such groups or communities were referred to in the news article.

As far as Section 504 IPC is concerned. Court further rejected the invocation of the same stating that the said offence can be invoked when the insult of a person provokes him to break public peace or to commit any other offence. There is no such allegation made by the complainant that owing to the alleged offensive post he was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence.

Accordingly, the other allegations qua the subsidiary offences under Sections 34 and 120B IPC were also held to be non est.

Placing reliance on the State of Haryana and Ors. v. Bhajan Lal and Ors, 1992 Supp (1) SCC 335, the Court held that allowing the continuance of the proceedings against the appellant will result in gross abuse of the process of lawfue to the fact that the allegations as set out in the FIR do not disclose necessary ingredients for any cognizable offence.

The appeal is allowed accordingly and the pending criminal case against the appellant was quashed.

## 2. RAM NATH VERSUS THE STATE OF UTTAR PRADESH & ORS., CRIMINAL APPEAL NO. 472 of 2012

As per a recent Supreme Court judgment when an accused is charged with food adulteration under the Indian Penal Code, 1860 ("IPC"), and Food Safety and Standards Act FSSA, them the proceedings cannot continue under the IPC due to the overriding effect of Section 89 of the Food Safety and Standards Act, 2006 ("FSSA").

With this, SC overturned the judgment of the High Court, wherein it refused to dismiss the criminal charges against the accused. Court noted that simultaneous prosecution under the IPC and FSSA is not allowed. This is because Section 89 of the FSSA takes precedence over the provisions of Sections 272 and 273 of the IPC.

The Supreme Court further stated that when the accused is charged with crimes under Sections 272 and 273 of the Indian Penal Code (IPC), offence underSection 59 ofthe FSSA isalso attracted.

The issue in the present case arose after a First Information Report was lodged by a food inspector against the petitioner alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was that, the appellant did not possess a licence to sell the commodity of mustard oil, but hecontinued to sell the same. Another allegationwas that thepetitioner had adulterated the mustard oil, edible oil and rice brine oil. The accused approached the High Court under Section 482 Cr.P.C. to quash the FIR, however, the High Court refused to quash the FIR, hence the present criminal appeal before the Supreme Court.

The supreme court accepted the submissions made by the appellanta nd held that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC.

Court further accepted that the title of FSSA suggests that the FSSA is meant to have a major impact on all laws related to food. However, in the main section, there is no specific limitation to only food-related laws. It states that the rules of the FSSA will still be valid even if they conflict with any other current law.

In light of the argument advanced by the contending parties, the Supreme Court quashed the pending criminal case against the appellant accused under IPC and gave the option to the concerned authorities to initiate proceedings against the appellant under FSSA for offences punishable under Section 59 of the FSSA.

# TAX

## 1. M/s Samsung India Electronics Private Limited Vs State of Uttar Pradesh [2024-TIOL-468-HC-ALL-GST]


In the case of M/s Samsung India Electronics Pvt Ltd v State of U.P and Others, the hon'ble Allahabad High Court addressed the petitioner's refund claim for unutilized Input Tax Credit (ITC) of CGST, SGST, and IGST paid on various inputs and input services.

The petitioner, M/s Samsung India Electronics Pvt Ltd, exported IT services to its overseas holding company, M/s Samsung Electronics Company Limited, Korea. They filed refund claims for unutilized ITC of CGST, SGST, and IGST paid on inputs and input services from April to June 2019, which was partially sanctioned. Subsequently, they applied for refunds for July to September 2019 and October to December 2019. The Department issued deficiency memos and show cause notices, alleging rejection of refunds for these periods. After replies and hearings, the Department partially allowed the refunds but rejected a portion, arguing certain goods were capital goods, not inputs. The petitioner appealed, leading to the present petitions before the Allahabad High Court.

The Hon'ble Allahabad High Court, while quashing the Order, held that while the principle of res judicata does not apply to taxation matters, tax authorities must maintain a consistent approach when faced with similar factual and legal circumstances.

The court emphasized the importance of uniform treatment, as taxpayers have a legitimate expectation of fairness and equity from the tax authorities and deviations from this principle undermines the credibility of their actions. The court also noted that withholding refund claims arbitrarily, despite past precedents and unchanged circumstances, is unfair. While drawing a distinction between capital goods and inputs, the hon'ble court affirmed that that the Petitioner's case is not subject to capitalization. The court stressed that show cause notices must clearly outline specific allegations, and the department cannot exceed their scope without violating natural justice. Any action beyond the show cause notice's confines was deemed void ab initio and unsustainable. The court found the impugned orders erroneous and allowed the writ petitions, with consequential reliefs to follow.

**W&B Comments:** It is a settled position of law that the Department cannot adopt a contradictory stance or inconsistent approach when dealing with the same facts and legal background. Altering their position would imply that their prior stance was incorrect. Therefore, tax authorities are required to adhere to uniform treatment when faced with similar factual and legal circumstances.

## 2. M/s Tokyo Zairyo (India) Private Limited Vs Assistant Commissioner [W.P.No.8817 of 2024 Order dated 02.04.2024]

The Madras High Court in Tokyo Zairyo (India) Pvt Ltd vs Assistant Commissioner set aside the order disregarding petitioner's reply as an unauthorised.

The Petitioner had challenged the assessment order which had disregarded the petitioner's reply. After the completion of the audit, a show cause notice was issued, to which the petitioner responded well within time.

However, the tax authorities passed an assessment order, prompting the petitioner to challenge it on the grounds of their disregarded reply. The petitioner had highlighted the disregard of the petitioner's reply, labeling it as unauthorized solely because of the petitioner's inability to attend the scheduled personal hearing. The department's argument against it was that the petitioner had failed to produce certain essential documents, leading to the confirmation of the tax demand.

The Hon'ble High Court observed that the order specifically mentioned the rejection of the petitioner's reply as unauthorized due to the absence of the petitioner during the personal hearing which raised question regarding the validity of such categorization and the subsequent disregard of the petitioner's contentions. Consequently, the court set aside the order and remanded the matter for reconsideration, emphasizing the necessity of providing a reasonable opportunity to the petitioner, including a personal hearing

.

**W&B Comments:** The Hon'ble Madras High Court observed that the assessment Order passed under Section 73/74 of CGST Act, had failed to comply with Sub-section 9 o of the provision. As the assessment order was passed without any consideration of representation (reply) made by the petitioner, it is not a well sounded order as it does not comply with the law well as the principles of natural justice.

## 3. M/s. Shantanu Sanjay Hundekari vs. Union of India [2024 (3) TMI 1277]

The Bombay High Court in the case of Shantanu Sanjay Hundekari vs. Union of India ruled that penalties could not be imposed on the employee, as they were neither taxable nor registered.

The petitioner, acting as a taxation manager for a shipping company, was authorized via power of attorney for specific GST matters. Allegations arose during investigations regarding the company's improper utilization and distribution of input tax credit, resulting in a significant demand cum show cause notice. This notice also targeted the petitioner for potential penalties alleging the benefit retention or causing such offences. The petitioner argued that they did not fall under the taxable or registered category according to GST laws, and thus should not be implicated in benefiting from such actions.

Appreciating the petitioner's arguments, the court concluded that penalties under Section 122(1A) of CGST Act could not be applied to the employee, as they neither violated the provisions outlined in Section 122(1) nor retained any benefit. This provision applies exclusively to taxable or registered individuals, which the employee was not.

**W&B Comments:** Section 122(1) applies to taxable persons, and this extends to subsequent application of Section 122(1A) to taxable persons as well. The Hon'ble Bombay High reaffirmed that Section 122 is invoked particularly when the offence is committed by the individual for personal gain, not because of the position they hold. Invoking Section 137 pertaining to criminal proceedings, in a show cause notice under Section 74 for adjudication renders such proceedings out of jurisdiction.

## 4. M/s. Vardhan Infraastructure vs. Central Board of Indirect Taxes [2024 (3) TMI 1216]

VARDHAN INFRA
DEVELOPERS

The Madras High Court in Vardhan Infraastructure vs. Central Board of Indirect Taxes held that Centre Authority cannot initiate proceedings against taxpayers assigned to State Authority and vice versa in the absence of cross-empowerment notification.

The Petitioner had argued that Central authorities had initiated the proceedings even though petitioner was assigned to state authorities for all the administrative purposes. In few other cases, State authorities had initiated the investigation but taxpayer was assigned to center authorities. While challenging the jurisdiction of the authorities to conduct the proceedings, the petitioner had contended that there is no cross-empowerment enabled in the GST law in absence of the notification [except refund processing notification] To contend it, petitioner referred to GST Council meeting minutes [9th and 22nd GST Council meeting], circular for division of taxpayer in the manner in which it was decided to be distributed between the Centre and State. Support was also drawn from Section 3 and 4 of CGST and SGST Act to say that the powers assigned to Board or Commissioner are linear and not cross-empowered as was structured under the Model GST law.

Appreciating the arguments taken by the petitioner, the hon'ble Court held that there is no notification in place under Section 6 to cross-empower the authorities to initiate or pursue the proceedings against the Petitioner who is not assigned to it. The hon'ble High Court issued the directions to jurisdictional authorities to pursue the appropriate investigation in case of assigned taxpayers and the limitation period will exclude the period of writ proceedings.

**W&B Comments:** The Hon'ble Madras High Court has clearly stated that in the absence of a notification under Section 6(1), authorities lack the cross-empowerment to initiate proceedings against a taxpayer who hasn't been assigned.

However, in a previous judgment (Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi [2022 (58) G.S.T.L. 292 (Mad.)]), the same court emphasized the distinction between "proceeding" and "inquiry," as Section 6(2) qualified by the words “subject-matter” indicates an adjudication process/proceeding on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties etc. Such proceedings are subsequent to inquiry. Therefore, the proper officer may proceed with a parallel proceeding under Section 70 in any inquiry even when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act.

## 5. M/s. Southern Engineering Services v. Deputy State Tax Officer [2024 (4) TMI 653]

The Hon’ble Madras High Court in the case of Southern Engineering Services v. Deputy State Tax Officer allowed the writ petition and set aside the assessment order thereby holding that, the assessment order is liable to be quashed in case where Petitioner incorrectly reported turnover in GSTR-1 but correctly in GSTR-3B.

Southern Engineering Services supplied services to an SEZ unit without charging any GST as the said supply was zero rated supply. The Petitioner incorrectly reported the turnover under the column taxable value in Form GSTR-1 but corrected the mistake by reporting is as zero-rated supply in Form GSTR-3B. However, the Department passed the assessment order against the Petitioner.

The Hon'ble Madras High Court held that, as per the invoice placed on the record by the Petitioner, the supply was made to the SEZ unit and therefore, the said supply would fall within the purview of zero-rated supply and the error in return was at the time of introduction of GST.

The court quashed the assessment order while observing that the Petitioner is entitled to an opportunity for hearing as per the facts and circumstances of the case.

**W&B Comments:** Despite the availability of an alternative remedy of appeal to the Petitioner, the Hon'ble High Court chose to entertain the present case and remanded it for reconsideration and emphasized on the necessity of providing the taxpayer with a personal hearing opportunity. This ruling is relevant as it establishes a precedent wherein if the violation of principles of natural justice is raised, the alternative remedy may be bypassed, allowing the High Court to address the concerns of the aggrieved taxpayer.

## 6. M/s. Sterlite Power Transmission Limited vs. Union of India [W.P.(C) 2966/2024 Order dated 28.02.2024]

The Petitioner, Sterlite Power Transmission Limited, has challenged the imposition of GST on the activity of providing a corporate guarantee to a subsidiary company by the holding company on the premise that it does not fall within the ambit of supply of services.

Under Service Tax regime, corporate guarantees faced no taxes if no consideration was involved.

It was also a view that corporate guarantees were akin to actionable claims and fell under Schedule III of the CGST Act, 2017 therefore it neither constituted the supply of goods nor services and accordingly not liable to GST. There was a lack of clarity on specific valuation mechanism in cases when a holding company provided a corporate guarantee to a subsidiary without receiving any consideration.

Based on the recommendation of the 52nd GST Council meeting, by Notification No. 52/2023-Central Tax dated 26.10.2023, Rule 28 of the Central Goods & Service Tax Act, 2017 was amended providing new valuation provision for corporate guarantees provided on behalf of a related person. CBIC has also issued Circular No. 204/16/2023-GST, dated 27-10-2023 clarifying that the activity of providing corporate guarantee to the bank/financial institutions for providing credit facility to the other company, where both the companies are related, is to be treated as supply of service. In case where no consideration is involved then also it is to be treated as a taxable supply of service as per provisions of Schedule I of CGST Act.

The petitioner has challenged the Circular, arguing that corporate guarantee is in the nature of a contingent contract which is not enforceable till the guarantee is enforced by the entity to which the guarantee is provided. The value of enforcement is not dependent on the value of the guarantee, and it is only where the guarantee is enforced that the issue of service may arise, if at all and as such fixing a value at 1% of the corporate guarantee provided would put onerous burden on the entity providing the corporate guarantee.

The Hon'ble Delhi High Court has issued a notice in the matter and directed that no coercive action should be taken against the petition where a final assessment is passed, or demand is created.

**W&B Comments:** The decision by the Hon'ble Delhi High Court to entertain the writ petition offers hope for clarity on GST implications for corporate guarantees. This could offer much-needed guidance, particularly after the ambiguity following the Supreme Court's ruling on non- applicability of service tax on corporate guarantee in the Edelweiss Financial Services Limited case. Despite the recent circular's attempt to address these issues, uncertainties persist regarding the timing and valuation of supplies.

# Articles

## Corporate governance and duty of directors


Companies drive economic growth for the country which leads to societal progress and development by contributing significantly to various sectors like employment, logistics, raw material etc. A healthy economy is often attributed to the number of successful businesses in a country. Their existence maintains regular flow of funds in various sectors including the sector in which they operate and also the other sectors which directly or indirectly work with these companies. In these circumstances, it becomes pertinent that these companies must act responsibly. They must have efficient management and fair practices. Directors have big responsibilities in this setup.

**Laws in India**

India being one of the developing nations is a home to various national as well as multinational companies. It has taken various steps to ease the way of doing business for these companies. India has various laws to guide good company governance and director duties. The Companies Act of 2013 is the primary law which prescribes responsible corporate governance practices. It sets clear rules for governance and duties of the director in a company.

**Care and Diligence**

Directors form the backbone of the company. It is the decisions of the directors that impact the company significantly. Any wrong decisions may lead the company to invite onerous legal scrutiny and penalties or force the winding up of its operations. Hence, directors must work with due care and diligence. They must act in the company's best interests.

**Loyalty and Conflict of Interest**

Directors must put the company first. This basically means that they should try their best to protect the interest of the company. When their own interest and the interest of the company is at stake, they must prioritize company interest over their own. They should avoid conflicts of interest. As per Section 166 of the Companies Act, 2013, every Director of a Company is duty bound to act in good faith in order to promote the objects of the company for the benefits of its members and in the best interests of all the stakeholders as well as the environment andalso exercise independent judgment. A director of a company shall exercise his duties with due and reasonable care, skill and diligence. He must not be involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. A director of a company shall not assign his office and any assignment so made shall be void. If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than INR 1 lakh but which may extend to INR 5 lakhs.

**Regulatory Oversight**

Directors are presumed to be officers in default and may be tried for any company law, foreign exchange or tax related violations by regulatory authorities such as Ministry of Corporate Affairs, SEBI, RBI, Income-tax Authorities etc.

**Challenges and stakeholder engagement**

Existing laws and regulations have improved to promote good corporate governance, but challenges remain. Recent scams like Punjab National Bank fraud case and IL&FS crisis have highlighted the need for continuous monitoring and enforcement to comply with corporate governance rules and obligations. Considering this situation, aligning the interests of various stakeholders such as shareholders, employees, customers and vendors play an important role. By engaging with stakeholders and encouraging activism, companies and their directors can be held accountable, transparency can be increased and positive changes can be made in corporate governance.

**Conclusion**

For businesses to thrive, it is essential to have strong corporate governance and directors to diligently carry out their duties. By following the law and creating a stable and ethical work environment, companies can establish trust, create value over the long term, and help advance economic and social development.

## When can the leader classify loan account as fraud


In the world of banking wherein financial transactions take place in a large number, keeping activities safe from fraud becomes crucial. However, a question arises as to how do lenders know when a loan is fraudulent? Let's take a look at this perspective.

**Understanding Loan Fraud:**

Loan fraud is considered a practice wherein one person tricks a bank into giving them money dishonestly. It happens in all kinds of loans, like home loans, personal loans, or credit cards. The process of tricking the banks may involve lying about financial conditions, using fake IDs, or forging documents.

**Signs of Loan Fraud:**

Due to the nature of their services, banks might face difficulties in accessing every loan account to find out which is a fraud one. However, there are some cues that must alert a lender:

**False Information:** If the person who has secured the loan has lied about their financial situation, which includes over assessing or under accessing their income, it could be fraud. Hence, banks must undertake rigorous due diligence.

**Identity Theft:** When a loan is secured using someone else's id rather than personal id, this must raise concern about the authenticity of the transaction.

**Fake Documents:** Forged documents or lack of essential documents is a sign of concern.

**Strange Activity:** A person who has secured a loan or in the process of securing a loan and who has been parallelly engaged in applying for a lot of different loans all at once or who is known to change the terms of a loan very frequently could be suspicious.

**What Lenders Must Do:**

The above activities can be an indication which can help banks can to filter out such kinds of transactions from normal ones. Once they know these accounts require extra attention, they need to do the following:

**Documentation and Evidence**: Lenders should keep a record of all important details like important documents and the transactions undertaken by these accounts and gather proof if they suspect fraud.

**Legal and Regulatory Compliance:** Lenders must follow all the applicable laws without any excuse. They are required to promptly report fraud to the authorities and submit all required documents which are relevant for the investigation.

**Risk Assessment:** It is the responsibility of these institutions to follow various risk assessment approaches for risk mitigation and securing their economic health. It includes initiating fraud prevention measures, suspending or terminating fraud loan accounts, and providing loans only after a complete background check of the customer.

**Customer Due Diligence:** In order to mitigate the risk of loan frauds, the economic institutions must implement robust customer due diligence processes that can help them identify and prevent loan fraud at an early stage. This involves verifying the identity of borrowers, document verification and monitoring account activity for suspicious behavior.

**Classification of frauds**

In order to have uniformity in reporting, frauds have been classified by RBI in its Master Directions on Frauds, based mainly on the provisions of the Bharatiya Nyaya Sanhita (erstwhile Indian Penal Code):

- Misappropriation and criminal breach of trust.
- Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.
- Unauthorised credit facilities extended for reward or for illegal gratification.
- Negligence and cash shortages.
- Cheating and forgery.
- rregularities in foreign exchange transactions.
- Any other type of fraud

**When can banks classify loan accounts as fraud?**

The initial decision to classify any standard or Non Performing Asset account as Red Flagged Account ('RFA') or Fraud lies with the bank in which the fraud account exists. It is the responsibility of the bank to report the RFA or Fraud status of the account on the Central Repository of Information on Large Credits (CRILC) platform so that other banks are alerted. In case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, the bank then has to report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as is being done hitherto.

**Right of Borrowers**

Recently in a case which came up for hearing in the Supreme Court challenging the Reserve Bank of India's (RBI) 2016 directions on 'Frauds Classification and Reporting by Commercial Banks and Select Financial Institutions', the bench was faced with the question wherein the borrowers were not given a chance to defend themselves before their accounts were labeled as fraudulent.

The bench held that while a hearing is not necessary prior to filing an FIR, it is important to read principles of natural justice into the 'Master Directions on Frauds' to prevent any arbitrary actions.

The court stated that when an account is classified as fraud, it results in multiple consequences for the borrower. Initially they have to face criminal and civil proceedings when the incident is reported to investigating agencies and also it might happen that this will result in blacklisting and designating the borrower as unworthy of credit by banks.

"When a borrower's account is classified as fraudulent under the Master Directions on Frauds, it essentially results in a freeze on their credit. This means they are prohibited from obtaining financing from financial and capital markets. The inability to raise funds could be devastating for the borrower, potentially leading to severe consequences such as financial ruin and loss of rights protected under Article 19(1)(g) of the Constitution. Debarment prevents a person or entity from exercising their rights and privileges, so it is crucial that the principles of natural justice are followed. The individual facing debarment should have the opportunity to present their case and be heard before any action is taken."

As far as the right of borrowers of being heard is concerned, the Court ruled that the principle of audi alteram partem, meaning "hear the other side", cannot be overlooked in the Master Directions on Frauds. Hence, the lender banks have to give borrowers a chance to defend themselves before labeling their account as fraudulent. It is true that the Master Directions on Frauds do not specifically prescribe for the borrowers to have a chance to defend themselves before their accounts are labeled as fraudulent but the court said that the principle of audi alteram partem must be applied to ensure that the borrowers are not unfairly treated.

**Conclusion**

Identifying a loan fraud is very important in the banking industry to uphold trust and safety placed in the lending activity and ensuring the good health of the economy. By identifying the indicators like inaccurate information, fake identities, or unusual behavior, lenders can act quickly to safeguard themselves. Establishing proper procedure is key in addressing potential fraud instances, guaranteeing that borrowers are given a chance to advocate for themselves and uphold their entitlements. Since many matter are prone to become adversarial, it is important for the lender to choose the right long-term legal partner to efficiently defend their claims.

# Arbitration and Enforcement of Foreign Award


Countries are diverse based on their unique social, economic, and political aspects. However, they are interconnected through business. It is because of this that many commercial disputes sometimes surpass national boundaries. In these times where the growth of a country is determined by its economic prosperity and trade relations, dispute resolution mechanisms like Arbitration have become a popular choice for settling global business disputes. Unlike traditional litigation, arbitration is a quick, amicable and efficient mode of conflict resolution. Nonetheless, enforcing international arbitration awards in India can prove to be a complicated endeavor, as it is guided by a plethora of statutes, rules, and legal precedents.

**Understanding Arbitration and Foreign Awards**

When the entities are engaged in business relations across borders, the last thing they would want is to be stuck in long-drawn legal battles. In business, time plays a crucial role. If the finances are stuck due to litigation, businesses might feel scarcity of money to undertake their core business and growth-related initiatives. Arbitration serves as a private method for resolving conflicts whereby parties' consent is required to have their disputes resolved by unbiased third-party called the arbitrator, whose ruling (referred to as an award) holds legal weight just like a judgment of the court. A foreign award is a decision made by arbitrators from outside India's jurisdiction. It is a decision made by arbitration panels in international or domestic arbitration proceedings.

**The Legal Framework**

The legal rules for arbitration and enforcing foreign awards in India are prescribed under the Arbitration and Conciliation Act of 1996, which is influenced by the UNCITRAL Model Law.

The New York Convention of 1958 helps in making sure that awards from arbitration conducted in other countries are upheld and enforced in a consistent and effective way. India's participation in the Geneva Convention of 1927 also strengthens the legal system for enforcing foreign arbitration awards.

The importance of arbitration as well as foreign awards and the rules governing them is highlighted by various courts in several decisions. These decisions have helped shape India's arbitration laws. In Renusagar Power Plant Co. Ltd. v. General Electric Co. (1994). SC 860, the Supreme Court upheld the implementation of a foreign judgment against an Indian company.

However, in National Agricultural Cooperative Marketing Federation of India (NAFED) v. Alimenta S.A., SC rendered the contract unenforceable due to violation of public policy. Court noted that NAFED was justified in not exporting the commodity as per the contract because doing so would have violated a government order.

Hence, the enforcement of foreign arbitration awards is determined on a case-to-case basis.

**Section 44 of Arbitration and Conciliation Act, 1996**

According to Section 44 of the act, a "foreign award" refers to a decision made by an arbitrator in a dispute between individuals, whether based on a contract or not, which are considered commercial under Indian law. This award must have been issued on or after October 11, 1960, and meet the following criteria:

(a) It must be the result of a written agreement for arbitration that falls under the Convention listed in the First Schedule.
(b) It must have been issued in a territory designated by the Central Government, which has determined that reciprocal agreements are in place and has officially announced such territories in the Official Gazette as covered by the mentioned Convention.

**Section 47 of Arbitration and Conciliation Act of 1996**

**As per Section 47 of the Act:**

(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced is in a foreign language, the party seeking to enforce the award shall produce a translation into English.

**Conditions for enforcement of foreign awards**

Enforcement can be denied due to incapacity of the parties, lack of proper knowledge or inability to present a case, award covering issues beyond the arbitration agreement, procedural irregularities, or if the award is not binding or has been set aside by the competent authority. Additionally, enforcement may be refused if the subject matter is not arbitrable under Indian law or if enforcement would be against public policy. The term "public policy" includes instances of fraud, violation of Indian law, or conflict with fundamental principles of morality or justice. If an application for setting aside or suspending the award is pending, the court may adjourn the decision on enforcement and may also order security from the party seeking enforcement.

**Enforcement of foreign awards.**

Where the Court is satisfied that the foreign award is enforceable, the award shall be deemed to be a decree of that Court.

**Addressing Challenges and Considerations**

It can be said that arbitration as a mode of dispute resolution is always prompted in India. To ensure that people and businesses use this way to get their disputes resolved, laws have been made lenient and validity of the awards have been made final. Even with the existing legal structure and favorable pro-arbitration decisions, individuals looking to enforce foreign awards in India may encounter obstacles.

**Some of the common challenges are:**

- The court hearing can be prolonged and enforcement of arbitral awards can be delayed. This invalidates the very purpose of arbitration as an alternative to courtroom litigation.
- The necessity for proficient legal assistance in navigating the intricacies of global arbitration and enforcement processes is complex and costly.

**Conclusion**

Enforcement of foreign awards play a crucial role in facilitating smooth international trade. The legal system and court rulings have time and again provided necessary support to simplify the process and increase the efficiency of the enforcement, yet certain obstacles remain. To improve the likelihood of successfully enforcing foreign awards in India, it is vital to stay informed about developments, consult with legal experts, and adhere to best practices in international arbitration.

# Privacy and Data Protection: Understanding Your Rights in the Digital Age


The influence of technology and the internet in our daily lives is greater than it was earlier and this scenario is here to grow manifold with the advent of AI. During the course of our lives, we share personal information online through various social media and online platforms to connect personally and professionally. The price that we pay while availing the digital services is in the form of our personal information which raises valid concerns surrounding data privacy and protection.

**What is Privacy and Data Protection?**

Right to Privacy allows you to keep your personal information confidential. Data protection refers to the measures and practices that ensure your personal data is safeguarded against data theft and misuse.

**Why is Privacy and Data Protection Important?**

Your personal information includes details like your name, address, phone number, financial data, and health record, this data can be misused by cyber criminals for identity theft or other financial scams. With the introduction of AI, various new areas of crimes have emerged using Deep Fake technology. Hence, protecting your data has become more important than it ever was. Privacy laws and data security regulations empower you with ownership over your personal information and restrict any unauthorized use.

There have been various instances wherein an individual's personal data was subjected to various malicious uses by private entities. This data is sometimes taken without even the owner's consent. The Cambridge Analytica Scandal in 2018 brought widespread attention to the issue of data privacy and misuse of data.

It exposed that the personal information of Facebook users was collected without their consent for political advertising. In a similar incident in 2021, the Pegasus Spyware Case came into light wherein, it was alleged that Pegasus Spyware is used for illegal surveillance on journalists, activists, and politicians. This incident again highlighted the importance of data privacy.

**Judicial intervention to safeguard personal data**

The courts in various instances came to the rescue of people who were the victims in the hands of private entities. The personal data was either taken without their consent or through complicated interfaces wherein users did not even understand that they have given consent and for what purpose. This left the data subjects in a vulnerable position without any recourse. In such situations, judicial intervention provided appropriate remedy to the data subjects. It also ensured that the entities using personal data are not taking advantage of the data subject's innocence or lack of technical knowledge.

In the case of Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors. AIR 2017 SC 4161, Supreme Court confirmed that privacy is a fundamental right under the Indian Constitution, paving the way for stronger regulations to safeguard personal information.

In another notable case, WhatsApp LLC & Anr. v Competition Commission of India, LPA 163/2021, the Delhi High Court ruled that WhatsApp's updated privacy policy violated IT Act and rules and the judgement allowed users to opt out from providing forced consent. This case highlighted the importance of transparent and responsible data management practices.

**Key Laws and Regulations in India**

**The Information Technology Act, 2000:** The Information Technology Act of 2000 sets out rules for electronic governance and oversees how personal data is handled. It also includes penalties for cybercrimes such as hacking and data theft.

The Digital Personal Data Protection Act, 2023: The Digital Personal Data Protection Act of 2023 has established a strong data protection law in India. It outlines individual rights regarding personal data, creates a Data Protection Authority, and places responsibilities on data fiduciaries. The 2023 act permits personal data to be used for any legal purpose. Entities that collect, store, and process digital personal data ('Data fiduciaries') and have specific responsibilities of: (a) maintaining security measure; (b) ensuring accuracy and completeness of personal data; (c) reporting data breaches to the Data Protection Board of India (DPB) in a prescribed manner; (d) deleting data upon consent withdrawal or when the specified purpose expires; (e) appointing a data protection officer and establishing grievance redress systems; and (f) obtaining parental/guardian consent for children/minors under eighteen years of age.

**The Aadhaar Act, 2016:** The Aadhaar Act, 2016 dictates how the Aadhaar unique identification system is used and lays down guidelines for gathering, storing, and using biometric data. The Supreme Court in Aadhar Judgement found that the Aadhaar Act was constitutional to the extent of using Aadhar for verifying an individual's identity to receive government-funded benefits like subsidies. However, private entities cannot use Aadhaar data without an individual's consent for any other purpose.

**Your Rights under Data Protection Laws**

**Consent:** When it comes to your personal data, companies and organizations are required to ask for your clear permission before they gather and handle it.

**Purpose Limitation:** Your data can only be used for the specific reason it was collected for or permitted for, and not for anything else.

**Data Minimization**: Additionally, only the necessary amount of data should be collected, and once the purpose is met, it should be removed.

**Access and Correction:** You also have the right to see and correct any inaccuracies in your personal data that the organizations holds.

**Data Portability:** Furthermore, you can move your personal data from one service provider to another in a standard format.

**Right to Be Forgotten:** You have the right to get your personal data removed or deleted from an organization's records under certain circumstances.

**Protecting Your Privacy and Data**

Be Cautious with Personal Information: When sharing personal information online, be cautious and think carefully about what you disclose, especially on social media platforms.

Use Strong Passwords: To protect your accounts, create strong, unique passwords for each account, especially banking and investment related information and consider using two-factor authentication if possible.

Keep Software Updated: Keep your operating systems, applications, and antivirus software up to date to prevent data security breaches.

Be Vigilant Against Phishing Attempts: Do not reply or provide personal information to unsolicited emails, messages, or calls requesting personal information.

**Conclusion**

Privacy and data protection are fundamental rights in the digital age. In a country like India where the majority of the population may not be technically-informed, it becomes even more dangerous to protect personal information. Many people might not be aware enough to understand their personal data being used for unintended purposes. The Internet has reached various parts of the country, with internet access and mobile usage, the issue of personal data protection has become more crucial than before. By understanding your rights and the laws that protect them, you can take steps to safeguard your personal information and maintain control over your data.

# Insolvency Proceedings and Homebuyers' Rights: What You Need to Know


In times when the real estate developers face financial trouble and they are unable to finish building homes, the homebuyers are left in a tough situation. The emotional stress and financial burdens faced by homebuyers in such situations cannot be overstated. Consider the case of the Amrapali Group in India (Bikram Chatterji v. Union of India, (2019) 19 SCC 161), where the Supreme Court canceled the developer's registration and ordered the attachment of its properties to ensure the completion of unfinished housing projects and the refund of investments made by homebuyers. In this article, we explore the rights and protections available to homebuyers in insolvency proceedings.

**Who are homebuyers?**

As per the Insolvency and Bankruptcy Code, 2016 ('IBC'), homebuyers are financial creditors. A 'financial creditor' is a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. In other words, a financial creditor is someone who's money is not yet paid by the person who owes the repayment. Homebuyers under IBC are treated as financial creditors. Their status as operational creditors has been reversed.

Homebuyers, who have invested in residential projects but have yet to receive possession of their homes, are typically classified as financial creditors. They have already paid advance money for the possession and are awaiting the same. They are given priority in insolvency proceedings. Operational creditors are those contractors, suppliers, or service providers who have provided goods or services necessary for project construction but have not been paid.

**Understanding Insolvency Proceedings:**

When a company or person is unable to repay their debts, it's called a situation of insolvency. In the real estate sector, insolvency occurs when developers cannot finish projects or deliver homes within a stipulated timeline because they have run out of finances. Insolvency cases in the Indian real estate sector have affected thousands of homebuyers, which highlights the prevalence and gravity of the issue.

**Homebuyers' Rights in Insolvency:**

As a homebuyer, you are not left helpless by the legal system. You are bestowed certain rights. Here's what you're entitled to if you've bought a home from a developer facing financial problems:

**Priority Status:** As a homebuyer whose money is owed by a developer, you have the advantage of being prioritized to receive your money back. This special treatment was established following the landmark IDBI Bank v. Jaypee Infratech Limited 2017 LawSuit (NCLT) 5069, which granted homebuyers the position of financial creditors under the IBC.

**Asset Protection:** You have the right to stake a claim on any property or assets owned by the developer in order to recover your funds.

**Legal Assistance**: Additionally, you have the option to pursue legal action against the developer to retrieve your money, compel them to complete the construction, or terminate the agreement and receive a refund.

**Regulatory Support:** Government agencies like the Real Estate Regulatory Authority (RERA) in India is empowered step in to help complete the building projects or find new developers to take over, as seen in the Pioneer Urban Land and Infrastructure Ltd. and Anr. V. Union of India Writ Petition (Civil) NO. 43 OF 2019.

**Challenges and Considerations:**

**Delays:** When a company is insolvent, it can be a lengthy process before a resolution is reached, causing delays. It is important to address these issues promptly, as seen in the Pioneer Urban Land case.

**Limited Funds**: In situations where there is not enough money to cover all debts, you may not receive full repayment.

**Legal Expenses:** The costs associated with legal proceedings can be substantial, therefore it is wise to review the risks and the costs involved. Obtaining guidance from seasoned legal professionals is key.

**Market Influences:** The completion of projects may be impacted by economic factors. Market is subject to various factors including cost of various raw materials, taxations, loan interest etc. It is the situation of the market which will determine the completion of the project with sufficient economic resources.

**Homebuyers cannot be treated different from other 'financial creditors'**

Recently, the Supreme Court in Vishal Chelani and others v. Debashis Nanda, 2023 LiveLaw (SC) 894 held that homebuyers cannot be treated different from other 'financial creditors' under the IBC only because they have secured favorable orders from the authority under RERA.

Court also overruled a National Company Law Appellate Tribunal (NCLAT) order which held that the beneficiary RERA orders should be treated differently from other home buyer allottees. It further stated that it is only home buyers that can approach and seek remedies under RERA – no one esle. In such circumstances, to treat a particular segment of homebuyers differently from another segment, on the ground that one had taken back the deposits with interest as ordered by RERA, would be highly inequitable.

**Conclusion**

With the rising economy of a developing nation like India, real estate sector is at an all-time boom. With the continued interest in the sector, real estate projects are also growing significantly. Hence, it becomes pertinent to know what are your rights as homebuyers. If you find yourself in a situation where your developer is facing insolvency, stay informed about the insolvency proceedings and any developments related to your housing project. Explore legal options and file appropriate claims or petitions to assert your rights as a homebuyer. Cooperate with regulatory authorities like RERA and provide all necessary documentation to support your case. It is imperative to choose the right course of action whether litigation or alternate dispute resolution to resolve the matter efficiently.

## Challenges in the real estate sector post-GST implementation


Before GST there used to be multiple taxation systems prevalent in the country. Tax rates used to vary from state to state, further complicating the taxation regime. The implementation of the GST regime in India is one of the major reforms aimed at simplifying the complicated tax system and making one tax applicable throughout the country under the 'One nation, one Tax' initiative. However, the real estate industry, which is a key player in the Indian economy, encountered several obstacles after the implementation of GST. Real estate contributes 6-7% of the total GDP of the country. The GST rates for real estate are 5% for residential properties and 18% for commercial properties. Developers under input tax credit (ITC) under the GST system, claim a tax credit for the GST they have paid on goods and services. This ultimately results in lower prices of the construction which ultimately results in lower property prices.

**How GST is applied in Real Estate sector**

Two main aspects of GST applicability in real estate are the goods aspect i.e. applicable GST on various construction materials and the services aspect i.e. the activity of construction itself. Result of both these aspects is the final cost of the property. The total GST applicable is calculated by adding the SGST (state GST) and CGST (central GST), thus 18% GST = 9% SGST + 9% CGST. 12% GST = 6% SGST + 6% CGST and so on. Different rates are applicable on different construction materials like Building bricks 5%, Roofing tiles 5%, Marble/Granite blocks 12%, Portland/Slag Cement 28% etc. Construction services also feature different taxes like Under construction properties under Credit Linked Subsidy Scheme 8%, Under construction properties (excluding those under Credit Linked Subsidy Scheme) 12%, Composite supply of works contract for affordable housing 12%, Works Contract (other than govt. bodies) 18% etc.

**Registration and Stamp Duty**

Registration and stamp duty are still applicable to real estate even post GST implementation. These charges are different in different states and may also vary from part to another part within the same state itself. These stamp duty and registration charges are applicable to both constructed and under construction properties, while GST is only applicable to under construction properties.

**GST on transfer of development rights ('TDR')**

TDR is when the owner of the land transfers the development rights of land to the Developer to construct the building. In return, the Landowner either takes money or a part of constructed property. This arrangement between the landowner and the developer is being treated as 'service' to attract GST. This has again left the developers in dollema since GST is not applicable on immovable properties and land here is immovable property. The definition attached to General Clauses Act, 1897 provides that "immovable property" includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. TDR is a benefit arising out of the land and hence it is an immovable property.

**Transfer of Floor Space Index (FSI)**

FSI is actually a permission granted by the concerned authority for undertaking construction on any land, with a view that the construction does not exert weight on ground beyond a specific limit. FSI is the maximum permissible limit on a land on which a structure can be built. FSI permission is sought by the developers from the concerned authorities i.e. local municipal authorities. GST is levied on the grant of FSI by the authorities since the permission is treated as a 'service'. This GST cost is in addition to the fees paid to these authorities to obtain permission. Sometimes permission is to be obtained from multiple authorities leading to increased financial burden on developers.

**Input tax credit ('ITC')**

It is a mechanism wherein the developers can claim the amount of GST paid on goods and services. If a property or part of property is constructed for the sole purpose of undertaking commercial activities, then GST paid out of the revenue generated and ITC is not allowed on the procurement cost of construction goods. Hence, the landowners who construct shops on their land or part of land for the purpose of business activities like shops, salons, hotels, guest houses, theaters etc. will have to pay GST on the revenue generated out of such activity. They will not be allowed to claim their amount as ITC. This matter was decided by the Orissa High Court in the case of M/S Safari Retreats Private Limited [2019 (25) G.S.T.L. 341 in favour of the Petitioner is engaged in carrying on business activity of constructing shopping malls for the purpose of letting out. The petitioners in this case were engaged in construction of shopping malls for the purpose of letting out to different customers. They were not allowed to claim ITC by the Revenue on construction material and consultancy services on the ground of section 17 (5) (d) of the CGST Act (Non availability of ITC on goods or services for construction of immovable property other than Plant & Machinery). Court held that Section 17 (5) (d) of the CGST Act has to be interpreted in continuity of the transaction since rent income is arising out of the property which is constructed after paying GST on different items. If ITC is denied on a building meant and intended to be 'let out', it would amount to treating the transaction as identical to a building meant and intended to be 'sold' which is contrary to the basic principles of classification of subject matter of tax levy and, therefore, violative of Article 14 of the Constitution.

By relying on the judgment of EicherMotors Ltd. and another versus Union of India and others, (1999) 2 SCC 361, court held that the credit is intended to give benefit to the assessee, this is the very intent of credit.

Therefore, if the Petitioner is being made to pay GST on the rental income arising out of the land on which he had paid GST already, he is eligible to claim input tax credit on the GST.

**Some of the changes faced by the real estate sector post-GST implementation are discussed in this article.**

Certain tax benefits and exemptions were enjoyed by the real estate sector under the pre-GST regime. However, post GST implementation, most real estate transactions came under the GST net, which increased the tax burden of developers and buyers. The property prices thus went up. Additionally, real estate players had to get accustomed to the new GST compliance requirements like filing the returns at regular intervals, maintaining detailed records, and keeping up with severe time deadlines. This created additional administrative burden and compliance costs for developers, particularly for the small players who did not have the resources and the expertise.

Certain positive parts of the GST regime ultimately cause negative impacts. For instance, one of the key benefits of GST is that a person or entity can claim input tax credits (ITC) on various inputs used in construction. However, it is very challenging to avail these credits because of the complex nature of projects and the involvement of multiple stakeholders, such as contractors, suppliers, and service providers. Each of these stakeholders charges GST on their supplies, and the developer is eligible to claim ITC on the GST paid to them. However, getting proper tax invoices with GST details from all the parties is difficult because of the multiple levels of sub-contracting involved. Real estate projects usually comprise residential as well as commercial units each of which attract different ITC rules under GST. Handling of the land-related costs such as stamp duty and registration charges under GST brings in complexities and differing interpretations on the applicability of ITC. Failure of the suppliers or contractors to comply with the GST requirements, such as non-payment of taxes or issues with invoicing, can result in no ITC being granted to the developer, making the matter even more complicated.

Moreover, the tax authorities lately have been constantly putting scrutiny on various real estate developers over non-compliance of the GST. They are being summoned and show cause notice have been issued. A leading developer in Mumbai has been served multiple show cause notices for non-payment of GST on certain transactions and incorrect availing of input tax credits.

The implementation of GST has given rise to a set of new issues entertained by consumer forums. In a landmark case, Homebuyers filed complaints against developers for not passing on GST benefits. As a consequence, the National Consumer Disputes Redressal Commission (NCDRC) directed the real estate company to refund the excess GST collected from homebuyers, along with interest.

**Lack of Clarity of GST provisions**

Although GST is not levied on the immovable property but even after the completion of property till Occupation Certificate (OC) is received, GST will be levied because it will be considered as 'Construction Services'.

The redevelopment of cooperative housing societies (CHS) have been tangled in a complex web of issues related to GST giving rise to legal disputes. There have been several appeals made to the finance ministry to streamline the tax mechanism and provide clarity for stakeholders. CHS are societies wherein members collectively transfer their development rights to a redeveloper who undertakes construction and delivers new flat in exchange for the old one. The redeveloper takes permission for the additional Floor Space Index (FSI) to construct additional flats for sale. With this he recovers money which enables him to offer new flats to the original members without cost. GST is being levied to CHS at 18% which will be applicable to the sale of flats after acquiring project completion certificate. This will not only make the construction cost expensive but will be transferred ultimately to the buyers. Thai will affect the entire real estate market because the prices of affordable housing will go up.

**Reforms required for ease of doing business**

Difficulties faced by this sector have made it apparent that GST reforms are required. Hence, the GST structure should be simplified considering different types of work involved in the real estate sector.

Real estate sector should be consulted to understand the challenges they face and the possible outcomes that can ease the process for them. GST reforms must ensure that the process of claiming ITC is simplified at each stage. It must be understood that the real estate sector requires efficient flow of financial resources to undertake its business. When these finances are stuck, it causes severe difficulties. When GST is charged, a large amount of money is stuck which is to be claimed via ITC. Sometimes the amount of GST paid is more than the tax which the company would have paid. The complexities of ITC makes it challenging to claim this money back. Hence, the GST regime should be amended to achieve the purpose for which it has been implemented i.e. simplification of tax structure and reduced burden on businesses and consumers.

**Conclusion**

Main intent behind the introduction of GST in Real Estate was to make housing affordable by crediting back the tax (GST) paid by the developers by disallowing tax burden to be transferred on the ultimate customers. However, in scenarios where different GST rates are applied to different items and types of construction activities along with no return of tax via ITC leaves developers in a vulnerable situation to either bear the tax burden themselves and suffer loss or transfer it to customers and make housing non affordable. Real estate sector is filled with complexities due to different projects and involvement of multiple stakeholders. Hence, availing benefits of the post GST regime remains a challenge for many developers in real estate sectors. Effective collaboration between the government, industry bodies, stakeholders, consumer forums, and judiciary remains critical to addressing the challenges and unleashing the full potential of the sector towards making a meaningful contribution to the nation's economic progress. The sector should be consulted while framing policies which will be applicable to them. A detailed analysis of the type of work undertaken, parties involved in each stage, challenges faced by the sector etc should be done and incorporated in policies. GST was introduced for the simplification of the earlier complex tax structure which is a welcome step, some of the provisions of the GST can be amended to effectively apply to specific sectors like Real Estate where the scenario is different from other businesses.

# A Closer Look at Our Recent Features

## Prevention of Money Laundering Act (PMLA)

## More trouble for AAP?


The Delhi High Court's recent pronouncement establishes that political parties, including the Aam Aadmi Party (AAP) led by Arvind Kejriwal, are subject to the Prevention of Money Laundering Act (PMLA).

It was interesting to see experts debate on the various aspects on #leftrightandcenter with Vishnu Som at NDTV today. Our Managing Partner, NILESH TRIBHUVANN emphasized that the Court has empowered the ED to take necessary action in case of AAP as a political party.

This interpretation implies that party officials could be held responsible for any financial irregularities under the stringent guidelines of the PMLA, particularly under Section 70(1), which pertains to the accountability of persons in charge of an entity's affairs.

Click here to see the full video :
https://www.linkedin.com/feed/update/urn:li:activity:7183892473876819968


## E-WAY Bill Generation Reached All-Time High at 10.35 Crore in March, April Collection Likely to Be Benefited

We're delighted to share that our Taxation Partner, Mr. Prateek Bansal has been featured in businessline for his expert insights. His commentary in the article "E-WAY Bill Generation Reached All-Time High at 10.35 Crore in March, April Collection Likely to Be Benefited" showcases his profound understanding of the subject. Dive into the article for a comprehensive view of Mr. Bansal's perspective on this pivotal issue.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7183704350131646466

## SIM Swapping Scams: Who Bears Responsibility For Losses?

We are thrilled to announce that our Managing Partner, Mr. NILESH TRIBHUVANN, has been spotlighted in NDTV Profit . His featured insights in the article titled "SIM Swapping Scams: Who Bears Responsibility For Losses?" highlight his deep expertise and significant contributions to our understanding of cybersecurity challenges.

For an in-depth look at Mr. Tribhuvann's perspective on this critical issue, we invite you to explore the article .

https://lnkd.in/dPuiRiUt


## Participation in the 10th Annual Real Estate and Construction Legal Summit 2024, organized by Lex Witness

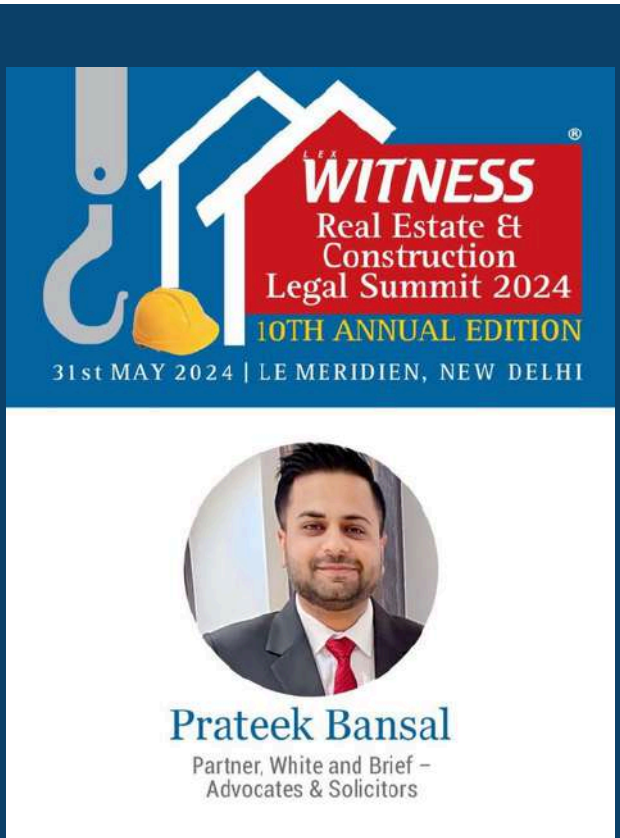
White & Brief is pleased to announce that we will be participating in the 10th Annual Real Estate and Construction Legal Summit 2024, organized by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs. The event is scheduled for May 31st at Le Meridien, New Delhi.

We are excited to be the Silver Partner for this prestigious event, which focuses on key themes such as legal, regulatory, and RERA matters in the real estate and construction sectors.

## 10th Annual Real Estate and Construction Legal Summit 2024

We are delighted to announce that our partner, Prateek Bansal, will be speaking at the 10th Annual Real Estate and Construction Legal Summit 2024. This prestigious event is set for May 31st at Le Meridien, New Delhi.

Join us for the most anticipated discussions on real estate, infrastructure, and construction law in India.



RBI issues FEMA norms for direct listing on international exchange

**A LIBERAL REGIME.** New provisions provide companies flexibility in funds management

Shishir Sinha
New Delhi

Listing of an Indian company on international stock exchanges got a push with the Reserve Bank of India (RBI) coming out with regulations under Foreign Exchange Management (FEMA). Experts believe new regulations will help companies utilise foreign exchange more effectively.

Regulations have been made public through two notifications. First set of regulations deals with mode of payment and reporting of non-debt instruments. "The proceeds of purchase/subscription of equity shares of an Indian company listed on an International Exchange shall either be remitted to a bank account in India or deposited in a foreign currency account of the Indian company," the notification said.

Further, the sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder. Reporting about transaction in foreign exchange will be done by the investee Indian company through an authorised dealer. In case an FPI makes investment through stock exchange, the authorised dealer will report to the RBI.

The other regulation said that in case the fund has been raised through External Commercial Borrowings, American Depository Receipts, Global Depository Receipts or through direct listing of shares of companies incorporated in India on International Exchanges but yet to be utilised or repatriated, then it will be held in foreign currency accounts with a bank outside India.

**EASE OF BIZ.** Proceeds of purchase of shares of an Indian firm listed on global exchange should be remitted to a bank account in India or deposited in a foreign currency account of the company

**PROVIDES FLEXIBILITY**

Manan Lahoty, Partner, IndusLaw, said these changes remove some wrinkles and enable some important procedural aspects of such listings. "The RBI has allowed funds raised by companies to be kept in forex until they are used – this will enable such companies to efficiently use such funds for overseas acquisitions and expansions as also other forex purposes such as capex," he said. Nilesh Tribhuvann, Managing Partner with White & Brief - Advocates & Solicitors, said new provisions provide companies with flexibility in funds management depending on their operational needs and investment strategies.

"This regulatory facilitation extends to the reporting requirements as well, where both transactions of FPIs on domestic and international exchanges must be meticulously reported to the RBI through designated channels, ensuring transparency and compliance," he said.

These changes reflect a broader vision of integrating Indian businesses into the global market fabric, allowing them to compete on an equal footing, attract substantial foreign investments and contribute robustly to India's economic stature globally.

## RBI comes out with FEMA regulations for direct listing on international exchange

We are delighted to announce that our Managing Partner, Mr. Nilesh Tribhuvann, has been featured in Businessline for his expert insights in the article titled "RBI Comes Out with FEMA Regulations for Direct Listing on International Exchanges." This insightful feature is available both online and in the printed edition. For an in-depth look at Mr. Tribhuvann's perspective on this critical issue, we encourage you to read the full article.

https://www.thehindubusinessline.com/markets/rbi-comes-out-with-fema-regulations-for-direct-listing-on-international-exchange/

## What has the RBI asked banks to do?

The RBI has asked banks to refund customers the excess interest and other charges. The RBI states, "These and other non-standard practices of charging interest do not align with the spirit of fairness and transparency while dealing with customers.

NILESH TRIBHUVANN, our managing partner, shares his views with Gargi Rawat on Newsbreak today on NDTV.

Click on the link to see the full video
https://www.linkedin.com/posts/white-and-brief-advocates

# How new rule will impact flight ticket prices

*by* **Neelanjit Das**

The Directorate General of Civil Aviation (DGCA) has come out with a direction which has the potential to make the base fare of a flight more affordable for flyers.

"The airfares so established by the airlines also include charges for some of the services rendered by them. On the basis of various feedback received, it is felt that many a times these services provided by the airlines may not be required by the passengers while travelling. Considering the fact that unbundling of services and charges thereto has the potential to make basic fare more affordable and provides consumers an option of paying for the services which he/she wishes to avail.The unbundled services must be provided on 'opt-in' basis and not on 'opt-out' basis...," said DGCA on 23 April.

In the opt-in process, you must pick the various services with your tickets and in the opt-out process all these are bundled unless you actively opt out of a service.

## Which are these services?

DGCA has mentioned seven such services:

- Preferential seating.
- Meal/snack/drink charges (except drinking water).
- Charges for using airline lounges.
- Check-in baggage charges.
- Sports equipment charges.
- Musical instrument carriage.
- Fee for special declaration of valuable baggage (allow for higher unit on carrier liability).

"The aviation sector might witness a minor shift in fare structures. It's not necessarily the case that airfares will decrease significantly across the board, but consumers now have more autonomy to choose a travel experience that aligns with their budget and preferences, potentially lowering their overall travel costs," said Nilesh Tribhuvann, Managing Partner, White & Brief-Advocates & Solicitors.


## Provision that may hike airfare for some

TheDGCA circular said, "Airlines shall ensure that children up to the age of 12 years are allocated seats with at least one of their parents/guardians, who are travelling on the same PNR and a record of the same shall be maintained."

According to Gauri Subramanium, Advocate, Supreme Court of India, "When the Air Corporations Act was repealed in March, 1994, tariff fixation was deregulated, and airlines have since then been free to fix reasonable tariffs. The Notification dated April 23, 2024, contains no restriction on increasing tariffs for the child, and the mandate is only that the child is always seated with the parent. It is therefore very much possible that a cost is levied through the seat selection option which is still an add-on feature and now can be sold as pairs in future especially since the notification has a caveat that the booking of the child should be on the same PNR."

## What will be the impact of this circular in the medium term?

Subramanium highlights revenue management's importance in aviation, emphasizing a new ticket pricing opportunity amid regulatory changes. Airlines have shifted to fee-based ancillary services, charging for once-complimentary offerings like check-in baggage and seat selection.. "Aviation companies are now met with a unique opportunity, to either build in the cost of the seat selection into the ticket price or use forecasting techniques to maintain the price and still allocate the seats when necessary for a parent and child. Undoubtedly, when price points are close, it is more difficult to forecast the demand against each segment," she said.

According to Tribhuvann, for airlines this circular requires operational adjustments and hence, airlines must try to balance the directives mentioned with innovative revenue management strategies.

"While some might argue it could lead to marginal revenue dips from seat selection fees, the directive aligns with a customer-centric approach, which is invaluable for long-term brand reputation. The aviation industry must now balance this directive with innovative revenue management strategies to maintain profitability while adhering to regulatory expectations," says Tribhuvann.

## Child below 12 to be seated with at least one parent

"Mandatorily getting a seat reserved beside a parent may force the aviation companies to put restrictions on the availability of web-check in seats for other passengers. This may also prompt aviation companies to increase the price of the child's ticket by building in that cost at the purchase stage and circumventing the add-on process altogether," says Subramanium.

## New rule to impact flight ticket prices

We are delighted to share that our Managing Partner, Mr. Nilesh Tribhuvann, is featured in The Economic Times discussing the new rule that will impact flight ticket prices. This insightful article is available both online and in the printed edition. For more insights from Mr. Tribhuvann on this topic, we invite you to check out the full article.

https://economictimes.indiatimes.com/new-rule-to-impact-flight-ticket-prices


## Supreme Court's response to a misleading ad case involving Patanjali and various ministries

We are delighted to share that our Managing Partner, Mr. Nilesh Tribhuvann, has contributed to a recent article about the Supreme Court's response to a misleading ad case involving Patanjali and various ministries.

For more insights from Mr. Tribhuvann on this topic, check out the full article.

https://legal.economictimes.indiatimes.com/news/editors-desk/sc-pulls-up-patanjali-and-various-ministries-on-misleading-ad-case/109566746

## Kotak Mahindra Bank's response to the RBI's imposed curbs.

We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN is featured in a Business Today article discussing Kotak Mahindra Bank's response to the RBI's imposed curbs, emphasizing the bank's commitment to providing uninterrupted services for its existing customers.

For more insights from Mr. Tribhuvann on this topic, check out the full article.

https://www.businesstoday.in/Kotak Mahindra Bank's response


## Good News for Travelers: DGCA's Big Relief for Parents Flying with Kids

We are delighted to announce that our Managing Partner, Mr. NILESH TRIBHUVANN , has been spotlighted in ET NOW for his insights in the article titled "Good News for Travelers: DGCA's Big Relief for Parents Flying with Kids."

For an in-depth look at Mr. Tribhuvann's perspective on this critical issue, we invite you to read the full article.

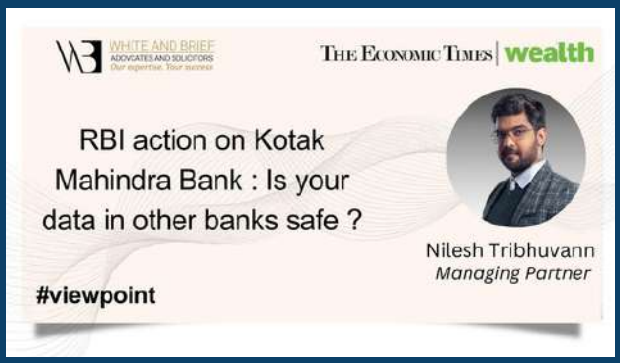
https://www.etnownews.com/news/good-news-for-travellers-dgcas-big-relief-for-parents-flying-with-kids-details-article-109570285

## RBI Action on Kotak Mahindra Bank: Is Your Data in Other Banks Safe?

We are thrilled to share that our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in an insightful article by Economic Times Wealth titled, "RBI Action on Kotak Mahindra Bank: Is Your Data in Other Banks Safe?"

For an in-depth understanding of Mr. Tribhuvann's expert insights on this critical issue, we invite you to read the full article .

https://economictimes.indiatimes.com/rbi-action-on-kotak-mahindra-bank-is-your-data-in-other-banks-safe



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