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MAY 2024

Legal Updates, Insights and Summary Judgements

This update covers:

Insight and Foresight: our perspective on key global developments

Client Alert: The legal dispute qua validity of Rule 96(10) of the CGST Rules

The legal dispute qua validity of Rule 96(10) of the CGST Rules and it's date of applicability is pending consideration before various High Courts. Notably, the Hon'ble Punjab & Haryana High Court, Bombay High Court, and Gujarat High Court have granted interim reliefs in respect of adjudication / recovery proceedings in the Writ Petitions challenging the vires of Rule 96(10).

In the backdrop of pan-India investigations / demands by GST authorities in relation to refunds received by the exporters, **White and Brief - Advocates & Solicitors** summarizes the key legal developments in this matter and suggests way forwards which may be adopted in case of potential recovery proceedings.
To delve into the specifics ,

please review the information provided in the following link

https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_what-is-rule-9610

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LEGAL POSITION QUA VALIDITY OF RULE 96(10) OF THE CGST RULES AND IT'S DATE OF APPLICABILITY

➢ What is Rule 96(10)?

Rule 96(10) of the CGST Rules places restriction on the exporters from availing dual benefits by simultaneously claiming IGST exemption on imports made under Notification Nos. 78/2017 and 79/2017-Cus both dated 13.10.2017 ("Notification No. 78/79") and paying IGST on exports through Input Tax Credit with the intention of claiming a refund of the said IGST amount under Section 54 of the CGST Act read with Rule 89 of the CGST Rules.

➢ Challenge regarding the vires & legality of the restriction under Rule 96(10)

The validity and legality of the restriction under Rule 96(10) has been challenged before various High Courts on the basis that:

(i) Rule 96(10) violates the provisions in the parent statute because the only prescription in Section 16 of IGST Act and Section 54 of CGST Act was to the extent of outlining the form and manner for claiming refund, but not for restricting refund.

(ii) Rule 96(10) creates fetter on an exporter's right to claim refund of IGST paid on exports & does not stand the test of legality because the Statute empowers rules to be made for enabling the refund mechanism, but not to restrict refund claims for legitimate exporters.

(iii) Rule 96(10) is also violative of Article 14 of Constitution of India as an arbitrary and unreasonable differential treatment is meted out to EOUs, Advance Authorization license holders and similar assessees.

The Hon'ble Punjab & Haryana High Court *vide* its Order dated 08.04.2024 in ***Arjan Impex Pvt. Ltd.*** and Order dated 24.02.2023 in ***Glassco Laboratory Equipments*** has granted an interim stay qua recovery proceedings in the Writ Petition challenging the restriction under Rule 96(10) of CGST Rules.

The Hon'ble Bombay High Court *vide* its Order dated 27.01.2021 in ***Prashi Pharma Private Limited***, where the vires of the restriction under Rule 96(10) have been challenged, has granted interim relief qua recovery of IGST refund till the next date of hearing. The Writ Petition challenging legality of Rule 96(10) as being violative of Article 14, is also pending consideration before the Hon'ble Bombay High Court in ***Watson Pharma Private Limited***.

Similarly, the Hon'ble Gujarat High Court *vide* its Order dated 08.09.2021 in ***Mayur Woven Pvt. Ltd.*** and Order dated 15.09.2021 in ***Parikh Enterprises*** has stayed the recovery and coercive actions in the Writ Petitions challenging the vires of Rule 96(10).

The Hon'ble Madras High Court in ***Comstar Automotive Technologies Pvt. Ltd.*** has also admitted the Writ challenging the arbitrary restriction as ultra vires Section 16 of the IGST Act.

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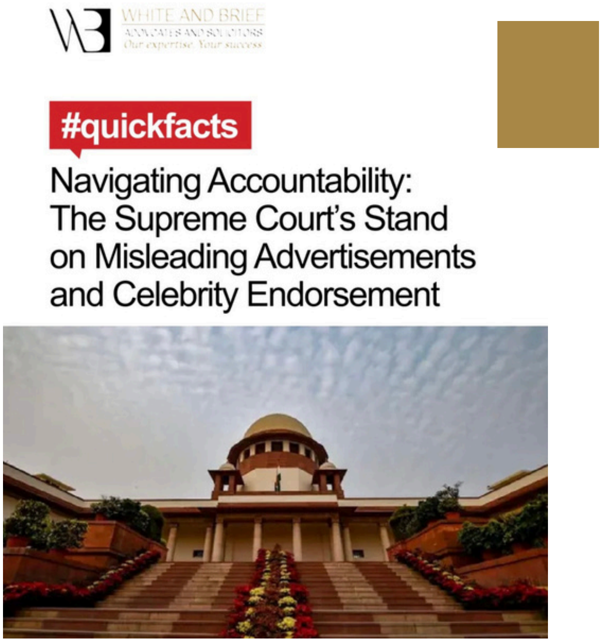
Arvind Kejriwal's Interim Bail: Key Highlights

- Arrested on March 21, 2024, in the Delhi excise policy case.
- Alleged as the "kingpin" in the scam.
- Challenged arrest under PMLA; refused to disclose password citing constitutional rights.
- Delhi HC rules AAP can be prosecuted as an "association of persons."
- Granted interim bail by Supreme Court till June 1, with strict conditions.

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

https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_kejriwal

Supreme Court's Stand on Misleading Ads and Celebrity Endorsements: Key Highlights



- Addressed misleading advertisements, initiated by the Indian Medical Association against Patanjali Ayurveda.
- Critical view on the role of social media influencers and celebrities.
- New directives for media compliance and self-declaration forms.
- Clear liability for endorsers in cases of deceptive products.
- Enforcement under the Consumer Protection Act, 2019.

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

https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_sc-infographic-on-celebrities

Supreme Court Ruling Lawyers Exempt from Consumer Protection Act Claims

Justices Bela Trivedi and Pankaj Mithal have ruled that legal professionals cannot be sued for service deficiencies under the Consumer Protection Act. This landmark decision recognizes the distinct nature of legal services, underlining the significant skills, education, and fiduciary duties that define the legal profession. The ruling reaffirms the importance of maintaining a clear boundary between legal advocacy and typical business services, ensuring that legal professionals can continue to focus on their core responsibilities without the constraints of consumer service litigation

Lawyers Cannot Be Sued Under Consumer Protection Act for deficiency of service, rules Supreme Court

In a major verdict, the Supreme Court has held that advocates or lawyers cannot be proceeded against for deficiency of services under the Consumer Protection Act.

While distinguishing the legal profession from trade and business, the court stated that professionals require advanced education, skill, and mental labor, and their success depends on factors beyond their control, unlike businesses. Hence, Professionals cannot be treated at par with traders/businessmen under the Consumer Protection Act.

A Supreme Court bench comprising Justices Bela Trivedi and Pankaj Mithal overruled a 2007 NCDRC judgment that included services provided by the lawyers under Section 2 (o) of the Consumer Protection Act 1986. While overruling the said judgment, this bench noted that the legal profession is "sui generis" and cannot be compared to other professions or businesses. Lawyers owe fiduciary duties to clients, are bound by clients' instructions, and clients exercise considerable control over them. The relationship between a client and a lawyer has unique attributes distinct from the relationship between a consumer and a service provider.

As per the court, the purpose of the Consumer Protection Act was to protect consumers from unfair trade practices and unethical business practices. Nowhere does this enactment suggest the legislative intent to include professions or professionals within its purview.

The court further opined that Indian Medical Association v. VP Shantna (1995) 6 SCC 651 wherein it was held that doctors and medical professionals can be held liable under the Consumer Protection Act, needs reconsideration by a larger bench.

However, the court clarified that lawyers can still be sued in regular courts for other civil/criminal wrongs.

Consequently, the court held that services hired by a client of an advocate would be a contract of personal service outside the purview of "service" under Section 2(42) of the Consumer Protection Act 2019.

Arguments advanced by Senior advocates in the instant case were noteworthy wherein they argued that the lawyers are officers of the court who require independence to discharge their duties. Senior advocates further differentiated the legal profession from healthcare by arguing that lawyers do not control the environment in which services are rendered. The amicus curiae also supported the arguments by stating that once the lawyer, being the agent of his client, appears before the Court on behalf of his client, he cannot be considered a service provider nor can his client be considered a service consumer. He further distinguished lawyers engaged in in-court work from those providing legal advice/ consultation/ drafting, suggesting different treatment.

To delve into the specifics , Click the button below

Promising Law Firm of the Year 2024

We are delighted to share that our Managing Partner Mr NILESH TRIBHUVANN received the Promising Law Firm of the Year 2024 award at the Legal Era - Legal Media Group Summit. The award was presented by Smt. Rekha Palli, Honorable Justice of the Delhi High Court; Dr. Lalit Bhasin, President of the Society of Indian Law Firms; and R. Venkataramani, Attorney General of India.

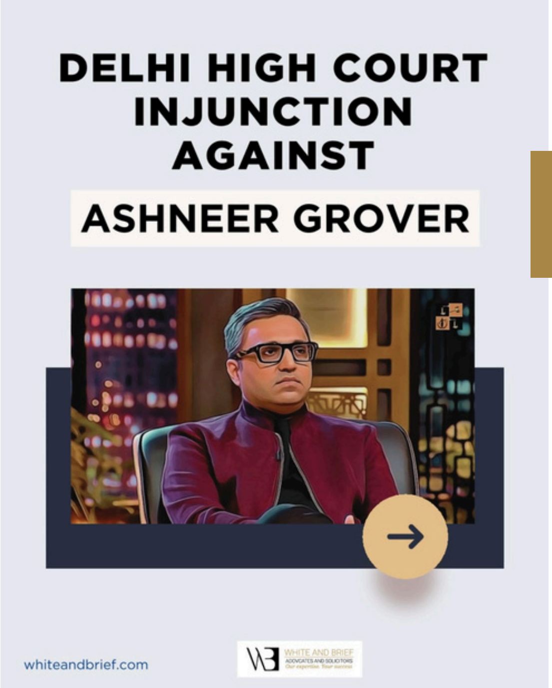
This recognition is a testament to the collective efforts of our White & Brief family, establishing us as a trusted name in the field.

Understanding the Impact:

The recent injunction against Ashneer Grover freezing his shares in BharatPe highlights a critical moment in corporate governance and legal accountability.

This decision doesn't just affect the parties involved; it sets a precedent for how conflicts over share transfers and business agreements are handled in the Indian legal system.

Stay informed about these developments to navigate the complexities of business law effectively.



To delve into the specifics , please review the information provided in the following link
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Case Update: In the recent Lokenath Construction Pvt Ltd vs. Revenue Government of West Bengal case, the Hon'ble Calcutta High Court sets a precedent for GST practices, focusing on the need for due process before penalizing recipients over input tax credit discrepancies.

White and Brief Advocates and Solicitors highlights the ruling's reaffirmation that input tax credit cannot be disallowed to a bonafide purchaser without proper inquiry qua the defaulting supplier. A critical reminder for all businesses to secure a robust legal defense against ITC mismatch notices.
To delve into the specifics , please review the information provided in the following link
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https://www.linkedin.com/posts/white-and-brief-advocates-solicitors

CASE ALERT

Lokenath Construction Pvt Ltd vs. Revenue Government of West Bengal and ors. [Order dated 02.05.2024 in MAT 2459 OF 2023]

The Hon'ble Calcutta High Court in the captioned matter has held that action of department of penalizing the recipient by confirming reversal of the availed input credit without first conducting an inquiry against the defaulting supplier, is arbitrary. The ignorance of the invoices and Chartered Accountants issued certificates produced by the assess was held to be without jurisdiction.

In the present case the department had issued a show cause notice under Section 73(1) of the CGST/WBGST Act against the Appellant, proposing the reversal of allegedly availed excess input tax credit on the ground that the Appellant had failed to provide proof that its supplier had remitted the tax to the government. Consequently, the Appellant had challenged the adjudicated order in the present appeal on the basis of Suncraft Energy Private Limited.

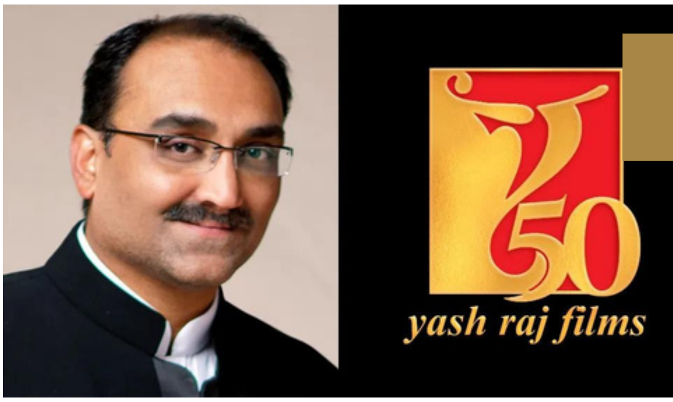
The Hon'ble High Court observed that where the department has accepted the position that the assessee has made payment of the tax to the supplier against the transaction, then the elementary principle to be adopted is to cause enquiry with the supplier. Non-compliance of so to penalise the appellant is arbitrary. The Hon'ble Calcutta High Court set aside the order and provided clear directions to the department to first proceed against the supplier and only under exceptional circumstances proceedings can be initiated against the appellant as per the CBIC Press Release dated 18.10.2018.

W&B Comment: The present ruling reaffirms the legal position that in case of ITC availed in GSTR-3B but not being reflected in GSTR 2B/2A, the said ITC cannot be disallowed to a bonafide purchaser without undertaking inquiry /recovery against the defaulting supplier. This view has also been echoed by Hon'ble Madras High Court in D.Y. Beathel Enterprises & Hon'ble Kerala High Court in Diya Agencies. Given that a slew of summons/notices are being issued by the GST authorities across the country on account of ITC mismatch, it is critical for the assessees to put forth a strong legal defense to such demands and challenge them before the appropriately forum.

Recent Judgements

CIVIL

1. Yash Raj Films Private Limited v. Afreen Fatima Zaidi and Another, (2024 SCC OnLine SC 578)



In the present case, the Apex Court discussed the legal implications of a promotional trailer of a movie and determined whether such trailer can create any contractual relationship and/or obligation leading to consumer dispute for deficiency of service and unfair trade practice.

The Respondents filed a consumer complaint before the District Consumer Redressal Forum against the Appellants, a well-known producer, for not containing the song 'jabra fan' in their movie, 'Fan'. The complaint was dismissed on the grounds that there is no relationship of consumer and service provider. Against the said order, the Respondent filed an appeal before the State Commission, and the same was allowed. The Appellant then moved the National Consumer Dispute Redressal Commission ("NCDRC") against the said order of State Commission. NCDRC held that displaying a song in the promotional trailer and not showcasing it in the movie, amounts to unfair trade practice. Further, playing a song in the trailer leads to an implied promise, thereby amounting to deficiency in services by the Appellants. Being aggrieved by the NCDRC order, the Appellants approached the Supreme Court.

The Hon'ble Supreme Court while setting aside the NCDRC order highlighted that the relationship between the Respondent and the Appellants is that of Consumer-Service Provider, because the Respondent has paid the necessary consideration. However, the promotional trailers are unilateral and do not qualify as offers and can never turn into promises, thereby not creating any contractual relationship /agreement to become enforceable by the law. Thus, there exists no deficiency in the services of the Appellants. The court further observed that the alleged deficiency arose because of the Respondent's wrongful expectations and not because of the actions of the Appellants. Additionally, the Hon'ble Supreme Court held that the promotional trailer does not fall under the instances of unfair method or unfair and deceptive practice, as the promotional trailer does not make any false statement or intend to mislead the viewers. The promotional trailers are only meant to encourage viewers to purchase the movie ticket.

The Supreme Court ruling clarified the major legal issue involved in relation to the promotional trailers and rightly held that they do not qualify as offers eliciting acceptance, are just an advertisement and as such they do not transform into promises much less agreements enforceable by law. Such trailers are only works of art and the filmmakers have creative freedom and this distinction should be kept in mind while deciding similar cases.

2. Karikho Kri v. Nuney Tayang, (2024 SCC OnLine SC 519)

The issue arising for consideration in the present case was relating to the validity of the High Court's findings where grounds under Section 100 of the Representation of the People Act, 1951 ("1951 Act") were established, warranting invalidation of the election of one Karikho Kri ("Appellant"). Two sets of civil appeals were filed before the Supreme Court under Section 116A of the 1951 Act against the decision of the High Court, which partially allowed an election petition holding the election of the Appellant as void but rejected the prayer of Nuney Tayang ("Respondent"), to declare him as duly elected.

The factual basis of the present case is such that in the year 2019, the Appellant won as an independent Member of Legislative Assembly from Tezu and his victory was challenged by the Respondent , of the Congress party on the ground that the Appellant in his election papers did not disclose certain vehicles in possession, being in occupation of a government-allotted cottage, and further did not provide certificates showing payment of rent, electricity, water, and telephone charges, etc. High Court held that the Appellant did not comply with the rules while submitting his nomination papers, and thereby violated Section 33 of the Representation of the People Act, 1951 and that the Appellant's nomination papers should have been rejected by the election officer, as per Section 36(2)(b) of the 1951 Act. Consequently, the Appellant's victory in the election was declared void, under Section 90(a)(c) of the 1951 Act. The Supreme Court while deciding the case observed that the High Court committed an error in concluding that sufficient grounds were made out under Section 100 of the 1951 Act to invalidate the election and upheld the candidature of the Appellant. The Hon'ble Supreme Court was of the view that every defect in filing of the nomination form cannot be termed as a ground to consider the elections as void and every case has its own set of individual facts. The Hon'ble Supreme Court observed that it is not necessary for a candidate to declare each and every item of the movable property that he or his dependent family members owns unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed. The Hon'ble Court further observed that non-disclosure of every asset owned by a candidate would not amount to a defect of a substantial character.

Consequently, the Apex Court rightly held that a candidate's 'Right to Privacy' would still survive in matters which are of no concern to the voter or are irrelevant to his candidature for public office. Further, very defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts.

ARBITRATION

1. Lease Plan India (P) Ltd. v. Rudraksh Pharma Distributor, 2024 SCC OnLine Del 2687

The Delhi High Court in the present case held that service through email or WhatsApp was sufficient for invocation of Arbitration in case of a valid agreement and hence referred the disputes between the parties to arbitration as per the arbitration agreement.

The facts of the present case are such that the Petitioners and the Respondents entered into a lease agreement which contained an arbitration clause stating that adjudication of disputes by reference to arbitration to be conducted at New Delhi in accordance with the Rules of Delhi International Arbitration Centre. Under the same clause, Courts in New Delhi have also been vested with exclusive jurisdiction under the Agreement. As disputes arose between the parties, the Petitioner invoked the arbitration clause and issued notice dated 31.12.2022 to the Respondents nominating Arbitrators to adjudicate the dispute, to which there was no response. Subsequently, the Petitioners filed the present application under S.11 of the Arbitration and Conciliation Act, 1996 for the appointment of Arbitrator.

The Hon'ble Court vide order dated 12.01.2024 permitted service by email and WhatsApp at the addresses and phone numbers mentioned in the Agreement, following which the Petitioner filed an affidavit of service dated 22.02.2024 which demonstrated that email and WhatsApp service was completed on 20.02.2024. Furthermore, the Hon'ble Court passed an order permitting service through RPAD and Speed Post on 06.03.2024 on address mentioned in the memo of parties, to which the Ld. Joint Registrar recorded in the order dated 04.04.2024 that valid service has not been effected by these means in view of the Speed Post tracking report.

The Hon'ble Court, after looking at the facts of the matter took into consideration that service by Speed Post was attempted however in the report, it stated that no such person was available at the address. However, the Hon'ble Court correctly arrived at the conclusion that the arbitration agreement was valid and service upon the respondents has been duly effected by email and WhatsApp which is sufficient, hence the court appropriately allowed the petition and referred the disputes to arbitration.

2. Prakash Industries Ltd. v. Sumeet International (P) Ltd., (2024 SCC OnLine Del 3036)

PRAKASH INDUSTRIES LTD.

The present case deals with limitation of jurisdiction of court to appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act 1996 ("1996 Act") vis-à-vis Micro Small and Medium Enterprises Development Act, 2006 ("MSMED Act").

In the present case, the Petitioner sought appointment of an Arbitrator when a reference under MSMED was already made. The plea of the Petitioner was that the Arbitrator appointed under MSMED Act cannot entertain claim/counter claim prior to the registration of the supplier i.e., the Respondent under MSMED Act. The Petitioner claimed that various work orders were issued between 2013 and 2022 and that the Respondent was registered under the MSMED Act in the year 2021. The Petitioner argued that since the disputes arose before the Respondent was registered under the MSMED Act, an Arbitrator appointed under the MSMED Act wouldn't have jurisdiction over these claims, and thus, they sought the appointment of an Arbitrator by the court under the 1996 Act. The Respondent, however, denying the allegations stated that they were registered under the MSMED Act, and thus the claims should be resolved through arbitration under that MSMED Act. It was also argued that the debit notes issued by the Petitioner were in response to a demand notice issued by the Respondent and were manufactured only to thwart proceedings under the MSMED Act. Both parties cited the judgment of Silpi Industries & Ors. vs. Kerala State Road Transport Corporation & Anr. (2021) 18 SCC 790, highlighting the key differences between arbitration mechanisms under the MSMED Act and the 1996 Act.

The Hon'ble High Court, while dealing with the issue in detail correctly and accurately emphasized upon the primacy of the MSMED Act in resolving disputes involving micro, small and medium enterprises, having overriding effect over the 1996 Act. The Court dismissed the present petition and observed that since arbitration proceedings were already initiated under the MSMED Act, and the debit notes were issued after the Respondent's registration under the MSMED Act, an Arbitrator need not be appointed under the 1996 Act.

In summary, the court fairly ruled in favor of the Respondent, dismissing the Petitioner's request for the appointment of an Arbitrator under the 1996 Act.

GENERAL CORPORATE

1. Non-Obstante Clause In Section 109A(3) Of Companies Act Doesn't Exclude Legal Heir From Claiming Securities Against Nominee

Section 109A(3) Of the Companies Act 1956 was inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998. As per this section, any shareholder or debenture holder can nominate a person to receive their shares or debentures in the event of their death but the nomination must be made in a prescribed manner. In cases where the shares or debentures are held jointly by more than one person, they can collectively nominate a person to receive all rights to the shares or debentures if all joint holders die. This nomination must also be made in the prescribed manner. Clause 3 of this section is more like a Supremacy of Nomination clause. It states that the nomination supersedes any other law or testamentary disposition regarding the shares or debentures and Upon the death of the shareholder or all joint holders, the nominee gains all rights to the shares or debentures, excluding all other persons unless the nomination is varied or canceled as prescribed. In case the nominee is a minor, the shareholder or debenture holder can appoint another person to be entitled to the shares or debentures until the nominee reaches adulthood. However, this appointment must also follow the prescribed manner.

Clause 3 provides Supremacy Over Other Laws and Wills. This clause mandates that the nomination made according to the prescribed manner takes precedence over any other laws or dispositions (including wills and other testamentary documents). It confers rights on the Nominee by granting the right to receive the shares or debentures of the company upon the death of the shareholder or the death of all joint holders. After the death of the shareholder or all joint holders, the nominee automatically becomes entitled to all the rights in those shares or debentures.

This means no one else can claim those shares or debentures, regardless of what other legal documents (like a will) might say. This exclusive right of the nominee can only be changed if the nomination is varied or canceled.

However, all this is subject to one requirement- nomination or cancellation has to be properly made.

A similar issue came to the Supreme Court in Shakti Yezdani & Anr. v. Jayanand Jayant Salgaonkar & Ors. The facts that have risen to the instant dispute were, that one Jayant Shivram Salgaonkar executed a will on 27.06.2011, making provisions for the devolution of his estates upon successors. Apart from properties mentioned in the will, he had fixed deposits (FDs) worth Rs. 4,14,73,994/- where respondents 2, 4, and appellant 2 were nominees.
He also had mutual fund investments (MFs) worth Rs. 3,79,03,207/- where appellants and a trust (respondent 9) were nominees. After Salgaonkar's death on 20.08.2013, respondent 1 filed a suit seeking the administration of properties under court supervision. Appellants claimed they were sole nominees to MFs and FDs, and nomination vested absolute ownership in them under Section 109A of the Companies Act, 1956.

The issue before the court was whether the nominee under Section 109A of the Companies Act, 1956, becomes the absolute owner of the shares/securities, superseding testamentary or intestate succession laws.

Appellants argued that Section 109A uses terms like 'vest' and 'to the exclusion of others,' along with a non-obstante clause, all of which intends to grant absolute ownership to nominees. They further argued that nomination under the Companies Act is different from other legislations and cannot be interpreted based on judgments pertaining to those laws. As far as the non-obstante clause is concerned, according to the appellants, it overrides any other disposition, including testamentary, and hence confers absolute rights on the nominee. Consequently, nomination under Section 109A constitutes a 'statutory testament' overriding laws of succession.

Respondents contended that a plethora of judicial pronouncements hold that nomination does not make the nominee an absolute owner, excluding legal heirs. With regard to the Companies Act, as per the respondents, it does not deal with succession laws and cannot be interpreted to create a third mode of succession. The non-obstante clause is limited to enabling the company to deal with securities after the shareholder's death, not granting ownership to the nominee to the exclusion of the successors. Consequently, the nomination cannot be equated with a 'statutory testament' or a will, which requires rigorous formalities under succession laws.

After considering the rival submission of the parries, the court concluded in favor of successors. While dismissing the appeal, the court held that the nominee under Section 109A of the Companies Act, 1956, does not become the absolute owner of the shares/securities, overriding the laws of succession.

Even if the widest possible interpretation of the provision of nomination within the Companies Act, of 1956 is taken, it will not be possible to hold that the same deals with the matter of succession in any manner. In absence of any material evidence, it cannot be interpreted that the intent of the legislature behind introducing a method of nomination through the Companies (Amendment) Act, 1999 was to confer absolute title of ownership of property/shares, on the said nominee.

The provision of nomination begins with a non-obstante clause and/or is armed with the term 'vest' in the Banking Regulation Act, 1949, the Government Savings Certificate Act, 1959, and/or the Employees Provident Fund Act, 1952 wherein multiple courts have rejected the argument that the nominee would become the absolute owner to the exclusion of the legal heirs. If this court holds otherwise it would exceed the scope and extent of S. 109A of the Companies Act, 1956.

The court placed reliance on judgments like Sarbati Devi v. Usha Devi, Vishin N. Khanchandani v. Vidya Khanchandani, and Ram Chander Talwar v. Devendra Kumar Talwar, to conclude that the nomination does not exclude legal heirs or create a third mode of succession.

Consequently, the Court rejected the argument that nomination under Section 109A constitutes a 'statutory testament' which overrides laws of succession and held that the said deposit is a part of the deceased depositor's estate and is subject to the laws of succession, that govern the depositor.

It further added that, unlike a will, the nomination is not subject to the rigors and formalities under succession laws for making and validating a will. Therefore, the argument by the appellants of nomination as a 'statutory testament' cannot be countenanced because the Companies Act, 1956 does not deal with succession nor does it override the laws of succession. It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder. In the case of a will, it is upon the administrator or executor under the Indian Succession Act, 1925, or in case of intestate succession, the laws of succession to determine the line of succession.

2. Patentability of man-made and novel non-living substance

The appellant filed an Indian patent application (5808/CHENP/2007) derived from PCT Application No. PCT/US2006/023856, titled "Receptor Antagonists for Treatment of Metastatic Bone Cancer."

The application claimed priority from a US application dated 17 June 2005 and initially had 80 claims.

After examination, objections were raised under Sections 3(c), 3(i), and 3(j) of the Patents Act, 1970, regarding the patentability of the claimed antibodies.

The appellant amended the claims and responded to the objections, asserting that the antibodies were not isolated from nature but were generated using transgenic mice expressing human immunoglobulin chains and hybridoma technology.

The appellant explained that paragraphs [00153] and [00154] describe the process in detail wherein it is specified that the antibody was generated by immunizing transgenic mice (engineered mice) that express human gamma heavy and kappa light immunoglobulin (Ig) chains with porcine aortic endothelial (PAE) cells expressing platelet~derived growth factor receptor alpha(PGDFR alpha), which were subsequently boosted with PGDFR alpha extracellular domain (ECD). The appellant further asserted that the material generated in response by such transgenic mice was extracted from the cells of the spleen of the mice, fused with immortal myeloma cells by using hybridoma technology so as to produce the antibody therefrom through the processes of cloning and chromatography. Thus, they asserted that the antibodies were not isolated from nature, as the above-mentioned chain of events does not occur in nature.

In the impugned order, the respondent (Patent Office) rejected the claims, concluding that the antibodies were produced by standard methods and were discoveries of naturally existing substances, thus not patent-eligible under Section 3(c) of the Patents Act. this led to the present appeal in the Madras High Court.

The issue before the High Court was whether the recombinant antibodies targeting PDGFR alpha, claimed in the patent application, are patentable under Section 3(c) of the Patents Act, 1970, or are considered discoveries of naturally occurring substances.

The appellant argued that the antibodies were not isolated from nature but were generated using transgenic mice expressing human immunoglobulin chains, immunized with PDGFR alpha-expressing cells, and hybridoma technology, as described in the specification. As per them, this modified antibody wasn't something found naturally because it was created through a complex process involving genetic engineering and selection by using special cells and proteins. The antibodies are not naturally occurring and are genetically modified substances, not excluded by Section 3(c) if they meet other patentability criteria. The appellant pointed out that using these specific components was necessary to prevent interference with natural bodily functions, especially during embryonic development.

Respondents (Patent Office) argued that the antibodies were isolated from human beings, as admitted in the specification (paragraph [0075]) and evident from the sequence listings showing the organism of origin as "Homo sapiens." as per them, the appellant merely generated known and naturally occurring antibodies using standard hybridoma technology, which is not novel. No recombination was seen in the sequence listings. The claimed invention falls squarely within the exclusion of Section 3(c) of the Patents Act.

Respondents placed reliance on several judgments of the Intellectual Property Appellate Board (IPAB) for interpreting Section 3(c) of the Patents Act including Biogaia AB v. Controller of Patents and Designs, wherein in paragraph 8 it was highlighted that non-living substances occurring in nature or isolated from nature are not eligible for patents. However, it also emphasized that genetically modified microorganisms or nucleic acid sequences may not be excluded if they meet other criteria such as novelty, inventive step, and industrial applicability.

In the University of British Columbia v. Controller of Patents, paragraph 9, it was established that non-human monoclonal antibodies do not fall under the scope of Section 3(c) of the Patents Act.

Then in Health Protection Agency v. The Controller General of Patents and another, paragraph 12, stated that substances created with human intervention do not fall within the scope of Section 3(c).

The antibodies claimed in the invention were indeed isolated from human beings as mentioned in paragraph [0075] of the complete specification, where the appellant allegedly admitted that the antibodies and antibody fragments could be obtained from naturally occurring antibodies. Additionally, certain sequence (SEQ) ID numbers specified the organism of origin as Homo sapiens.

The appellant utilized standard hybridoma technology to generate known and naturally occurring antibodies, which lacked novelty. No recombination was evident in the sequence listing.

Regarding previous orders of the Intellectual Property Appellate Board (IPAB) and decisions of the Patent Office, the respondent distinguished the IPAB order in the Health Protection Agency, stating it pertained to a biological process indicator not found in nature. Similarly, they differentiated the Patent Office's decisions in Patent Application No.5057/CHENP/2007 and Patent Application No.2569/MUMNP/2008, which allegedly involved mutated antibodies.

In response to these contentions raised by the respondents, the appellant filed a rejoinder clarifying that the antibodies claimed in the invention were not isolated from human beings but were produced using transgenic mice engineered with human genes. These mice were immunized with PAE cells expressing PGDFR alpha, followed by isolation of splenocytes and fusion with myeloma cells to produce the antibodies. Therefore, they argued that these antibodies cannot be considered isolated from human beings which is the reason they do not fall within the scope of Section 3(c) of the Patents Act. To support this interpretation, reference was made to the legislative history of Section 3(c), wherein in the Patents (Second Amendment) Bill, 1999 (Bill No.49) and related parliamentary speeches, it was contended that the above provision (Section 3 (c)) was amended to introduce the third limb, which cannot be interpreted with reference to Section 3(d), which was amended separately.

Further, Delhi High Court in Diamond Star Global Sdn. Bhd. v. Joint Controller of Patents and Designs (Diamond Star), held that "mere" in Section 3(c) also extends to "discovery of any living thing or non-living substance occurring in nature." hence, the instant invention does not fall within the exclusions of Section 3(c) of the Patents Act.

After considering the rival submission of the parties, the court held that the antibodies did not originate from humans based on the sequence listing, as some sequences specified "unidentified" or "artificial" organisms. Hence, they qualify for patent protection under Section 3(c).

Regarding the patentability of the appellant's monoclonal antibodies, the court noted that Antibodies are proteins naturally produced by the human body's immune system to defend against antigens, which include bacteria, viruses, fungi, toxins, and allergens. The specific part of the antigen to which an antibody binds is called an epitope. Antibodies consist of four polypeptide chains, two heavy and two light chains, forming a Y-shaped structure. Each chain has a variable region, determining the antibody's specificity, and a constant region. The variable regions contain complementarity-determining regions (CDRs), crucial for binding to epitopes. Polyclonal antibodies are produced by various B cells and can bind to multiple epitopes on the same antigen. In contrast, monoclonal antibodies are produced by identical B cells, binding to a single epitope, and can be classified into non-human, chimeric, humanized, and human categories based on their derivation.

The Court further noted that Section 3(c) excludes the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature from being considered inventions under the Patents Act. "Mere" relates to only the first limb of Section 3(c) -the discovery of a scientific principle and not the discovery of living or non-living substances. Further, "occurring in nature" applies only to non-living substances, and not to living things. Hence, naturally occurring non-living substances are excluded from patent eligibility, while synthetic or engineered substances could be eligible.

The court placed reliance on a plethora of judgments including Sidney A. Diamond v. Ananda M. Chakrabarty wherein the US Supreme Court established that man-made bacteria are patentable, Mayo Collaborative Services, dba Mayo Medical Laboratories v. Promotheus Laboratories Inc.(Mayo) wherein the same apex authority held that laws of nature, physical phenomena, and abstract ideas are not patentable and Association for Molecular Pathology et al v. Myriad Genetics et al wherein naturally occurring DNA was barred from not patent eligibility and cDNA were held patentable due to human intervention.

Regarding the appellant's monoclonal antibodies, the court noted that they are produced using hybridoma technology and transgenic mice expressing human immunoglobulin chains which target specific epitopes of the PDGFR alpha receptor, which is engineered and not naturally occurring. Although the organism specified in the sequence listing is primarily "homo sapiens," some sequences are listed as "unidentified" or "artificial," indicating synthetic origin. It was not the hybridoma technology that was claimed by the appellants as the investigation but the specific engineering of monoclonal antibodies targeting PDGFR alpha was claimed as a unique invention.

In view of the above conclusion, the court directed that the claimed invention be granted on the basis of the current claims, which were submitted in the course of hearings before the respondent.

CRIMINAL

1. Dying declaration can be the sole basis of conviction if it inspires the full confidence.

Supreme Court in Naeem v. State Of Uttar Pradesh [Neutral Citation: 2024 INSC 169] Acquited Two in Murder Case and Upheld Conviction of Prime Accused Based on Dying Declaration.

The Court allowed the appeals of the two accused, acquitting them due to the lack of specific roles attributed to them in the dying declaration. However, the court upheld the conviction of the prime accused, relying solely on the cogent and reliable dying declaration of the deceased.

Facts that gave rise to the instant dispute were, On 1st December 2016, Shahin Parveen sustained severe burn injuries and gave a statement alleging that her brother-in-law Pappi @ Mashkoor (Accused No. 1), his wife Naeema (Accused No. 2), and Naeema's brother Naeem (Accused No. 3) had set her on fire. Shahin Parveen's dying declaration (Ext. Ka-6) was recorded by Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar, on the same day between 8:48 pm and 9:15 pm. In her dying declaration, Shahin Parveen stated that she had a dispute with Pappi @ Mashkoor over the partition of their shared residence. On the day of the incident, Pappi @ Mashkoor poured kerosene on her and set her ablaze, aided by Naeema and Naeem. Shahin Parveen succumbed to her injuries on 2nd December 2016 at Safdarjang Hospital, New Delhi. Based on the dying declaration, the trial court convicted all three accused under Sections 302 (Punishment for murder) and 34 (act done in furtherance of the common intention) of the IPC and sentenced them to life imprisonment. The High Court upheld the conviction and sentence. Being aggrieved thereby, the appellants preffrerd the present appeals.

Issue before the court in the instant appeals was whether the conviction based solely on the dying declaration is sustainable, and if so, whether the conviction of all three accused is tenable.

The Supreme Court held that a dying declaration can be the sole basis of conviction if it inspires the full confidence of the court, and the court is satisfied that the deceased was in a fit state of mind and the statement was not the result of tutoring, prompting, or imagination. The court found no reason to interfere with the concurrent findings that the dying declaration was true, free from any effort to induce a false statement, coherent, and consistent. Regarding the conviction of Accused No. 1 Pappi @ Mashkoor, the court upheld the conviction based solely on the cogent, trustworthy, and reliable dying declaration, which attributed the specific roles of pouring kerosene and setting the deceased ablaze to him. However, for Accused No. 2 Naeema and Accused No. 3 Naeem, the dying declaration only stated that they aided Pappi @ Mashkoor without specifying their roles. The court held that in the absence of any specific role attributed to them, they were entitled to the benefit of the doubt. Consequently, the Supreme Court allowed the appeals of Naeema and Naeem, acquitting them of all charges, while dismissing the appeal of Pappi @ Mashkoor, upholding his conviction and life sentence.

2. Chargesheet should abide by all the particulars of Section 173 (2) of the Criminal Procedure Code, 1973 (CrPC).

Supreme Court has Laid Down Detailed Guidelines on Requirements for Police Reports/Chargesheets under Section 173(2) CrPC.

The Supreme Court in Dablu Kujur v. The State Of Jharkhand (Neutral Citation: 2024 INSC 197) has issued comprehensive guidelines specifying the mandatory requirements that police officers must comply with while submitting the police report/chargesheet under Section 173(2) of the Criminal Procedure Code after completing an investigation.

The instant case came to the Supreme Court through an appeal filed by the appellant-accused challenging the High Court's dismissal of his bail application in a murder case. The appellant-accused challenged the impugned judgment and order dated 17.01.2023 passed by the High Court of Jharkhand at Ranchi, whereby the High Court dismissed his bail application in respect of FIR for offenses under Sections 302, 120-B/34 of IPC and Section 25(1-B) of the Arms Act. On 17.07.2023, a Supreme Court bench comprising Justices Sanjiv Khanna and Bela M. Trivedi passed an order observing that the chargesheet submitted by the police was bereft of details and particulars. The Court directed the Director General of Police (DGP), Jharkhand to examine whether the chargesheet complied with the law and take appropriate steps if such chargesheets were being filed. Similar directions were issued to the DGPs of Bihar and Uttar Pradesh, as the Court was informed that similar chargesheets lacking details were being filed in these states as well. In compliance with the Supreme Court's order, affidavits were filed on behalf of the states of Jharkhand, Uttar Pradesh, and Bihar regarding the steps taken/being taken for submitting chargesheets/police reports in accordance with the law. The Supreme Court deemed it necessary to elaborately deal with various aspects of Section 173(2) of the Code of Criminal Procedure, which pertains to the police officer's report on the completion of the investigation.

The Supreme Court elaborately dealt with various aspects of Section 173(2) of the Code of Criminal Procedure, which pertains to the police officer's report on the completion of the investigation. The Court observed that the police report is a crucial document that allows the accused to prepare a defense in front of the court. Hence, it is necessary for the investigating officer to strictly comply with the requirements of this provision. The Court noted that the form of the report to be submitted under Section 173(2) is prescribed by the State Government, and each State has its own Police Manual to be followed by police officers. However, the mandatory requirements to be complied with by such officers in the police report/chargesheet are laid down in Section 173, particularly sub-section (2)

The Court highlighted that the police report submitted under Section 173(2) forms the basis for the competent court to take cognizance of the offense. It is an opinion or intimation of the investigating officer to the concerned court regarding an offense committed or not committed by the accused.

Considering the significance of compliance with Section 173(2), the Supreme Court issued the following guidelines for police officers submitting chargesheets/police reports. The police report shall contain:
(i) Prescribed details like names of parties, nature of information, acquainted persons, offense details, accused's custody status, etc.
(ii) If no sufficient evidence against the accused, a clear statement on compliance with Section 169 CrPC.
(iii) All documents/extracts as per Section 173(5) if Section 170 CrPC is applicable.
In addition to this, the court emphasized that Investigating officers must strictly comply with Section 173(2) requirements as the report forms the basis for the court to take cognizance. Further, Partial chargesheets and delayed submission of documents under 173(5) can be grounds for default bail claims.

This decision provides clear and extensive guidelines to ensure full compliance by investigating agencies with the statutory requirements for police reports under Section 173(2) CrPC. moreover, it also strengthens the position of the accused by realizing their right to be able to present his case and also to be eligible for default bail in case of Partial chargesheets submissions, delayed submission of documents under 173(5)

TAX

1. M/s. Sanyukta Bhattacharjee vs. Union of India [2024 (5) TMI 315]

The Hon'ble Calcutta High Court in the present case has condone the delay beyond the prescribed period of limitation under Section 107(4) of the WBGST Act in filing of appeal.

The Petitioner had failed to lodge an appeal within the statutory 90-day window, including the additional one-month extension. On the basis that the appeal was filed beyond the permissible period, the appellate authority dismissed it. However, the Calcutta High Court intervened, instructing the appellate authority to invoke Section 5 of the Limitation Act, 1963, thereby adjudicating the appeal on its merits.

Section 5 of the Limitation Act, 1963 elucidates that an appeal can be accepted after the stipulated timeframe if the appellant can demonstrate to the court a valid reason for the delay in filing the appeal. The Division Bench of Hon'ble Calcuttaa High Court in the case of S.K. Chakraborty & Sons[1] had observed that Section 29(2) of the Limitation Act provides that Section 5 shall be applicable unless expressly excluded by a special law and since Section 107 of CGST Act does not have any non obstante clause to make Section 29(2) non-applicable, it is improper to read an implied exclusion thereof.
[1] (2024) 123 GSTR 229

W&B Comments: Several High Courts, including the Allahabad High Court in M/s Yadav Steels[1], argue that the GST Law, being a special statute it is implied that the GST Law excludes Limitation Act. The Hon'ble Calcuttaa High Court while taking Yadav Steels into consideration, relied on Hon'ble Supreme Court in Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper[2]. This decision ensures that taxpayers have the opportunity to have their appeals heard and decided on merits, despite procedural delays.

[1] 2024-AHC 26169
[2] (2020) 17 SCC 692

2. M/s Prahitha Constructions Pvt. Ltd. v. Union of India and Others [SLP (C) No. 11079/2024]

In the case of M/s Prahitha Constructions Pvt. Ltd. v. Union of India and Others, the Hon'ble Supreme Court heard and issued notice in the SLP filed against Hon'ble Telangana High Court's judgement of taxability of transfer of development rights.

The Hon'ble Telangana High Court in the case of Prahitha Construction v. Union of India and Others[1] in its order dated 09.02.2024 held that the transfer of the development rights to real estate developers by way of Joint Development Agreement with the landowners, would fall within the purview of taxable service under GST. The Hon'ble High Court has observed that TDR cannot be brought within the purview of Entry 5 of Schedule-III unless is there is a cogent and substantial material to establish that a right, title and ownership being created in favour of developer.

However, the Hon'ble Supreme Court stated that the Impugned Judgement rendered by the Hon'ble High Court is not stayed, and therefore the Petitioner is required to pay the taxes.

W&B Comments: As there is currently no stay on the matter, the levy remains operational, and GST must be paid upon the transfer of development rights. Historically, there has been a debate about the taxability of such transfers, as taxpayers argue that development rights, being derived from land sales, fall within the definition of immovable property. no service tax was levied in the erstwhile regime. CESTAT Tribunal Chandigarh in DLF Commercial Projects[1] had observed that "the transfer of development rights in the case in hand is termed as immovable property in terms of Section 3(26) of General Clauses Act, 1897 and no service tax is payable as per the exclusion in terms of Section 65B(44) of the Finance Act, 1994." Nevertheless, taxpayers are currently obligated to pay GST on such transfers until the Hon'ble Supreme Court provides any relief on the issue.

[1] 2024 (2) TMI 902
[2] 2019 (27) GSTL

3. 1.M/s Lokenath Construction Pvt Ltd vs. Revenue Government of West Bengal and ors. [Order dated 02.05.2024 in MAT 2459 OF 2023]

The Hon'ble Calcutta High Court in the captioned matter has held that action of department of penalizing the recipient by confirming reversal of the availed input credit without first conducting an inquiry against the defaulting supplier, is arbitrary. The ignorance of the invoices and Chartered Accountants issued certificates produced by the assess was held to be without jurisdiction.

In the present case the department had issued a show cause notice under Section 73(1) of the CGST/WBGST Act against the Appellant, proposing the reversal of allegedly availed excess input tax credit on the ground that the Appellant had failed to provide proof that its supplier had remitted the tax to the government. Consequently, the Appellant had challenged the adjudicated order in the present appeal on the basis of Suncraft Energy Private Limited.

The Hon'ble High Court observed that where the department has accepted the position that the assessee has made payment of the tax to the supplier against the transaction, then the elementary principle to be adopted is to cause enquiry with the supplier. Non-compliance of so to penalise the appellant is arbitrary. The Hon'ble Calcutta High Court set aside the order and provided clear directions to the department to first proceed against the supplier and only under exceptional circumstances proceedings can be initiated against the appellant as per the CBIC Press Release dated 18.10.2018.

W&B Comments: The present ruling reaffirms the legal position that in case of ITC availed in GSTR-3B but not being reflected in GSTR 2B/2A, the said ITC cannot be disallowed to a bonafide purchaser without undertaking inquiry /recovery against the defaulting supplier. This view has also been echoed by Hon'ble Madras High Court in D.Y. Beathel Enterprises & Hon'ble Kerala High Court in Diya Agencies. Given that a slew of summons/notices are being issued by the GST authorities across the country on account of ITC mismatch, it is critical for the assessees to put forth a strong legal defense to such demands and challenge them before the appropriately forum.

4. M/s. Arjan Impex Pvt. Ltd vs. State of Haryana & Ors. [CWP 566 of 2022 Order dated 27.01.2021)]

The Hon'ble Punjab & Haryana High Court vide its Order dated 08.04.2024 and Order dated 24.02.2023 in Glassco Laboratory Equipments has granted an interim stay qua recovery proceedings in the Writ Petition challenging the restriction under Rule 96(10) of CGST Rules.

Rule 96(10) of the CGST Rules places restriction on the exporters from availing dual benefits by simultaneously claiming IGST exemption on imports made under Notification Nos. 78/2017 and 79/2017-Cus both dated 13.10.2017 ("Notification No. 78/79") and paying IGST on exports through Input Tax Credit with the intention of claiming a refund of the said IGST amount under Section 54 of the CGST Act read with Rule 89 of the CGST Rules. The validity and legality of the restriction under Rule 96(10) has been challenged before various High Courts on the basis that:

(i)Rule 96(10) violates the provisions in the parent statute because the only prescription in Section 16 of IGST Act and Section 54 of CGST Act was to the extent of outlining the form and manner for claiming refund, but not for restricting refund.

(ii)Rule 96(10) creates fetter on an exporter's right to claim refund of IGST paid on exports & does not stand the test of legality because the Statute empowers rules to be made for enabling the refund mechanism, but not to restrict refund claims for legitimate exporters.

(iii)Rule 96(10) is also violative of Article 14 of Constitution of India as an arbitrary and unreasonable differential treatment is meted out to EOUs, Advance Authorization license holders and similar assessees.

The Hon'ble Bombay High Court vide its Order dated 27.01.2021 in Prashi Pharma Private Limited, where the vires of the restriction under Rule 96(10) have been challenged, has granted interim relief qua recovery of IGST refund till the next date of hearing. The Writ Petition challenging legality of Rule 96(10) as being violative of Article 14, is also pending consideration before the Hon'ble Bombay High Court in Watson Pharma Private Limited. Similarly, the Hon'ble Gujarat High Court vide its Order dated 08.09.2021 in Mayur Woven Pvt. Ltd. and Order dated 15.09.2021 in Parikh Enterprises has stayed the recovery and coercive actions in the Writ Petitions challenging the vires of Rule 96(10). The Hon'ble Madras High Court in Comstar Automotive Technologies Pvt. Ltd. has also admitted the Writ challenging the arbitrary restriction as ultra vires Section 16 of the IGST Act.

W&B Comments: The GST authorities have recently launched investigations in respect of the refunds received by the exporters upon payment of IGST. Upon summons / search / seizure, the said proceedings have been culminated into show cause cum demand notices thereby seeking recovery of the allegedly erroneous refunds. As the first appeal against the adjudication order would necessitate cash payment of pre-deposit equivalent to 10% of duty demand, a Writ Petition may be preferred before the jurisdictional High Court challenging the vires and legality of the restriction imposed under Rule 96(10) of the CGST Rules along with its date of enforcement, as the case may be.

In case of utilization of both IGST-paid and IGST-free imports in manufacture of the exported goods (qua which refund has been received), it is critical that a nexus be established between imported raw materials and export of manufactured goods so as to restrict the applicability of Rule 96(10) to the IGST-free imports only.

Articles

RBI's Draft Guidelines on Climate-Related Financial Risks: A Paradigm Shift in Regulatory Oversight

India's growth rate of 7.2% in fiscal 2022-2023 was the second-highest among the G20 countries and almost twice the average for emerging market economies that year.[1] The country is an emerging economy. It has been a significant growth engine for the world, contributing 16% to the global growth in 2023. It is also situated at a strategically advantageous position in world geography. We get sunlight for the majority of the days which is more than 300 sunny days a year. It was about time that we realized to utilize the environment around us for our benefit. It would be incorrect to assume that the country only has advantages and no disadvantages when it comes to its location in geography. However, we did a commendable job in utilizing the advantages for our good and also adapting to the disadvantages. One of the examples would be utilizing solar panels to meet increasing energy demands and other instances can be the cultivation of water-intensive crops like sugarcane where rainfall is abundant like Maharashtra and water-efficient crops like millet in Rajasthan. This is a smart way to deal with the needs of a country that is growing and as a consequence of such growth, the needs of its people are also increasing. Every country just like India is dependent on the environment however humans have managed to reverse the situation wherein the environment is now dependent on us. The needs may change but one thing is constant, we cannot survive without the environment but the environment will not only survive but thrive without us something we saw in COVID times.

The ramifications of climate change and environmental degradation pervade all realms, transcending geographical boundaries, sectors, and demographics without prejudice; however, the magnitude of their impact varies across different spheres. A propitious development is a cognizance among the global citizenry regarding the anthropogenic causation of nature's despoilment, which has catalyzed a collective endeavor to mitigate and redress the deleterious consequences. The realization that the environment's survival hinges on human actions has prompted a collective global effort to mitigate climate change's adverse effects. Various measures have been taken by countries together like the Conference of the Parties (COP) and G20 and several measures are being taken individually within the countries like Swach Bharat Abhiyan, Namami Gange, EIA, National Action Plan on Climate Change (NAPCC), India's commitment to achieving a target of net zero emissions by the year 2070 etc.

Recognizing a problem is the initial stride toward finding a solution, and this realization has dawned upon us. An exemplary endeavor in our journey toward embracing climate resilience is the Reserve Bank of India's (RBI) introduction of draft guidelines on the 'Disclosure framework on climate-related financial risks, 2024.' These guidelines mark a significant step in acknowledging and addressing the financial risks posed by climate change, underlining our collective commitment to a sustainable future.".

The framework mandates disclosure by regulated entities (REs) on four key areas of governance, strategy, risk management, and metrics and targets. The central banking regulator recently released draft guidelines on climate risk and sustainable finance and the framework for acceptance of green deposits. The current disclosure framework is a step towards bringing the climate risk assessment, measurement, and reporting requirements under the mainstream compliance framework for financial sector entities in India. This move will help incorporate climate-related issues into the overall organizational culture, policies, and operations.

As per the draft guidelines, it is mandatory for all Scheduled Commercial Banks (excluding Local Area Banks, Payments Banks, and Regional Rural Banks), Tier-IV Primary (Urban) Co-operative Banks, All-India Financial Institutions (such as EXIM Bank, NABARD, NaBFID, NHB, and SIDBI), and Top and Upper Layer Non-Banking Financial Companies (NBFCs) to disclose climate-related financial risks. Climate-related disclosures by REs being a significant source of information, allow different stakeholders (e.g., customers, depositors, investors, and regulators) to understand relevant risks faced and approaches adopted to address such issues. This in turn allows them to make an informed choice.

RBI has clarified that all the entities mentioned above should disclose their governance structures related to climate risk management. This includes details on board oversight, the role of senior management, and how these risks are integrated into overall governance. With this, RBI aims to ensure that senior management and the board assume responsibility for climate risk integration and make this information about climate risk management accessible to stakeholders. However, there are several limitations and challenges that entities might face including maintaining robust governance structures for climate risk management which can be complex, especially for smaller financial entities with limited resources. However, RBI has not specified any metrics and methodologies for measuring and reporting climate risks. The lack of sufficient data on climate risks may make it difficult for entities to conduct thorough assessments. Moreover, the individuals in management may not be experts in climate risk management.

Moreover, RBI has mandated the entities to describe the actual and potential impacts of climate-related risks and opportunities on REs, strategy, and financial planning. This involves a thorough assessment of what specific climate-related issues would arise over time and the material impact it could have on the RE along with current and anticipated effects of climate-related financial risks and opportunities on the business model of the RE. However, integrating climate risk assessments into existing business models and strategies can be difficult, particularly for entities with complex or diversified operations. Successful implementation will depend upon the trained staff with specialized knowledge and skills to assess climate impacts, which many organizations may lack.

Climate change is a long-term phenomenon, and its impacts may unfold gradually over years or decades. Businesses may struggle to incorporate these long-term considerations into their short-term strategic planning. Lastly, switching to sustainable and climate-efficient practices is costly which will automatically increase the financial burden.

Apart from that, RBI has mandated disclosures regarding the processes used by entities to identify, assess, and manage climate-related financial risks. This includes how climate risks are integrated into overall risk management frameworks and the methods used to prioritize these risks. Here, no standard process has been mentioned by RBI that can universally be used by these entities so the chances of different strategies and varying results can impact the object sought to be achieved by RBI. lack of standardised process leaves a lot of scope for interpretation on the side of REs which can differ from one entity to the other.

Entities are further mandated to report the metrics used to assess and manage relevant climate-related risks and opportunities. This includes performance metrics, targets set by the entity, and progress towards achieving these targets. This target can be impacted by limited availability and quality of data. Measuring progress toward targets requires consistent monitoring and reporting mechanisms. For these reasons, additional investments are needed in technology and expertise for monitoring and reporting. In the absence of a standardized process, many organisations might be reluctant to prioritize climate risk management over traditional financial work especially when they know their competitors are not prioritizing the same.

The RBI’s guidelines will be implemented in a phased manner to ensure a smooth transition and adequate preparation time for entities. In Scheduled Commercial Banks, All-India Financial Institutions, and Top-tier NBFCs Governance, Strategy, and Risk Management disclosures will commence from FY 2025-26 and Metrics and Targets disclosures will start from FY 2027-28. Tier-IV UCBs will follow the same implementation schedule, starting a year later. This phased approach allows entities to gradually build their capabilities and integrate the necessary systems for comprehensive climate risk management.

The Reserve Bank of India's (RBI) Draft Disclosure Framework on Climate-related Financial Risks, 2024 represents a commendable effort to address the inadequacies in reporting climate-related information within the financial sector. With a notable portion of climate-related data being either inaccurately reported or altogether omitted due to the absence of binding regulations, the introduction of this framework by the RBI signifies a crucial step towards rectifying this issue. By mandating the reporting of such data, financial entities will be compelled to undertake more climate-efficient measures to mitigate associated risks. Moreover, this initiative is poised to foster a culture of responsible leadership within management, instilling a habit of considering climate risks when making decisions that could potentially harm the environment. However, this is not the first instance of the RBI taking proactive measures to address climate-related issues. Back in 2007, the RBI published guidelines on Corporate Social Responsibility (CSR), sustainable development, and non-financial reporting, demonstrating its ongoing commitment to promoting sustainability within the financial sector after realizing [1] the general lack of adequate awareness on the part of Asian Companies on issues like global warming and climate change and the risk that it can pose to business models.[2]

[1] World Economic Forum, "India could become the world's 3rd largest economy in the next 5 years. Here's how" (January 15, 2024), available at https://www.weforum.org/agenda/2024/01/how-india-can-seize-its-moment-to-become-the-world-s-third-largest

[2] PWC "Disclosure framework on climate-related financial risks, 2024", (Accessed on 23.05.2024), available at https://www.pwc.in/blogs/disclosure-framework-on-climate-related-financial-risks

[3] Business Standard, "RBI asks banks to step up CSR efforts" (Jan 19 2013), available at https://www.business-standard.com/article/finance/rbi-asks-banks-to-step-up-csr-efforts-107122000048_1.html

The Domino Effect: How Ed Investigations Open Floodgate For Tax Investigations

When running a business, priorities typically revolve around market expansion, customer service, team strength, leadership, and legal protection. Facing investigative agencies like the Enforcement Directorate (ED), the Directorate General of GST Intelligence (DGGI), and the Income Tax Department (ITD) is unlikely to be on your radar. However, if such a scenario arises, questions about preparation, legal implications, and subsequent investigations become pertinent. Imagine one day, the ED showed up to investigate financial irregularities in your business under the Prevention of Money Laundering Act, 2002 (PMLA) and Foreign Exchange Management Act, 1999 (FEMA). After this, the DGGI shows up to investigate offences under the Goods and Services Tax (GST), followed by the Income Tax Department to investigate tax evasion. While this may seem distant, it's a reality for many businesses. This discussion aims to equip you with the knowledge and readiness to navigate these challenges confidently.

- **Expansion of ED raid/investigation to taxation matters**

ED is a statutory body empowered under the Central Vigilance Commission Act, 2003 to investigate money laundering offences and violations of foreign exchange laws. The ED operates within the jurisdiction or limits of the PMLA, FEMA, Fugitive Economic Offenders Act, 2018 (FEOA), Foreign Exchange Regulation Act, 1973 (FERA) and Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).

In recent times, raids conducted by ED as part of the investigation process or collection of evidence have shown a higher possibility of investigations by other agencies like DGGI and the ITD. There have been several instances in the news wherein once a business is raided by the ED, an investigation by the ITD and/or DGGI follows next. This shows that the ED raids do not always conclude with a final report, rather investigations are initiated by other departments based on the information discovered by ED. This leads to the expansion of the scope of the initial raid. This series of investigations is chiefly a result of the sharing of data between these agencies. Various investigation agencies are legally authorized to share the relevant data to facilitate the investigation into financial crimes through an inter-agency collaborative approach, which leads to their involvement in the dispute.

According to Section 66(1)(ii) of the PMLA read with relevant notifications, ED officers are authorized to provide information available to notified agencies when necessary for the fulfilment of their functions under the relevant statute.

The Central Board of Direct Taxes (CBDT), which frames policy for the ITD, vide Order dated 21.07.2020 allowed the ITD to share PAN and bank account details of any entity with investigative and intelligence agencies, including the ED and DGGI, under the integrated counter-terrorism platform NATGRID. On a similar line, the Central Board of Indirect Taxes & Customs (CBIC) vide Notification dated 07.07.2023 expanded the scope of PMLA by including the Goods and Services Tax Network (GSTN) in the specified list of agencies that are required to share information with the ED.

These law enforcement agencies/regulatory bodies collaborate to ensure compliance with laws and effective prosecution of offenders. It cannot be lost sight of that all these multiple raids and investigation proceedings by different agencies can be parallel or at different times.

Overlapping of offences investigated by ED with those under the GST and IT Act

It cannot be ruled out that if one of the agencies has given a clean chit, the others cannot charge on the same subject matter if their investigation leads to appropriate evidence. This leads to a situation where one particular act is considered as an offence when viewed from both ED's as well as DGGI / ITD's lens. Therefore, a person can be subjected to arrest and custody by different agencies at the same time.

As regards GST, there are certain actions which involve business transactions undertaken either to avoid paying the legitimate amount of tax or, to claim wrongful input tax credit (ITC), which can be investigated by DGGI. However, when these transactions are undertaken cross-border and/or involve siphoning off the money especially if the funds are circulated through shell companies or overseas entities, such offences then fall within the purview of ED. In this situation, such transactions may attract investigation by both agencies (i.e. ED and DGGI) due to their overlapping nature. An illustrative list of such transactions is hereunder:

- Under or over-valuation of goods/services exported or imported through related parties.
- Fake invoicing within certain companies, whether or not located outside India, so as to inflate turnover.
- Claim of bogus ITC and circular trading
- Fraudulently claiming GST refunds without actually exporting any goods or services.
- Exports without realizing any foreign exchange within prescribed timelines.

Similarly, activities such as concealing income/assets abroad or engaging in fraudulent cross-border transactions, fall within the jurisdiction of both the ITD and the ED due to their implications for tax evasion, money laundering, or violation of foreign exchange regulations. During the investigation, when the ED identifies such violations, it shares data with the ITD resulting in simultaneous proceedings by these agencies thereby expanding the scope of the original scrutiny. Below are a few instances which may attract parallel actions by ED and the ITD:

- Tax evasion by concealing income/assets abroad, or willful failure to report income earned from foreign sources/foreign investments.
- Transactions aimed at evading taxes through fraudulent means such as falsifying records, inflating expenses, or manipulating financial statements.
- Cross-border financial transactions including those facilitated through hawala networks or offshore accounts.
- Creation and misuse of shell companies or benami transactions to conceal ownership or evade taxes.
- Cases where individuals or entities misappropriate assets or funds for personal gain, including embezzlement, diversion of funds, or fraudulent conveyance of property.

In case of overlapping of offences falling within the jurisdiction of more than one investigative agency, a situation may arise when a person who is already arrested by one agency for a violation or allegation of an offence, can further be arrested by another agency for an offence falling under the jurisdiction of that other agency. Hence, it is possible in some instances that one person can be arrested by more than one investigative agency for violation of overlapping offences falling within the jurisdiction of these agencies. For instance, recently the Delhi High Court has remanded BRS leader K. Kavitha to the custody of CBI for her alleged involvement in a corruption case related to an alleged Delhi liquor policy scam. She was earlier arrested by ED for alleged money laundering in the excise policy scam and hence, was already in judicial custody when CBI arrested her.

Instances where ED raids paved the way for other agencies

There have been numerous instances wherein businesses were bombarded with different investigations after ED raids. In 2022, the ED conducted raids on various offices of the M/s DSL Dharampal Satyapal Group, owners of 'Rajnigandha' pan masala and 'Catch' spices, over allegations of money laundering and tax evasion. During the investigation, ED found alleged diversion of funds to offshore entities in tax havens (tax evasion), and bogus ITC under the GST laws. The ED's investigation led to the ITD and DGGI initiating parallel investigations into the group's financial irregularities.

In another instance, ED conducted raids on Xiaomi, Oppo, and Vivo offices in India qua alleged tax evasion, transfer pricing, and violation of FEMA regulations and subsequently, the ITD and DGGI also joined the bandwagon.

Global commodities trader ‘Trafigura’ came under ED scrutiny for a Transfer pricing violation. Trafigura is alleged to have companies in Tax havens and moving money to those companies helped it avoid taxes. Earlier, the company was investigated by the ITD.

Recently in 2023, troubled British news broadcaster BBC came under ED scrutiny for alleged foreign exchange violations. ED came into the picture after the ITD’s survey of the BBC Delhi office revealed several discrepancies and inconsistencies in transfer pricing documentation.

These trends of investigations reveal expanded jurisdiction of ED concerning certain offenses. For instance, above mentioned cases of Xiomi, Trafigura, and BBC highlight the instances of transfer pricing violations that were being investigated by ED. In a nutshell, due to the overlapping of certain offenses between PMLA, FEMA, Income Tax, and GST, the simultaneous proceedings by different agencies appear to be inevitable.

- **What should businesses do?**

Standard Operating Procedures (SOPs) may be put in place defining the roles and responsibilities of different teams/verticals in case of sudden investigation, to ensure smooth coordination and submission of correct information to the investigating agencies. Training may be imparted to the employees in respect of maintaining confidentiality, protecting sensitive information, and safeguarding legal rights during questioning/investigations.

Regular audits and health check-ups are another way to mitigate the risk of potential inquiry. Besides mitigating litigious positions, a business review would also assist in adopting tax-efficient structures.

The Dramatic Turn of Events: Inside the Supreme Court's Landmark Decision in the Delhi Metro vs. Airport Express Legal Saga

Delhi Metro Rail Corporation Ltd. v Delhi Airport Metro Express Pvt. Ltd.

The Supreme Court, in response to a curative petition filed by the Delhi Metro Rail Corporation (DMRC) challenging a previous judgment, declared that the decision to overturn the Division Bench's ruling and restore the arbitral award constituted a miscarriage of justice.[1] As a result of this latest happening, DMRC will not have to pay ₹7687-crore arbitral award to DAMPEL. The initial Division Bench decision, based on Section 34 of the Arbitration and Conciliation Act, provided that the arbitral award was flawed.[2] However, the Supreme Court, under Article 136 of the Constitution, upheld the validity of the award. Initially, the review petition of DMRC against the judgment of the Supreme Court was dismissed.[3] Now, the events have taken a dramatic term wherein, the SC has corrected its mistake in a curative petition filed to cure the defects of its earlier judgment in the same case. The Court emphasized the importance of adhering to established legal principles and cautioned against the routine use of curative jurisdiction to revisit arbitral awards. Consequently, the Court reverted the parties to their pre-judgment positions and discontinued execution proceedings related to the arbitral award. With this, the arbitral award which asked DMRC to pay ₹7687 crore to DAMPEL will not come into effect.

What is the curative petition?

A curative petition is a legal remedy available in the Indian judicial system to rectify a gross miscarriage of justice that may have occurred due to an error in the judgment of the Supreme Court. It is the last judicial resort available for redressal after the exhaustion of all other legal remedies. A curative petition can only be filed after a review petition against the Supreme Court's judgment has been dismissed. It is heard by a bench of the three senior-most judges of the Supreme Court, along with the judges who delivered the impugned judgment, if available.

The concept of the curative petition was introduced by the Supreme Court of India in the case of Rupa Ashok Hurra vs. Ashok Hurra and another[1], wherein the court was addressing the question of whether an aggrieved party could seek relief against the final judgment or order of the Supreme Court, even after the dismissal of a review petition. The objectives of the curative petition are two-fold: to prevent miscarriage of justice and to deter the abuse of the legal process.

The constitutional basis for the curative petition is provided by Article 137 of the Indian Constitution, which grants the Supreme Court the power to review any judgment or order pronounced by it in matters concerning laws and rules made under Article 145. According to the procedure, a curative petition can be filed within 30 days from the date of the judgment or order, after the dismissal of a review plea against the final conviction.

For a curative petition to be entertained, the petitioner must demonstrate that there was a violation of the principles of natural justice and that they were not allowed to be heard by the court before the order was passed. It is emphasized that curative petitions should be rare exceptions rather than regular occurrences.

If the Bench determines at any stage that the petition lacks merit, it may impose penalties on the petitioner. A curative petition can be rejected by the bench at any stage if it lacks substantive merit or fails to demonstrate a violation of natural justice.

The Supreme Court of India's special powers

The Supreme Court of India holds special powers endowed by the Constitution, as the apex judicial body in the nation. Article 131, confers exclusive original jurisdiction to adjudicate disputes arising between the Centre and one or more States, or among States themselves, about legal rights. Additionally, Article 136 bestows discretionary jurisdiction upon the Supreme Court, empowering it to grant special leave to appeal from any judgment, decree, or order issued by any court or tribunal within India, except military tribunals and court-martials. Furthermore, the Court exercises advisory jurisdiction under Article 143, whereby the President of India can seek the Court's opinion on specific matters of law.

The Supreme Court can initiate contempt proceedings under Articles 129 and 142 to punish for contempt of itself, either suo motu or upon petition by others. Article 145 empowers the Supreme Court to formulate rules governing its practice and procedure for reviewing judgments, determining costs, granting bail, staying proceedings, and conducting inquiries, subject to the President's approval. Through these diverse powers, the Supreme Court plays a pivotal role in upholding the rule of law and dispensing justice across the Indian judicial landscape.

Recently, the Supreme Court of India utilized its "extraordinary powers" through a curative petition to reverse its previous judgment whereby it upheld an arbitral award ordering the Delhi Metro Rail Corporation (DMRC) to pay nearly Rs 8,000 crore to Delhi Airport Metro Express Private Limited (DAMEPL).

A partnership between DMRC and DAMEPL was entered into to construct, operate, and maintain the Delhi Airport Metro Express. However, disputes arose, leading to DAMEPL terminating the agreement in 2013, citing safety concerns and operational issues.

The arbitration panel ruled in favor of DAMEPL, directing DMRC to pay nearly Rs 8,000 crore. DAMEPL pursued the matter with the Supreme Court, which initially upheld the arbitral award in 2021. However, in the recent judgment, the Supreme Court ruled in favor of DMRC, citing a "fundamental error" in its previous judgment.

It ordered the refund of amounts deposited by the petitioner and any amount paid as part of coercive action. However, the court emphasized that the use of curative jurisdiction should not become routine, cautioning against opening floodgates for excessive court intervention in arbitral awards.

The judgment criticized the 2021 verdict of the Supreme Court, which upheld an Arbitral Tribunal’s award, as a grave miscarriage of justice. It described the decision as a misappreciation of law and facts, resulting in the restoration of a patently illegal award. The bench pointed out that the division bench of the Delhi High Court had provided more than adequate reasons to conclude that the arbitral award suffered from perversity and patent illegality.

Analyses

I. Curative Jurisdiction:

The Supreme Court's curative jurisdiction allows it to rectify gross miscarriages of justice even after the dismissal of a review petition. The jurisdiction aims to prevent abuse of the court's process and remedy serious injustices. In the case of Rupa Ashok Hurra vs. Ashok Hurra, the court emphasized that justice should prevail over the principle of finality of judgments in exceptional cases where declining to reconsider a judgment would perpetuate irremediable injustice. The court outlined that a curative petition may be entertained to prevent abuse of process and correct miscarriages of justice, including violations of natural justice or situations where there's a risk of bias. However, the court noted that the grounds for entertaining a curative petition cannot be exhaustively enumerated.

II. Scope of Interference with Arbitral Awards:

Section 34 of the Arbitration Act allows courts to set aside arbitral awards on specific grounds, including conflicts with public policy or patent illegality. Patent illegality arises when the arbitrator's decision is irrational, perverse, or beyond the scope of their authority. Courts have endorsed the principle that arbitral awards can be set aside if they violate fundamental principles of natural justice or contravene the arbitration statute. The judgment on setting aside or refusing to set aside an arbitral award under Section 34 is appealable under Section 37 of the Arbitration Act. However, the Supreme Court's jurisdiction under Article 136 to grant Special Leave to Appeal against decisions rendered in appeal under Section 37 is discretionary and exceptional. The Court must interfere sparingly and only when exceptional circumstances exist, ensuring that the correct tests are applied to assail the award.

III. The award was patently illegal

The Court pointed out the Tribunal's failure to consider vital evidence, such as the joint application to CMRS and the CMRS certificate, and its inability to reconcile inconsistencies in the evidence presented.

By setting aside the Division Bench's judgment, the Supreme Court effectively reinstated an award that was deemed to be patently illegal, imposing a significant and unjust burden on a public utility. Consequently, a grave miscarriage of justice ensued, warranting the invocation of the curative jurisdiction under Article 142. As a result, the curative petitions have been allowed, restoring the parties to their pre-judgment positions as per the Division Bench's decision.

Execution proceedings to enforce the arbitral award are to be discontinued, and any amounts deposited by the petitioner according to the Supreme Court's judgment are to be refunded. Additionally, any amounts paid by the petitioner as a result of coercive action are liable to be restored. Supreme Court erred in interfering with the Division Bench's decision, which was based on a correct application of the law.

The interference by the Supreme Court led to the reinstatement of an illegal award, resulting in a serious miscarriage of justice. Therefore, the curative petitions are allowed in the terms outlined, and any pending applications are disposed of accordingly.

[1] Curative Petition (C) Nos.108-109 of 2022
[2] DMRC v. Delhi Airport Metro Express (P) Ltd., OMP (ENF.) (COMM.) No. 145 of 2021 (DHC)
[3] DMRC v. Delhi Airport Metro Express (P) Ltd. 2024 SCC OnLine SC 522
[4] [2002] 2 S.C.R. 1006

Compound Interest as Compensation under the Consumer Protection Act, 1986 in Real Estate Disputes

The real estate sector has been facing a multitude of challenges and disputes, especially post-GST implementation. This often leaves buyers, promoters, and developers entangled in legal battles seeking redressal for various grievances. Post the implementation of GST, consumer courts have witnessed a surge in real estate disputes. Complaints against developers have surged post-GST implementation, regarding issues of hidden costs, poor quality work, ownership delays, illegal construction, and contract violations.

In analyzing the legal landscape, it becomes evident that the jurisdiction of consumer forums, such as the National Consumer Disputes Redressal Commission (NCDRC), extends to adjudicating disputes arising from deficiencies in real estate services. Section 2(o) of the CP Act[1] defines 'service,' encompassing construction activities undertaken by developers. Furthermore, Section 2(g) of the CP Act defines "deficiency" as any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. These provisions are often used by the consumer forum to award compensation to aggrieved purchasers falling within the category of "consumer" under clause 2(d) of the CP Act. For instance, the Supreme Court, in the case of Lucknow Development Authority v. M.K. Gupta[2], affirmed that inordinate delays in delivering possession constitute a deficiency in service, awarding compensation to the purchasers. Also, the court in Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor[3] held that interest on compensation shall accrue from the dates of deposits made by the consumer and not from the date of the last deposit, ensuring restitution for delays.

However, the intricacies surrounding the award of compensation, particularly in the form of compound interest, necessitate a nuanced understanding of legal principles and precedents. Furthermore, the introduction of GST has introduced additional complexities in real estate transactions, with issues such as tax implications, valuation methodologies, and contractual terms coming under scrutiny. Consumer forums are confronted with disputes ranging from excessive GST levies to contractual terms that are perceived as one-sided and oppressive to consumers.

One of the contentious issues in real estate disputes pertains to the award of compensation, particularly in the form of compound interest, under the Consumer Protection Act, 1986 (CP Act)[1]. Supreme court in a case of M/s Suneja Towers Private Limited & Anr. v. Anita Merchant[2] stated that Compound Interest cannot Be Awarded Casually As Compensation by Consumer Forums in Real Estate Disputes. The Court further clarified that compound interest can be awarded in situations after taking into account relevant factors which would include uncertainties of the market and several other imponderables. After placing reliance on appropriate provisions of CPA, the Court highlighted that the Forum is empowered to grant punitive damages as per the proviso to Section 14(1)(d) of the Consumer Protection Act of 1986, (Act) if it deems fit.

In this case, the purchaser Anita Merchant (respondent) booked three residential flats of a residential project, namely Siddharth Shila Apartments at Ghaziabad. Respondent made payment up to 6th installment but, defaulted thereafter and did not make the remaining payment despite numerous reminders. She later issued a notice to the appellants M/s Suneja Towers Pvt. Ltd. (Siddharth Shila Apartments), stating that even after 16 years, the possession has not been delivered. To which the they replied stating that there was only provisional allotment and no agreement as such was executed between the parties. Moreover, the allotment had been canceled due to default on the purchaser's part. Consequently, a cheque of Rs. 10,68,031/- was sent as a refund to them. The District Forum dismissed the complaints on the grounds of lack of jurisdiction. State Commission was approached which based on Manjeet Kaur Monga v. K.L. Suneja[1], ('Dr. Monga's Case'), directed respondents to refund the amount deposited by the respondent with 'compound interest at the rate of 14% from the date of deposit'.

National Commission was approached which dismissed the petition and refused to interfere with State Forum's judgement. Therefore, the consumer approached the Supreme Court.

SC held that Dr. Monga's Case pertained to claiming compensation under the MRTP Act, whereas the present case was related to claiming compensation under the Consumer Protection Act, of 1986. Hence, Dr. Monga's Case cannot be read in support of the principle that compensation under the Consumer Protection Act, of 1986 could also be in the form of compound interest.

The Act of 1986 has empowered the Consumer Forums to direct payment of compensation to the consumers for any loss or injury suffered due to the negligence of the opposite party. However, there is no hard and fast rule as to how much interest should be granted and it would depend on the facts and circumstances of each case. Claim for compensation by way of compound interest is to be declined if it does not have any nexus with the commercial realities of the prevailing market as has been held in IREO Grace Realtech (P) Ltd. v. Abhishek Khanna,[1] ('Ireo Grace').

The Court observed that to determine the compensation, the Consumer Forum must examine the time value for money along with an in-depth and thorough analysis of all the facts and material surrounding factors, including realities and uncertainties of the market. As far as the award of compound interest in the instant case was concerned, SC noted that the same was without examining any factor which has led to serious inconsistencies.

The State Commission straightaway jumped to the conclusion of awarding compound interest at the rate of 14%, without considering the refund Rs. 10,68,031/- on 08.11.2005 by the respondents, and without even specifying the period of such operation of compounding of interest. The Court viewed that if at all compounding of interest is allowed, that could not run beyond 08.11.2005, at least in regard to the said sum of Rs. 10,68,031/-, and the said interest does not exceed the amount of Rs. 2,48,52,000/-, which has already been received by the respondent pursuant to the order passed by the Court. Considering the peculiar circumstances of the case, as an extraordinary measure, the respondent was allowed to retain the received amount.

This judgment highlighted one of the most significant issues faced by the consumer courts while awarding compensation in real estate disputes under the Consumer Protection Act, of 1986. It clarifies that compound interest should not be awarded casually by consumer forums and must be grounded in the specifics of each case, considering market realities and the time value of money.

This judgment emphasizes the necessity for a detailed and nuanced evaluation of all relevant factors before deciding on compensation.

It also reinforces the consumer forums' mandate to ensure that awards are fair and proportionate, balancing the interests of both consumers and developers in real estate transactions. This ruling provides clearer guidelines, ensuring that compensation decisions are not arbitrary and are based on sound legal and economic principles.

[1] Consumer Protection Act, 1986
[2] 1994 AIR 787
[3] 2022 SCC OnLine SC 416
[4]Consumer Protection Act, 1986
[5] 2023 SCC OnLine SC 443
[6] (2018) 14 SCC 679
[7] (2021) 3 SCC 241

India's New IT Rules: Balancing Misinformation and Free Speech

The Central government introduced a new amendment to the Information Technology Amendment Rules, 2023 for Open, Safe, Trusted, and Accountable Internet usage. This amendment empowers the Ministry of Electronics and Information Technology (MeitY) to create a "fact check unit" to identify false or misleading content online.

Along with that, if the social media intermediaries fail to prevent users from hosting or publishing flagged information, their "safe harbour" immunity, will be withdrawn which could expose them to criminal prosecution. This can have negative implications for freedom of speech and civil liberties guaranteed by the constitution of India. With the new provisions, the Union government is empowered to determine what information is false and exercise censorship. This may hinder free information as the content can be withdrawn after the Union Government decides it is false.

In the era of digitalization, the spread of misinformation can lead to serious consequences for individuals, communities, and even nations. The government has attempted to address this issue through the instant amendment made to the IT Rules. However, concerns remain about the impact of these amendments on the freedom of speech and expression guaranteed under the Constitution of India.

Section 79 of theInformation Technology Act, of 2000 deals with immunity to intermediaries, as long as they follow due diligence and state-prescribed guidelines. It states that no person providing any service as a network service provider shall be liable under this Act, rules, or regulations made thereunder for any third-party information or data made available by him if he proves that the offense or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offense or contravention. For the purposes of this section, "network service provider" means an intermediary, and "third party information" means any information dealt with by a network service provider in his capacity as an intermediary.

The Information Technology Act, of 2000 was amended in 2008 to provide an exemption to intermediaries from liability for any third-party information. After that, the IT (Intermediary Guidelines) Rules, 2011 under the IT Act specified the due diligence requirements for intermediaries to claim such exemption. Later on, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 replaced the 2011 Rules. In April 2023, the Government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.

The most debated provision regarding the new rules is the power of the union government to remove any online content that it deems false or misleading. In such a situation, social media platforms and intermediaries will be deprived of the protection of the “safe harbour” if they do not comply with government orders. The issue is regarding “in respect of any business” which is not defined anywhere and is very large in its scope. It can have a negative effect on the right to freedom of speech and expression.

The Rules require the “social media intermediary and significant social media intermediary” (such as Twitter, Facebook, etc.) and Online Gaming Intermediary to inform their users not to 'host, display, upload, modify, publish, transmit, store any information which is 'identified as fake or false or misleading by a fact check unit of the Central Government' in respect of any business of the Central Government.

If the information has been flagged as false or misleading, intermediaries need to take down the content. The fact check unit of the Central Government can instruct intermediaries (including social media sites) not to host such false or misleading content.

Further, online gaming Platforms will have to register with a Self-Regulatory Body (SRB) that will determine whether the game is permissible. After receiving such permission, the online gaming intermediary has to display a demonstrable and visible mark of verification of such online game by the online gaming self-regulatory body on such permissible online real money game. It is the responsibility of the platform to ensure that online games do not involve any gambling or betting elements and that compliance with legal requirements, standards, and safety precautions such as parental controls shall also be ensured.

The Supreme Court of India's cognizance

The Supreme Court of India has taken cognisance of the issue in the case of Kunal Kamra v. Union of India[1] wherein the issue before the apex court is:

- Does the formation of a fact-check unit under the IT Rules, 2023 violate Article 14 for being arbitrary?
- Does a fact-check unit restrict the freedom of speech and expression under Article 19?[2]

The challenge in the instant case is with respect to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (IT Rules 2023) notified by the Ministry of Electronics and Information Technology which direct social media intermediaries (such as Facebook, Twitter, etc.) to remove any news related to the "business of the Central Government" that is deemed "fake, false, or misleading" by a fact-checking unit established by the Union Government.[3] It is further challenged that the formation of a fact-check unit contradicts Section 79 of the Information Technology Act, 2000 (IT Act) which protects social media intermediaries from liability of user-generated content.

Reliance was placed on Shreya Singhal v Union of India[4], where the Supreme Court mandated that notifications to take down content should be issued through a court order however, the IT Rules 2023 enables the Union Government to address the social media intermediary directly by acting both "the Judge and the Prosecutor." the petition further claims that the IT Rules 2023 violate Articles 14,19(1)(a) and 19(1)(g) of the Constitution for running afoul of principles of natural justice, freedom of speech, and prevent from engaging in political satire.

The Union responded to the instant petition stating that the Rules are issued in "public interest" to prevent the spread of "false news." As far as FCU is concerned, they argued that the same will be carried out based on evidence. The aggrieved persons can approach a court if they feel their information is wrongfully flagged and taken down.

The petitions filed in the Bombay High Court by the Association of Indian Magazines (AIM) and the Editors Guild of India challenging the same IT Rules 2023 were clubbed with Kamra's petition.

Bombay High Court judgment

Bombay High Court delivered a divided ruling on the petition challenging the notification for establishing a fact-check unit under the amended IT Rules.[1] The bench, comprising Justices Gautam Patel and Dr. Neela Gokhale, issued a split verdict on January 31, 2024. Justice Patel expressed concerns over the broad powers granted to the government's fact-check unit, which he termed as the "sole authority" to determine the truth or falsity of information. He highlighted the subjective nature of concepts like "misleading" and the lack of absolute truths in human history. Patel argued that social media intermediaries, being a "vulnerable segment," would likely comply with takedown requests from the government's fact-check unit, risking the suppression of opposing viewpoints. On the other hand, Justice Gokhale disagreed, stating that intermediaries would not lose their safe harbour protection unless they failed to remove content falling within the reasonable restrictions under Article 19(2) of the Constitution. She emphasized that aggrieved parties could seek remedies from competent courts, making them the "sole arbiter" and not the government. Gokhale dismissed concerns of bias against the fact-checking unit solely because it was appointed by the government, considering the challenge premature based on the anticipation of potential abuse. Following the split verdict, Kunal Kamra approached the Bombay High Court seeking an interim stay on the notification of the fact-check unit. However, Justice A.S. Chandurkar declined to grant a stay, on the ground that notifying the unit would not create an irreversible situation, as any action taken would be subject to the validity of the amendment which is still undecided due to the split verdict. Aggrieved by this, Kamra approached the Supreme Court against this decision of the single judge. Meanwhile, the Union notified the fact check unit.

The bench of Chief Justice D.Y. Chandrachud with Justices J.B. Pardiwala and Manoj Misra has put a stay on the Union's notification establishing the fact check unit. Hence, this matter remains sub jucide.

Effect on Online Gaming

MeitY has been designated as the nodal ministry for online gaming. However, Online gaming was not previously regulated under the IT Act, 2000. These are now regulated under the 2023 Rules. The definition of "online gaming intermediaries" remains very broad, leading to ambiguity. The term "wagering" used in the criteria for "permissible online real money game" is not elaborated upon, leaving the classification up to the interpretation of the self-regulatory body.

Online gaming intermediaries that enable access to permissible online real money games are required to display a visible verification mark from an online gaming self-regulatory body for such games. While informing users about rules, privacy policy, terms of service, etc., these intermediaries must include specific information for each permissible online real money game like the policy on withdrawal/refund of deposits, determination and distribution of winnings, fees and charges payable by the user.

Before accepting any deposits from users for permissible online real money games, online gaming intermediaries must identify and verify the user's identity following the procedures applicable to entities regulated by the Reserve Bank of India for customer identification like Know-Your-Customer. Importantly, online gaming intermediaries enabling access to such games cannot directly finance or enable third-party financing for the purpose of playing these online real-money games.

Further, as per Section 4A, the Ministry can designate self-regulatory bodies to verify online real money games. These bodies must be companies registered under section 8 of the Companies Act, 2013, with membership representing the gaming industry and promoting responsible gaming. Their boards must include experts from various fields, and their articles must ensure conflict-free operations, member accountability, clear membership criteria, and Ministry-approved amendments.

These bodies must have financial capacity. They can declare a game permissible if it does not involve wagering and complies with relevant laws, initially relying on applicant information for up to three months. They must publish verified games and member lists online. Verification can be suspended or revoked if rules are not followed. The bodies must publish frameworks for protecting sovereignty, user safety, child safeguards, and preventing addiction and financial harm. The Ministry may require information disclosure and consider published verification details before issuing directions under section 69A of the Act. A grievance redressal framework must be published, with complaints acknowledged within 24 hours and resolved within 15 days. The Ministry can direct rectifications for non-conformities and suspend or revoke designations if necessary, with interim directions for user access to games.[1]

The 2023 amendment raises several concerns due to its failure to define various terms like “fake news” and "any business". Further, the act allows the government's fact-check unit immense powers to declare the veracity of any news "in respect of any business" as invalid. The use of undefined words gives the government unchecked power to decide what content should be available on internet. The rules come face to face with the protections provided under Article 19(2). A lawfully enacted statute should adopt less restrictive alternatives to removing misinformation. In the guise of misinformation and the fear of facing a penalty, Intermediaries will remove information deemed false by the Fact Check Unit. The new regulation gives the government the power to decide what is fake or false. The rights of the press and individuals to speak truth will be curtailed along with civil liberties. This wrong was undone by the Supreme Court's Judgment in Shreya Singhal vs Union of India wherein the Supreme Court held that a law that limits speech should not be vague nor over-broad. In this situation, it becomes pertinent for the Supreme Court to step in one more time for Balancing Misinformation and Free Speech of individuals. The case of Kunal Kamra can be an appropriate occasion for the court to balance these two important facets of free speech i.e. government’s initiative to curb misinformation and citizen’s right to freedom of speech and expression.

Maternity Benefits Beyond Contractual Terms: Insights from Dr. Kavita Yadav v Ministry of Health and Family Welfare Department

The Supreme Court of India in Dr. Kavita Yadav v The Secretary, Ministry of Health and Family Welfare Department & Ors.[1] ruled in favor of a contractual employee who was denied maternity benefits extending beyond her contract period. The Court determined that the benefits under the Maternity Benefit Act, 1961, should continue even after the termination of her employment contract.

The appellant was employed on a contract basis from June 12, 2016, to June 11, 2017. She applied for maternity benefits on May 24, 2017, seeking leave starting from June 1, 2017. The employer granted only 11 days of maternity leave, citing the end of her contract on June 11, 2017. The appellant's claim for 26 weeks of maternity benefits under the Maternity Benefit Act, of 1961, was rejected by both the Central Administrative Tribunal and the High Court.

The reasoning adopted by the High Court while rejecting maternity benefit to the appellant in its judgment delivered on 19th August 2019 was based on Section 5 of the Maternity Benefit Act, 1961.

Section 5 of the Maternity Benefit Act, of 1961 deals with the right to payment of maternity benefits. As per the provisions of this section, every woman shall be entitled to, the payment of maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day and the employer is mandated to ensure the compliance of this provision.

Explanation embedded in the section states that the average daily wage should mean the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher. Subclause (2) further states that no woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery: however, the qualifying period of one hundred and sixty days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration. For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, ti.e., six weeks up to and including the day of her delivery and six weeks immediately following that day. In case the woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death, and in case where a woman after the delivery dies, during her delivery, or during the period of six weeks immediately following the date of her delivery, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child.

High Court Judgment

As per the High Court, the petitioner's reliance on Section 5(2) of the relevant Act to claim maternity benefits after her contract ended on 11.6.2017 is irrelevant. Regarding the issue of whether she was entitled to the benefit after her employment contract expired, the court noted that Section 5(1) of the Act provides for maternity benefit for the "period of her actual absence", which presupposes that for the maternity leave, the woman employee would remain present at work. However, where the employment contract is time-bound and ends during the pregnancy or after childbirth, there is no question of her remaining "actually absent" because she would not be expected to remain present after the contract termination.

As per the court, the purpose of the Act is not to extend the period of an employee's contract, and granting 180 days maternity leave despite the contract expiring a few days after leave began would be tantamount to an unintended extension of the contractual employment period.

Supreme Court judgment

This judgment was appealed before the Supreme Court. The issue before the Apex Court was whether a contractual employee is entitled to maternity benefits under the Maternity Benefit Act, of 1961, beyond the period of her contractual employment.

The appellant argued that under Section 5(2) of the Maternity Benefit Act, 1961, she was entitled to maternity benefits for a period of 26 weeks, as she had served more than 180 days continuously before the expected delivery date. On the other hand, the respondent-employer contended that maternity benefits should not extend beyond the contractual period of employment. They argued that the contractual term could not be notionally extended to grant full maternity benefits.

After considering the rival submission of the parties, the Supreme Court while setting aside the judgment of the High Court, ruled in favor of the appellant, directing the employer to provide full maternity benefits.

The court interpreted the provisions of the Maternity Benefit Act, 1961 and emphasized that the Act aims to protect the dignity of motherhood by ensuring a woman's employment is not terminated due to pregnancy. Further, Section 5(2) clearly grants maternity benefits to women who have worked for 180 days prior to the expected date of delivery, irrespective of the term of the contract. Further Section 5(2) of the Maternity Benefit Act, 1961 specifies eligibility criteria for maternity benefits. Court reproduced the provisions of Section 12(2)(a)of the 1961 Act[1] wherein continuation of maternity benefits which is inbuilt in the statute itself is made clear.

Section 12(2)(a) deals with dismissal during absence or pregnancy. It protects women from wrongful deductions made in her salary by the actions of her employer. As per this section, in the case where a woman is absent from work in accordance with the provisions of the 1961 Act, her employer cannot discharge or dismiss her or give notice of discharge or dismissal and if he does so, the same would be considered unlawful. This section protects women by holding actions of the employer unlawful which are taken at her disadvantage just because she was absent as per the provisions of the 1961 Act. As a consequence of this, if the woman is discharged or dismissed at any time during her pregnancy, she would be entitled to maternity benefits or a medical bonus. She can be deprived of maternity benefits, medical bonus or both if the dismissal is for any prescribed gross misconduct communicated to the woman in writing. Any woman deprived of maternity benefit or medical bonus or both can appeal to an appropriate authority within sixty days from the date on which the order of such deprivation is communicated to her and the decision of the authority will be final.
Based on this section, the court concluded that Section 12(2)(a) of the Maternity Benefit Act, 1961 Protects women from dismissal or discharge during pregnancy, hence the benefits would survive and continue despite the cessation of employment.

The court opined that Section 27 of the Maternity Benefit Act, 1961 Provides overriding effect to the Act over any inconsistent agreement or contract. For this reason, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11th June 2017.

After placing reliance on Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr.[1], the Court held that maternity benefits are not co-terminus with the term of employment and can extend beyond the contractual period.

Consequently, the court noted that a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act(180 days of service), she became eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute “discharge” and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.

The Supreme Court's judgment is pivotal in interpreting and reinforcing the provisions of the Maternity Benefit Act, 1961. The purpose of this act has always been to ease the working environment for women. A recent amendment to the act "the Maternity Benefit (Amendment) Act, 2017"[1] increased paid maternity leave from 12 weeks to 26 weeks, with not more than eight weeks preceding the expected delivery date, and introduced the possibility of working from home based on mutual agreement between the employer and the employee. This highlights the attempts made at improving women's participation in the labor force and enhancing the quality of their employment through legislative measures, including the Code on Social Security, 2020,[2] which mandates crèche facilities in establishments with 50 or more employees and allows women to work night shifts with adequate safety measures.

The Supreme Court's ruling is significant as it clarifies the judicial interpretation of key provisions of the Maternity Benefit Act, particularly for women engaged in non-standard contracts, such as fixed-term contracts. This decision lays a beneficial foundation for improved maternity protections at the workplace and sets a precedent for future cases, as evidenced by the Delhi High Court's reliance on this ruling in Govt. of NCT Delhi v. Rehmat Fatima[3] to grant maternity benefits post-contract expiry. It highlights the need for employers to acknowledge the financial responsibility of extending maternity benefits beyond the contract term.

It could potentially affect cases where a woman has not started availing maternity benefits before her contract ends. This decision, thus, ensures that women who begin availing maternity benefits during their employment can continue to receive these benefits even after their contractual engagement ends, promoting fairness and addressing the genuine expectations of modern working women.

By ensuring that maternity benefits extend beyond the contractual period, the Court has aligned Indian practices with other national jurisdictions. In other countries including Croatia, Italy, Luxembourg, Somalia, and Tajikistan, the employer has a responsibility to find alternative employment to the employee after the expiry of fixed-term contracts. During the period in which alternative employment is being sought, wages are paid for three months from the day on which the fixed employment contract expires.

Analysing Supreme Court's Ruling on Applicability of Amended Section 29A to International Commercial Arbitrations

India Being the Fifth Largest Economy and Highest Population-Based Economies in the World.[1] With an estimated GDP of more than ₹293.90 lakh crore generated by a population of over 1 billion, India is expected to grow at 7.6.% in 2023-24, making its economic growth the fastest among major economies.[2] To make itself a compelling investment destination, India has made various efforts to ease the trade and business regime, including promoting a favorable business climate and improving infrastructure. Total FDI inflows in the country in FY 2023-24 stood at $971.521 billion (April 2000 to December 2023), and total FDI equity inflows were $666.477 billion (April 2000 to December 2023), according to the Department of Promotion of Industry and Internal Trade, Government of India.[3]

India which is making endeavors to make its economy vibrant by making itself an attractive business destination is sure to make dispute resolution efficient and expeditious. In order to ease the doing of business, India has been actively promoting arbitration as an effective means of dispute resolution. Arbitration offers several advantages that contribute to India's economic growth and make it an attractive investment destination. It acts as an alternative to the already overburdened court system of the country which might lead to delays and pendency in resolving disputes, something that business entities might prefer to avoid. Arbitration is already a widely recognized neutral and efficient method of resolving commercial disputes in international business transactions. Promoting arbitration, creates a favorable environment for foreign investors and multinational companies, thereby encouraging foreign direct investment (FDI) and economic growth. Another aspect that makes arbitration a preferred mode of dispute resolution is the enforceability of the awards.

Arbitral awards are generally easier to enforce across jurisdictions compared to court judgments as they are backed by international conventions like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which India is a party along with other 171 states. This enforceability aspect makes arbitration an attractive option for parties involved in cross-border transactions. Arbitration also provides liberty to the parties to choose arbitrators. Hence, they can choose arbitrators with specific expertise in the subject matter of the dispute, leading to more informed and specialized decision-making compared to traditional court proceedings. As a result of this, an emerging trait in new-age contracts can be witnessed wherein arbitration and/or mediation clauses are included to ensure cost and time-efficient mechanisms for the resolution of disputes.

Section 29A of the Arbitration and Conciliation Act, 1996 ("Act") inserted via the Amendment Act of 2015 which came into effect on 23.10.2015, introduces a time limit for the completion of arbitration proceedings. It prescribes a statutory period of twelve months for the completion of proceedings from the date the arbitral tribunal enters upon reference.

Thereafter, this prescribed time limit was amended via the Amendment Act of 2019 which came into force on 30.08.2019 and the statutory limit was set as twelve months from the date of completion of pleadings with an option of another extension of six months by mutual consent of the parties.

However, another flexibility is provided under sub-section (4) wherein the parties can file an application to the court for an extension if the award is not passed in terms of Section 29A(1) or within the extended period.

Whether Section 29A and the provisions set out therein are applicable to international as well as domestic commercial arbitrations alike became a bone of contention. Another issue that emerged was whether the amended provision which came into effect on 30.08.2019 will be applied retrospectively or prospectively.

This issue is put to rest by the Supreme Court of India (“Supreme Court”) in its recent judgment in Tata Sons Pvt. Ltd. v. Siva Industries and Holding Ltd and Ors.[1] wherein the court held that the time limit of twelve months provided under the amended Section 29A (1) of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) for rendering an award is not applicable to ‘international commercial arbitrations’

Article 29A[2] in its true and original form sets out that…….”The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:
Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23

Tata Sons Private Limited ("Applicant"), Tata Tele Services Limited ("TTSL"), and NTT Docomo Inc. ("Docomo") entered into agreements wherein Docomo acquired equity shares of TTSL from Siva Industries and Holdings Ltd. ("Respondent No. 1"). The Applicant, TTSL, Docomo, and Respondent No. 1, along with C. Sivasankaran (promoter and guarantor of Respondent No. 1, "Respondent No. 2"), executed an inter se agreement according to which the Respondents can acquire TTSL's shares proportionately if Docomo exercised its sale option. Disputes arose between Docomo and the Applicant, leading to an arbitral award directing the Applicant to acquire Docomo's TTSL shareholding. Pursuant to this, the Applicant called upon the Respondents to acquire Docomo's shares under the inter se agreement. Disputes ensued between the Applicant and Respondents, resulting in the matter being referred to arbitration. The applicant issued a notice of arbitration to the first respondent and to the second respondent (a foreign party, being a resident of Seychelles) and nominated an arbitrator but the respondents did not appoint their nominee arbitrator despite the service of the arbitration notice.

The applicant filed a petition before the Supreme Court under Section 11(6) of the Arbitration and Conciliation Act[1] for the constitution of an arbitral tribunal in international commercial arbitration. The Supreme Court had exclusive jurisdiction to entertain the arbitration petition since the proposed arbitration between the applicant and the respondents, of whom the second respondent is a foreign party, was an international commercial arbitration in terms of Section 2(1)(f)[2] of the Arbitration Act. As Respondent No. 2 was a foreign party, the Supreme Court appointed Mr Justice S N Variava as a sole arbitrator.

The arbitrator entered upon the reference on 14 February 2018. On 21 March 2018, during a preliminary meeting, the parties agreed to a six-month extension for rendering the award, if the arbitral proceedings could not be completed within a period of twelve months commencing from the date the arbitral tribunal entered reference. Hence, the time to deliver the award stood extended until 14 August 2019.

During the pendency of the arbitral proceedings, IDBI Bank Ltd initiated insolvency proceedings against the first respondent under the Insolvency and Bankruptcy Code 2016. Hence, by an order of the National Company Law Tribunal, Chennai a moratorium was placed on all proceedings against the first respondent, including the arbitral ones. However, the moratorium was lifted on June 3, 2022. The extension of six months agreed upon by the parties expired on 14 August 2019.
Applicant filed an interlocutory application contending that as a result of the amendment of Section 29A of the Arbitration and Conciliation Act, 1996, with effect from 30 August 2019, the arbitration proceedings before the sole arbitrator should, be allowed to automatically continue in view of the amendment of the statute.

The Applicant was basically seeking the continuation of the arbitral proceedings, arguing that the amended Section 29A rendered the time limit for international commercial arbitrations inapplicable retrospectively.

Respondent No. 2 however contended that accepting the Applicant's arguments would imply the statutory time limits under Section 29A is entirely inapplicable to international commercial arbitrations.

The Supreme Court allowed the application and held that the time limit for passing an arbitral award under amended Section 29A of the Arbitration and Conciliation Act is not applicable to international commercial arbitrations.

Respondent No. 2 however contended that accepting the Applicant's arguments would imply the statutory time limits under Section 29A is entirely inapplicable to international commercial arbitrations.

The Supreme Court allowed the application and held that the time limit for passing an arbitral award under amended Section 29A of the Arbitration and Conciliation Act is not applicable to international commercial arbitrations.

In domestic arbitration, Section 29A(1) stipulates a mandatory period of twelve months for the arbitrator to render the arbitral award. In contrast, the substantive part of Section 29A(1) clarifies that the period of twelve months would not be mandatory for international commercial arbitration. Hence, post amendment, the time limit of twelve months as prescribed in Section 29A is applicable to only domestic arbitrations and the twelve-month period is only directory in nature for an international commercial arbitration.

To answer, whether the amended Section 29A would apply prospectively or retrospectively, the court placed reliance on the Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd,[1] and held that Section 29A was procedural in nature. Procedural law establishes a mechanism for determining the rights and liabilities of a party and a machinery for enforcing them.[2] Generally, procedural laws are presumed to be retrospective, unless there is a clear indication that such was not the intention of the legislature,[3] or the procedural law imposes new obligations qua transactions already concluded or creates new rights or liabilities.[4] Since the 2019 Amendment Act does not contain any provision evincing a legislative intent making the application of the amended provision perspective, the time limit prescribed under the amended Section 29A will apply retrospectively to all pending arbitral proceedings from its effective date i.e., August 30, 2019.

Consequently, the Supreme Court concluded that the sole arbitrator is empowered to pass appropriate procedural directions for extension of time while endeavoring to expeditiously conclude the arbitration.

As a consequence of this judgment, the long-debated confusion has been put to rest. It has been made clear by the Apex Court that the twelve-month time limit as prescribed in Section 29A is applicable only to domestic arbitrations and is a directory for international commercial arbitration.

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A Closer Look at Our Recent Features

The Domino Effect: How ED Investigations Open the Floodgate for Tax Investigations

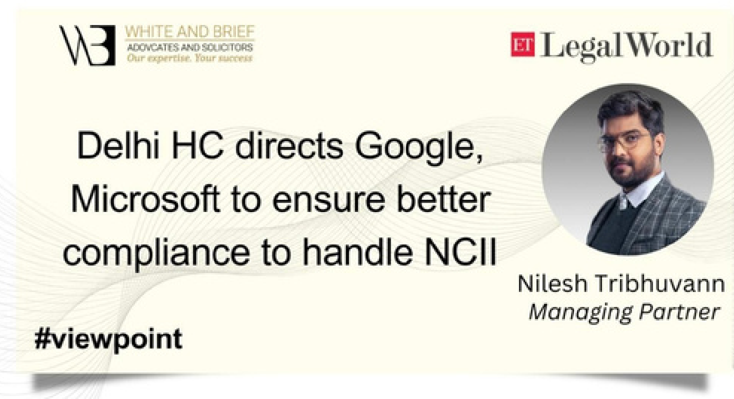
We are delighted to share that our Tax and Customs Partner, Prateek Bansal , has authored an article titled "*The Domino Effect: How ED Investigations Open the Floodgate for Tax Investigations*" which has been published by Outlook Publishing (India) Pvt. Ltd. This recognition is a testament to our firm's unwavering commitment and leadership in the field.

In this detailed article, Prateek offers profound insights into:

- The broadening scope of ED raids/investigations to encompass taxation issues.
- The overlap of offenses investigated by the ED with those under the GST and IT Act.
- Cases where ED raids have facilitated further scrutiny by other regulatory authorities.
- Takeaway for businesses.

We invite you to explore the full article to gain deeper insights into these critical issues and understand the proactive measures businesses should adopt.

https://www.outlookindia.com/outlookhub/the-domino-effect



Delhi High Court's directive to Google and Microsoft for improved compliance in managing non-consensual images.

White and Brief - Advocates & Solicitors is pleased to showcase a recent viewpoint from our Managing Partner, NILESH TRIBHUVANN, featured on ETLegalWorld Delve into his analysis of the Delhi High Court's directive to Google and Microsoft for improved compliance in managing non-consensual images.

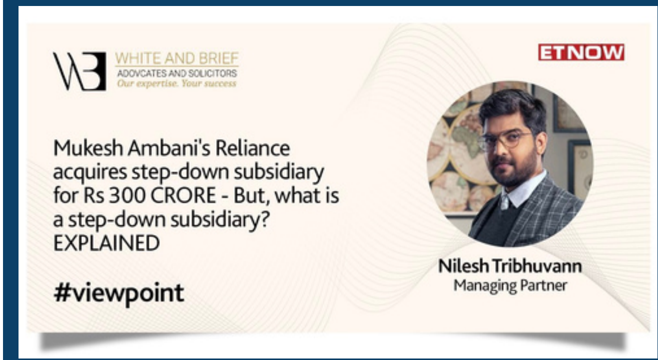
Click on the link to read the full article https://legal.economictimes.indiatimes.com/news/editors-desk/delhi-hc-directs-google-microsoft-to-ensure-better-compliance-to-handle-ncii/110090027

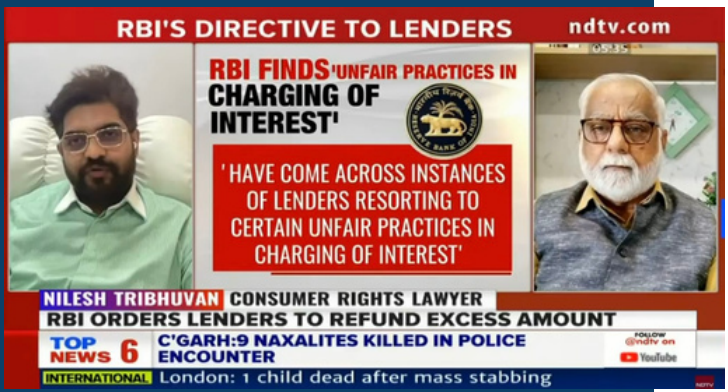
Reliance's strategic acquisition of a step-down subsidiary for Rs 300 Crore

We are delighted to share a recent viewpoint by our Managing Partner, NILESH TRIBHUVANN, featured on ET NOW. Dive into an insightful exploration of Reliance's strategic acquisition of a step-down subsidiary for Rs 300 Crore. What exactly is a step-down subsidiary?

🔗 Read the full story and discover how such moves shape the business landscape.

https://www.etnownews.com/companies/mukesh-ambanis-reliance





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

Revised regulations on flight ticket costs.

We are excited to announce that our Managing Partner, Mr. NILESH TRIBHUVANN, has been featured in an article by The Economic Times discussing the impact of revised regulations on flight ticket costs.

For further insights from Mr. Tribhuvann on this matter, please refer to the complete article at the following link:
Click on the link to read the full article
https://hospitality.economictimes.indiatimes.com/revised-regulation-set-to-influence-flight-ticket-costs/109645050

Will this bank continue to offer 9.2% interest on fixed deposits post-merger?

We are delighted to share that our Managing Partner, Mr. Nilesh Tribhuvann, has been featured in the Economic Times Wealth article titled "Will this bank continue to offer 9.2% interest on fixed deposits post-merger? Know what changes for FD investors."

To read his insights, click on the link below

https://m.economictimes.com/wealth/invest/fd-investors-used-to-get-9-2-in-this-small-finance-bank-before-it-was-merged-what-changes-for-fd-investors-loan-customers/articleshow/110562169.cms

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