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JUNE 2024

Legal Updates, Insights and Summary Judgements

This update covers:

Insight and Foresight: our perspective on key global developments

Key Takeaways from the 53rd GST Council Meeting – 22 June 2024

Tax Dispute and Settlement:
No Interest & **Penalties**: Waived for tax demands (April 2017 – March 2020) if paid by 31 March 2025.
Extended ITC Time: Until 30 November 2021 for ITC related to April 2017 – March 2021.
Appeal Limits: INR 20 Lakhs for GST Tribunal, INR 1 Crore for High Court, and INR 2 Crores for Supreme Court.

Trade and Compliance:
Amendments in GSTR-1: Can amend before filing GSTR-3B.
E-commerce Relief: Reduced TCS from 1% to 0.5%.
No Interest on Late Tax Payments: If paid by due date from Electronic Cash Ledger.
Extended Filing Date: For Composition Dealers to 30 June.

New Restrictions:
No ITC Refund: For goods exported with export duty.
Detailed B2C Reporting: Threshold reduced to INR 1,00,000.

Rate Rationalizations:
Uniform 5% IGST: On parts for aircraft MRO services.
12% GST: For items like milk cans, carton boxes, sprinklers, and solar cookers.
Service Exemptions: For hostel accommodations and certain railway services.

Clarifications:
Place of Supply for Custodial Services: Location of the recipient for FPIs.
Corporate Guarantee Valuation: For related parties.

Stay informed and compliant!

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

https://www.linkedin.com/feed/update/urn:li:activity:7211704072452661249

Supreme Court Ruling on Deportation Laws

#quickfacts

Deportation and the Supreme Court: Understanding the Apex Court's Stand

Comprehensive update on the Supreme Court's critical role in shaping deportation laws in India.

Key Highlights:

Legal Framework:

The Foreigners Act, 1946: Regulates entry and departure of foreigners.

The Passports Act, 1967: Governs issuance and revocation of passports, impacting deportation.

The Citizenship Act, 1955: Defines conditions for acquiring or losing Indian citizenship

Key Judgments:

Sarbananda Sonowal v. Union of India (2005): Emphasizes national security and constitutionality of the Illegal Migrants Act, with the burden of proof on individuals.

Hans Muller of Nuremberg v. Superintendent, Presidency Jail (1955): Establishes that deportation is not punishment and the government has inherent power to deport.

State of Arunachal Pradesh v. Khudiram Chakma (1994): Prohibits arbitrary deportation without due process, considering humanitarian concerns for long-term residents and refugees.

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Principles Established:

Due Process of Law: Ensures fair opportunity to present the case and decisions made according to legal procedures.

National Security and Integrity: Prioritizes national security in deportation matters.

Humanitarian Considerations: Balances approach for long-term residents and refugees.

Burden of Proof: Requires individuals to prove their legal status.

Implications for Immigration Policy:

Strengthening Legal Procedures: Advocates for transparent and fair deportation decisions.

Balancing Security and Humanitarian Concerns: Promotes effective and compassionate immigration policies.

Clear Burden of Proof: Emphasizes robust documentation and verification processes.

The Supreme Court's balanced approach ensures the protection of national security while upholding due process and humanitarian considerations, serving as a guiding force for effective immigration policy formulation and implementation.

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

https://www.linkedin.com/feed/update/urn:li:activity:7205917004912877570

Supreme Court Ruling on India's First EVM-Based Election

Supreme Court's decision to set aside India's first EVM-based election, focusing on legal, technical, and trust issues.

Key Highlights:

Legal Framework Missing: The Representation of the People Act, 1951, did not authorize the use of Electronic Voting Machines (EVMs), rendering the election procedurally invalid without the necessary legal backing.

Reliability Concerns: Questions about the reliability and accuracy of EVMs were raised, highlighting the need for thorough testing and validation.

Trust Deficit: There was a significant lack of transparency and trust among voters and political parties, emphasizing the need for clear guidelines and regulations to ensure electoral integrity.

Supreme Court's Verdict:

The election was declared invalid, underscoring the necessity for a robust legal framework and safeguards when implementing new technologies in elections.

Post-decision, amendments to the Representation of the People Act were made to include EVMs, ensuring reliability and transparency through extensive trials and improvements.

Ensuring Fair Elections:

The importance of legal and procedural robustness in electoral processes was highlighted, with a focus on legal, technical, and trust safeguards.
Implementing technological advancements in elections must prioritize reliability and public confidence to maintain the integrity of the electoral process.

This landmark decision by the Supreme Court reinforces the need for a comprehensive legal framework and transparent procedures to uphold the fairness and trustworthiness of elections.

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

https://www.linkedin.com/feed/update/urn:li:activity:7205931391375597568

Delhi High Court's Landmark Order on Disability Reservation in Nursing Education

Crucial update from the Delhi High Court regarding disability reservation in nursing education, emphasizing inclusivity and equal opportunities.

Key Highlights:

Background:

The Rights of Persons with Disabilities Act, 2016 mandates equal opportunities in education and employment, requiring educational institutions to reserve seats for students with disabilities.

Court Order:

The Indian Nursing Council (INC) is directed to consider representations for disability reservation.
Current policies must be evaluated in light of the Rights of Persons with Disabilities Act, with potential amendments to ensure inclusivity.

Impact on Nursing Education:

Promotion of inclusivity and equal opportunities in nursing programs.
Increased accessibility for students with disabilities, emphasizing diversity and an equitable healthcare workforce.

Responsibilities of the Indian Nursing Council:

Review and amend current policies to align with the court directive.
Ensure admission processes accommodate students with disabilities, improving access to nursing education.

Expected Outcomes:

Improved representation of persons with disabilities in the nursing profession.

Enhanced inclusivity and support within nursing education, positively impacting the healthcare sector with a diverse workforce.

This directive underscores the importance of adapting educational policies for inclusivity and the role of the INC in fostering a diverse and equitable healthcare environment.

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

https://www.linkedin.com/feed/update/urn:li:activity:7205949332997443585

New Guidelines for Arbitration and Mediation in Domestic Public Procurement

We are delighted to share an insightful document issued by the Ministry of Finance, Department of Expenditure, outlining the latest Guidelines for **Arbitration and Mediation in Contracts of Domestic Public Procurement**.

Here are some key highlights:

Introduction to the Guidelines: A comprehensive overview aimed at improving dispute resolution mechanisms in public procurement.

Advantages of Arbitration: Speed, efficiency, and inclusion of technical expertise are among the benefits, ensuring swift and informed decisions.

Government Disputes Peculiarities: Unique challenges due to multiple levels of scrutiny and the need for accountability to Parliament.

Mediation as an Alternate Dispute Resolution: Emphasizing the benefits and successful models within government entities under the Mediation Act, 2023.

Key Guidelines for Procurement Contracts: Strategies such as restricting arbitration in large contracts, preferring institutional arbitration, and encouraging amicable settlements.

Encouraging Mediation and Amicable Settlements: Adoption of mediation, formation of High-Level Committees for high-value matters, and processes for negotiation.

Approval and Modifications of Guidelines: Authority requirements, relevance of Section 49 of the Mediation Act, 2023, and application flexibility.

Conclusion and Implementation: Summarizing key points and encouraging efficient, fair, and accountable processes across government ministries and entities.

Let's work together to promote pragmatic and fair decision-making in public procurement.

To delve into the specifics, please review the information provided in the following link :
https://www.linkedin.com/feed/update/urn:li:activity:7209094641441251328

National Litigation Policy 2024: A Step Towards Efficient and Responsible Litigation.

Introducing the National Litigation Policy 2024, recently approved by the Union Law Minister, and a key part of the BJP's 2024 Lok Sabha election manifesto. This policy aims to address the **high volume of pending legal cases and transform the government into an efficient and responsible litigant**.

Highlights include:

Current Scenario: The government is responsible for 73% of Supreme Court cases, with approximately 50 million cases pending.

Objectives: Transform the government into an efficient and responsible litigant.

Introducing the National Litigation Policy 2024, recently approved by the Union Law Minister, and a key part of the BJP's 2024 Lok Sabha election manifesto. This policy aims to address the **high volume of pending legal cases and transform the government into an efficient and responsible litigant**.

Efficient Litigant Characteristics: Competent legal representation, focus on core issues, cohesive management, and prioritization of good cases.

Responsible Litigant Characteristics: Avoids false pleas, presents correct facts, does not conceal information, and prioritizes welfare legislation.

Significance: Aims to reduce government litigation in courts, supporting the National Mission for Justice Delivery & Legal Reforms.

Let's work together to promote efficient, fair, and responsible litigation practices.

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

https://www.linkedin.com/feed/update/urn:li:activity:7209454448727760897

Modi 3.0: A Wishlist of Reforms

The NDA's tenure since 2014 has seen significant economic reforms.

The wishlist for Modi 3.0 includes:

Capital Expenditure: Focus on infrastructure investment to stimulate economic growth.
Fiscal Management Strategy: Long-term fiscal policy with transparency and consistency.
Demand Management: Boosting rural demand, private sector investment, and employment growth.
Debt Management: Prioritizing debt indicators over deficit indicators.
Tax Reforms: Broadening the tax base and overhauling tax structures.
Expenditure Reform: Rationalizing subsidies and streamlining public expenditure.

Together, these initiatives aim to promote efficient, fair, and accountable practices across public procurement, litigation, and economic policy, driving India towards sustainable growth and fiscal stability.

To delve into the specifics, please review the information provided in the following link :
https://www.linkedin.com/feed/update/urn:li:activity:7209789714432745475

Recent Judgements

CIVIL

1. BAR of Indian Lawyers through it's President , Jasbir Singh Malik vs. D.K. Gandhi PS National Institute of Communicable Diseases and Anr. (2024 SCC Online SC 928)

In the present case, the Supreme Court delivered a significant judgement addressing the applicability of the Consumer Protection Act ("CP Act") to legal services.

The Respondent in the present case, hired the Appellant's services to file a complaint against for dishonouring a cheque. The sum to be paid was delivered to the Appellant but did not reach the Respondent. Moreover, the Appellant filed a suit claiming that the sum was due to him as his fees.

In the complaint filed before the District Consumer Forum, the Appellant argued that the forum had no jurisdiction to adjudicate the dispute. However, the District Forum decided in the favour of the Respondent. The appeal before the State Commission was allowed holding that the services of advocates did not fall within the ambit of a 'Service' defined under Section 2(1) of the CP Act. The National Consumer Disputes Redressal Commission ("NCDRC") held inter alia that if there was any deficiency in service rendered by the Advocates/Lawyers, a complaint under the CP Act would be maintainable.

The Supreme Court reached the conclusion that the legislature never intended to include professions or services rendered by professionals under the CP Act. This contradicts a 28-year-old judgement in Indian Medical Association v. VP Shantha, which held medical professionals fall within the CP Act. The court addressed procedural propriety issues and observed that the decision of this case deserves to be revisited. Additionally, the court observed that the legal profession is not commercial in nature but is essentially a service oriented, noble profession, therefore the profession is sui generis i.e. unique in nature and cannot be compared with any other profession.

The Supreme Court held that the services rendered by an advocate do not fall within the ambit of the CP Act and that they come under the "a contract of personal service" as opposed to a "contract for service". The Supreme Court ruling underscores the importance of maintaining high standards of professional ethics and conduct within the legal system. It highlights the procedure and principles governing the disciplinary actions against advocates.

2. Diocese Of Delhi-CNI v. Deepak Martin Caleb (2024 SCC Online Del 3696)

In the present case an application under Order XXII Rule 3 was filed by the present Respondent seeking to be impleaded as Plaintiff in place of his deceased father in a Suit seeking enforcement of personal and non-hereditary rights. The point to be adjudicated was whether, upon the demise of the original Plaintiff, the present Respondent being the legal representative of the original Plaintiff could be impleaded in the Suit under Order XXII Rule 3.

On 12.05.1997, Rev. John H. Caleb ("deceased Plaintiff") was appointed by the present Petitioner to serve as the resident priest of the Green Park Free Church, starting 31.05.1997. He was provided accommodation in the Church Parsonage, Green Park Free Church. The deceased Plaintiff retired in March 2001 but continued to serve on an ad-hoc basis until 2005, receiving superannuation benefits, including gratuity. On 16.11.2007, he was re-appointed as Resident Pastor and allowed to remain in the Suit premises until 14.05.2018, whereby he was informed that his services were no longer needed and that he must vacate the premises for the new Priest. The Bishop of Diocese of Delhi-CNI requested Rev. Caleb to vacate the premises and further denied Rev. Caleb's request for alternate accommodation and offered house rent until January 2019, urging him to vacate immediately. Deceased Plaintiff filed a Suit seeking to prevent his eviction. During the Suit's pendency the deceased Plaintiff passed away on 30.08.2021. The Respondent then applied to substitute his name for his deceased father in the Suit.

The Supreme Court in Puran Singh v. State of Punjab held that a personal action dies with the death of the person and quoted the maxim "action personalis moritur cum persona". Further it was stated that, the right to sue does not survive as the enforcement of personal rights which are extinguished with the death of the person concerned and does not devolve upon the legal representatives or successors.The Suit became moot upon the death of the deceased Plaintiff and that the Respondent had no independent right or interest in the Suit premises as such he cannot be impleaded.

Accordingly, the Hon'ble Delhi High Court allowed the present Civil Revision petition, thereby holding that the original Suit for permanent injunction abates due to the death of the Plaintiff and as such comes to an end.

3. Jatinder Kumar Sapra v. Anupama Sapra (2024 SCC OnLine SC 796)

The present Appeal before the Supreme Court assailed the correctness of the order passed by the High Court of Punjab and Haryana, which upheld the correctness of an order passed by the Family Court. The Family Court dismissed a petition instituted by the Appellant herein under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage by way of a decree of divorce.

The Appellant & the Respondent were married in 1991. It was alleged that the Wife ill-treated the Husband, and constantly acted against the Husband at the behest of her parents. On the other hand, the Wife alleged cruelty and torture at the hands of the Husband. The parties were adamant on parting ways citing irretrievable breakdown of marriage and submitted that the marriage be dissolved on the aforesaid ground.

The parties relied on the judgment passed by the Hon'ble Supreme Court in Shilpa Sailesh v. Varun Sreenivasan 2023 SCC OnLine SC 544., wherein it was observed that a marriage may be dissolved on the ground of an irretrievable breakdown in exercise of the jurisdiction of SC under Article 142(1) of the Constitution of India. The Supreme Court delineated various factor(s) to be considered by this Court whilst exercising such jurisdiction which included., Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward, the marriage has irretrievably broken down is to be factually determined and firmly established. It includes:

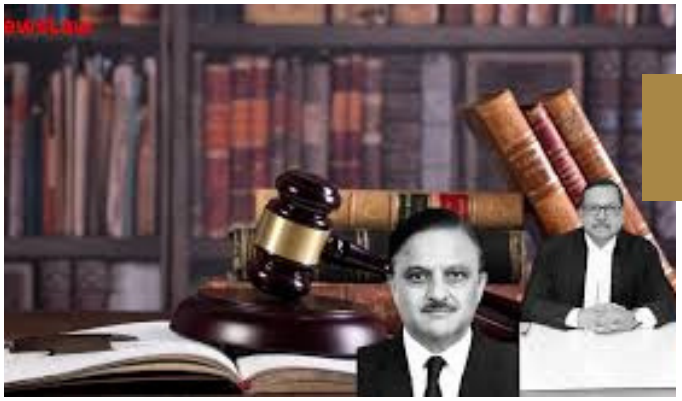
1. Period of time the parties had cohabited after marriage
2.When the parties had last cohabited
3. The nature of allegations made by the parties against each other and their family members
4. The orders passed in the legal proceedings from time to time
5. Cumulative impact on the personal relationship;
6. Whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc.
7. The period of separation should be sufficiently long, and anything above six years or more would be a relevant factor.

The Supreme Court noted that these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations.). The factors stated are to be taken as codified in nature and are rather illustrative and worthy of consideration as mentioned by the SC in the Shilpa Sailesh (Supra).

In the current case SC believed that the prima – facie had satisfied them of the parameters. The undisputed fact is that the parties separated 22 (twenty-two) years ago, having cohabited last in January 2002. The children are now majors and gainfully employed. Keeping in view the circumstances, the SC established that the marriage between the parties has broken down and that there is no possibility that the parties would cohabit together in the future & hence the appeal was allowed.

ARBITRATION

1. Dani Wooltex Corporation and Ors. vs. Sheil Properties Pvt. Ltd. and Ors. (MANU/SC/0444/2024)



In present appeal, the Supreme Court discussed the issue regarding the legality and validity of the order of termination of the arbitral proceedings under Clause (c) of Sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996 ("the Act") passed by the Arbitral Tribunal.

The case arose from an appeal challenging the Bombay High Court's order that set aside the arbitral tribunal's termination of arbitral proceedings between the Appellant and the Respondents (referred as "Sheil" and "Marico") under Section 32(2)(c) of the Act, 1996.

The factual matrix in the present case is that Sheil and Marico had filed separate suits against the Appellant, which were referred to the same sole arbitrator by court orders in 2011. The arbitrator first heard Marico's claim and passed an award in 2017. In 2020, the Appellant filed an application under Section 32(2)(c) of the Act. seeking termination of Sheil's arbitral proceedings on the ground that Sheil had abandoned its claim by not taking any steps for 8 years after filing the statement of claim. The arbitrator allowed the application and terminated Sheil's proceedings, holding that Sheil had abandoned the claim. The Bombay High Court set this order aside.

The Supreme Court upheld the High Court's order, making some important observations on the scope of Section 32(2)(c) of the Act. It held that the power under this provision can only be exercised if the arbitral tribunal records its satisfaction based on material on record that continuation of proceedings has become unnecessary or impossible. Mere failure by a Claimant to request the tribunal to fix a hearing date cannot lead to the conclusion that the proceedings have become unnecessary.

The Court states that it is the arbitral tribunal's duty to fix meetings/hearings even if parties do not make such requests. The failure of a Claimant to do so, by itself, is no ground to conclude that proceedings have become unnecessary. As for abandonment of claim by a Claimant being a ground to invoke Section 32(2)(c), the Court said abandonment cannot be readily inferred. Only if the established conduct of a Claimant leads to the sole conclusion that the claim has been given up, can abandonment be inferred.

Applying these principles, the Court found that in the present case, there was no material to conclude that Sheil had abandoned its claim against the Appellant. The fact that Sheil did not challenge the Marico award or take steps for hearings after that award did not amount to abandonment. The termination order was thus held to be illegal.

Accordingly, the appeal was dismissed, and parties were directed to get a substitute arbitrator appointed for the pending Sheil vs Dani Wooltex arbitration, as the previous sole arbitrator had withdrawn.

GENERAL CORPORATE

1. Mr. Rahul Visaria vs. Maurya Intermediaries Private Limited & Ors. (Company Application No. 509 of 2023 in Company Petition No. 41 of 2016)

The present case was looked after, thoroughly researched and argued by our firm, White and Brief, Advocates and Solicitors. In the present case, we were representing Mr. Rahul Visaria. The issue arising for consideration in the present case was a dispute over alleged fraudulent shares transfer leading to the dilution of Mr. Visara's share in the company, prompting legal action under section 241-242 of the Companies Act, 2013.

The factual basis of the present case was such that Mr. Rahul Hemchandra Visaria ("Applicant") was originally a holder of 51.67% of shares in the company. However, the Respondents herein fraudulently changed the address of the company and subsequently, removed the Applicant from the directorship of the company. Being aggrieved, the Applicant approached the Hon'ble National Consumer Law Tribunal ("NCLT") under Section 241-242 of the Companies Act, 2013.

However, at the time when the Respondents filed its reply challenging the maintainability of the said Company Petition, the Applicant learnt that the Applicant's shares in the company had been diluted by the Respondents herein, without any knowledge of the Applicant. Hence, the Applicant approached the NCLT seeking waiver of the requirement specified under Section 244(1)(a), which came to be allowed, thereby granting an opportunity to the Applicant to proceed with the Company Petition, despite being disqualified as a member of the company, on account of the fraudulent shares transfer.

Therefore, the Tribunal held that the alleged fraudulent transfer of the shares itself has disentitled the Applicant from maintaining the Company Petition on account of him becoming a non-member, therefore, such fraudulent transfer itself would constitute a case of oppression qua a member, who ceased to be a member on account of such fraudulent transfer. Therefore, the Hon'ble Tribunal found it appropriate to waive the conditions stipulated under Section 244(1)(a) of the Companies Act, 2013.

This decision highlights the importance of addressing fraudulent activities that impact shareholding and demonstrates the Tribunal's commitment to enabling individuals to seek redress for such actions.

2. M/s Abaj Foods Private Limited vs The Authorized Officer, Punjab (R/Special Civil Application No. 2676 of 2023 – Gujarat High Court)

In the present case, a Petition was filed before the Hon'ble Gujarat High Court challenging the actions/measures taken by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

The Petitioner contended that the Notice under section 13(2) of the SARFAESI Act issued by the Respondent Bank did not mention the break up of the principal amount and the interest amount and hence, the Notice was defective and in contravention of the provisions of the SARFAESI Act.

In view of the above facts and circumstances, the Hon'ble High Court relied upon the judgment of Punjab National Bank Vs. Mithilanchal Industries Pvt. Ltd., wherein it was held:

"29. The words used in Section 13(3) of the SARFAESI Act are "details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the Secured Creditor." So, the notice under Section 13(2) of the SARFAESI Act has to necessarily contain the details on the above two counts."

In view the aforesaid, it was held that in accordance with section 13(3) of the SARFAESI Act, providing of the principal amount and interest amount was necessary for the purpose of making demand in the Notice issued under section 13(2) of the SARFAESI Act. In was held that Section 13 (3A) of the SARFAESI Act gave right to the borrower to make a representation or raise an objection against the notice under section 13(2). Therefore, it was observed that unless the borrower knew the details of the amounts being demanded under a notice under section 13(2), the borrower would not be in a position to make any representation or raise any objection.

Thus, the petition was allowed by the Hon'ble Court, and the Bank was restrained from taking any possession of the secured assets of the Petitioners pursuant to the notice issued under section 13(2) of the SARFAESI Act and the actions under sections 13(4) and 14 of the SARFAESI Act till the final disposal of the Securitization Application pending before the Debt Recovery Tribunal.

CRIMINAL

1. Mohd. Nawaz Iqbal Shaikh vs State of Maharashtra & Anr. (Criminal Application No. 450 of 2022) along with Salman Khan @ Abdul Rashid Khan vs. State of Maharashtra & Anr. (Criminal Application No. 357 of 2022 – Bombay High Court)

In the present case, two applications were presented before Hon'ble Bombay High Court to invoke the power of Court under Section 482 of the Criminal Procedure Code, 1973 ("Cr.P.C.") seeking a relief of quashing of an order dated 22/03/2022, passed by the Metropolitan Magistrate, 10th Court at Andheri, Mumbai, for committing the offences punishable under Sections 504 and 506 of the Indian Penal Code,1860 ("IPC").

Amongst the two applicants, one Applicant is Salman Khan ("Accused 1") who is a well- known cine artist and is a part of the Indian film and entertainment industry and the other is his bodyguard ("Accused 2"). The complainant is the journalist who reported in D.N Nagar Police station that at around 4.40 p.m. on 24/04/2019, he noticed Accused 1 riding a bicycle and Accused 2 escorting him on bike.

Being a journalist, he was tempted to ask Accused 2, whether he can video shoot Accused 1 and once consent was accorded, he started the recording. This, however, irked Accused 1 and at his indication, Accused 2 jumped on the car of the complainant and assaulted him. Even Accused 1 participated in the assault.

A complaint was filed before the Metropolitan Magistrate, 10th Court at Andheri, Mumbai, seeking a direction under Section 156(3) of Cr.P.C., to hold a detailed inquiry into the incident and alternative relief, to issue process against the accused persons under Sections 324, 392, 426, 506(II) read with Section 34 of IPC, the learned Magistrate turned down the request for issuance of directions under Section 156(3). Instead, he directed the complainant to furnish verification statement under Section 200 and further directed an inquiry to be conducted under Section 202 by D.N. Nagar Police Station and submit the report.

The Bombay High Court observed that the allegations levelled against the accused persons in the complaint, apart from being an after thought, in no case met the necessary ingredients of Sections 504 and 506, which would have warranted the Magistrate to take cognizance upon a complaint. The essential ingredients so as to constitute an offence under Section 504 and 506 of IPC were laid out in the said case, making the said case a note-worthy precedent.

Additionally, it was held that unless examination of the complainant was made under Section 200 of Cr.P.C., the Magistrate could not exercise the power under Sections 202, 203 or 204 and in this case, by surpassing the said procedure, the Magistrate had issued the process against the accused persons. Hence, the impugned order was set aside, since the said complaint had not been in compliance of Section 200 of Cr.P.C. and since no offence lied under Section 504 and 506 of IPC, the impugned order was quashed and set aside.

2. Sharath Chandrasekhar vs. Union of India (Writ Petition No. 18066 of 2023)

The present case deals with the complications during the renewal of passport due to the on account of pending legal proceedings.

The facts of the instant case are such that, Sharath Chandrasekhar (Petitioner), a dual-qualified lawyer registered with the Bar Council of Karnataka and the New York State Bar was seeking the court's intervention for the renewal of his passport, which was due to expire. The passport in question, was issued by the Regional Passport Office in Bengaluru and was valid until April 4, 2023. The Petitioner had applied for renewal six months before the expiry date, as per the standard procedure.

During the police verification process, it was found that the Petitioner was involved in three legal proceedings; a matrimonial case initially filed in Bengaluru but transferred to Lucknow by the Supreme Court, a maintenance case filed by his wife under Section 125 of the Criminal Procedure Code (Cr.P.C.) and a case filed by his wife under Section 12 of the Protection of Women from Domestic Violence Act, 2012.

The court observed that the pending legal proceedings, particularly the matrimonial disputes, should not unduly prejudice the Petitioner's right to have his passport renewed. The Court emphasized that the legal proceedings mentioned should not automatically serve as a bar to the renewal of the passport. The court referred to previous judgments stating that the right to travel abroad is a part of the fundamental right to personal liberty. Therefore, the Court held that any restriction on this right must be reasonable and proportionate to the purpose it seeks to achieve.

Directive for Discretion: The court directed the passport authorities to exercise their discretion judiciously while considering the Petitioner's application for passport renewal. It instructed the authorities to take into account the nature of the legal proceedings, the Petitioner's need to travel, and his track record of compliance with legal mandates.

The court concluded that the Petitioner's involvement in legal proceedings, in itself, should not be the sole ground for denying the renewal of his passport. It mandated the passport authorities to consider the renewal application on its own merits and in accordance with the principles laid down by the court. The court's observations and the subsequent directive reflect a balancing act between the state's interest in regulating the issuance of passports and an individual's right to freedom of movement. It stressed that while the state may have legitimate concerns regarding the flight risk of individuals involved in legal proceedings, these concerns must be balanced against the individual's rights.

TAX

1. M/s. White Mountain Trading Pvt Ltd vd. Additional Commissioner CGST Appeals-II, Delhi [2024-TIOL-885-HC-DEL-GST]

The Hon'ble Delhi High Court in present case dealt with the question that whether physical filing done post limitation period would bar the appeal on such grounds of the actual online filing was conducted within the limitation period.

The petitioner challenged the order by the Commissioner of Central Tax Appeals, dismissing the appeal against the original order on the grounds of being time-barred. The deadline for filing an appeal therefore under Section 107(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"), was 03.08.2023. The appeal was recorded as filed on 25.09.2023, which was more than a month late. Commissioner Appeals held that only a delay of up to one month could be condoned by the power vested under him according to Section 107(4) of the Act if sufficient cause was shown. It was noted that the petitioner had initially filed the appeal online on the GST Portal on 02.09.2023, and the date recorded in the impugned order, is when the petitioner physically submitted the appeal following the online submission. It is undisputed that the appeal must be filed online first, followed by the submission of a physical copy to the department and the date of filing is considered the date of initial online submission, provided the appellant complies with other legal requirements.

Since the appeal was filed online 02.09.2023, the delay did not exceed one month, the Hon'ble Delhi High Court held that Commissioner Appeals had the authority to consider the application for condonation of delay. Consequently, the order was set aside, and the matter was remitted back to the Commissioner Appeals to be considered on merits.

W&B Comments: The Hon'ble High Court clarified that taxpayers must adhere strictly to prescribed time limit of 3 months while filing a statutory appeal under Section 107(1). However, it was also affirmed that the date of online filing of appeal on the GST Portal constitutes the official date of appeal initiation and not the date of physical submission. This interpretation of the section safeguards the taxpayers right to seek condonation of delay for reasons deemed sufficient under Section 107(4) of the Act.

2. M/s Mahindra & Mahindra Limited vs. Union Of India [2024 (4) TMI 1031]

The appellant was served with a notice under Section 73(1) of CGST Act on 29.09.2023. The last date for reply was fixed at 30.10.2023 for which the appellant sought extension of time while the date of personal hearing was given as 12.10.2023, eventually after further extension reply was filed on 15.11.2023 but personal hearing was not given and order challenged before the Learned Single Bench were passed on 29.12.2023.

The Learned Division Bench of Hon'ble Chhattisgarh High Court held that the mandate of the law is that upon demand notice time must be provided for reply from the assessee after which he may be given an opportunity to be heard in a personal hearing before passing appropriate order. It is not the scheme of the act to give personal hearing first and then seek reply to the notice, the reply must be sought first and subsequently an opportunity to be heard must be given.

As such the procedure adopted in this case was held to be wrong and violative of the principles of natural justice of the appellant.

The Hon'ble High Court held that where a statute contains a mandate of hearing the principles of natural justice automatically apply upon such a procedure and that administrative authorities must be mindful of them while exercising their statutory power. As such the order passed by the Joint Commissioner of State Tax was set aside as it amounted to defeat the rules of natural justice and the object of the legislation and the appellant provided the opportunity to appear for personal hearing before the authority.

W&B Comments: The judgement by Hon'ble Chhattisgarh High Court underscores fundamental principles of natural justice in administrative proceedings under them GST laws[1]. It emphasizes on procedural fairness by providing an opportunity for the appellant to respond to a notice under Section 73(1) before scheduling a personal hearing.

[1] Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519; Umanath Pandey v. State of UP [2009] 12 SCC 40-43; Ridge v. Baldwin, (1963) 2 All ER 66.

3. M/s. M. Trade Links vs. Union Of India [2024 (6) TMI 288]

The Constitutional validity of GST provisions Section 16(2)(c) and Section 16(4) was challenged by the petitioner before the Hon'ble High Court of Kerala in the present case.

The High Court observed that Input Tax Credit (ITC) is in the nature of a benefit or concession extended to the dealer under the statutory scheme. It is no absolute right, even if it is held to be an entitlement it is subject to the restrictions u/s 16(2) & 16(4). Keeping in mind the conditions to determine constitutionality of taxing provisions, it was held by the Hon'ble Kerala High Court that Section 16(2) & 16(4) of the CGST act are not unconstitutional. The interpretation of the provisions was elucidated with the help of various cases wherein it was held that Section 16(1) is an enabling provision to claim benefit under ITC, but such benefit is not an absolute right and is subject to fulfilment of conditions provided under Section 16(2) & 16(4). Section 16(2) provides a non-obstante clause preventing unregistered persons from claiming benefit of the scheme subject to conditions, it was held that this is a restrictive and not an enabling provision, as such a non-obstante clause preceding a restrictive provision doesn't exclude application of other restrictive provisions on the matter as they are confirmatory and non-contradictory. As such the temporal limitation under Section 16(4) is applicable to Section 16(2) despite the non-obstante clause due to it being non-contradictory. Hon'ble High Court held that the conditions are necessary to impose on the scheme in the interest of revenue and budgetary management.

W&B Comments: Many taxpayers were issued notices demanding reversal of ITC claimed beyond the time limit prescribed under Section 16(4) of the CGST Act and various petitions were filed across the various High Courts[1] on the issue. The validity of Section 16(4) is pending before the Hon'ble Supreme Court and in the case of Shanti Motors vs. Union of India[2] the Court has issued notice to the Revenue. In regards to this, the 53rd GST Council Meeting also has recommended to extend the time limit for availing ITC pertaining to FY 2017-18 to FY 2020-21 to November 30, 2021 retrospectively w.e.f. July 1, 2017. Therefore the present judgment and GST council recommendation in regards to a retrospective amendment to allow ITC is a welcome step.

[1] Jain Brothers [2023 (12) TMI 829]; BBA Infrastructure [2023 (12) TMI 835]; Gobinda Construction [2023 (9) TMI 902]
[2] (2024) 19 Centax 214 (S.C.)

4. CBIC Instruction Circular No. 01/2024 –GST/583 dated 30.05.2024

CBIC
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

The CGST Act mandates that after the issue of demand notice, recovery proceedings should be initiated by the proper officer if an assessee fails to pay the due amount within three months from the date of the order as it is so interpreted from the act. In exceptional cases, to protect revenue interests, the proper officer may recover the dues in less than three months, for reasons to be recorded in writing. If the assessee does not pay within this period or within three months, the proper officer may proceed with recovery under Section 79(1) of the CGST Act.

CBIC had observed instances where some field formations initiated recovery before the three-month period without the necessary written justification. To ensure uniform implementation of the law, the Board clarified that, according to Circular No. 3/3/2017-GST dated July 5, 2017, the jurisdictional Deputy or Assistant Commissioner of Central Tax is responsible for recovery under Section 79 of the Act. For early recovery, the Deputy or Assistant Commissioner must place the matter before the jurisdictional Principal Commissioner/Commissioner of Central Tax with reasons. The Principal Commissioner/Commissioner must then record written reasons for requiring early payment and issue directions accordingly, considering the taxable person's financial health and business status.

These directions should not be issued mechanically but only when necessary to safeguard revenue interests due to specific circumstances based on credible evidence. This is in line with the board's intention to balance the interests of revenue with the ease of doing business

W&B Comments: There have been various cases where the GST authorities have initiated recovery even before the completion of the three month period for filing of statutory appeal. The amount confirmed vide the order only become due and payable after demand is crystallised. Therefore, this circular will be helpful for the cases where the department has arbitrarily initiated recovery proceedings in pursuance of the demand order before giving statutory period of three months.

Articles

Analysing the Exclusion of Lawyers from Consumer Protection Act for Deficient Services

In a significant ruling, the Hon'ble Supreme Court, vide its recent judgment in Bar of Indian Lawyers v D.K. Gandhi PS National Institute of Communicable Diseases and Anr.[1], has settled a debated issue after holding that advocates would not fall under the category of "consumer" for the purposes of Consumer Protection Act, 1986 ("CPA 1986"), re-enacted by the Consumer Protection Act 2019 ("CPA 2019"). Until the said decision, there was no judgment that could settle the issue and instant pronouncement is the first of its kind on this issue.

Lawyers Cannot Be Sued Under the Consumer Protection Act for deficiency of service, rules the 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.

[1] Civil Appeal No. 2646 of 2009

A Supreme Court bench comprising Justices Bela Trivedi and Pankaj Mithal addressed a significant legal question in Civil Appeal No. 2646 of 2009. The core issue was whether a complaint alleging "deficiency in service" against advocates practicing the legal profession is maintainable under the Consumer Protection Act, 1986, as re-enacted in 2019. This involved determining if services provided by advocates fall within the definition of "service" under the Consumer Protection Act (CP Act).

Case Background:

The appeals arose from an order by the National Consumer Disputes Redressal Commission (NCDRC), which held that complaints regarding deficiencies in services rendered by advocates are maintainable under the CP Act, 1986. D.K. Gandhi hired the services of an advocate to file a complaint under Section 138 of the Negotiable Instruments Act. The advocate allegedly failed to deliver a DD/pay order and a crossed cheque to the respondent, leading to a consumer complaint against him.

The court placed reliance on Section 2(1)(o) which defines "service" as any service made available to potential users, including the provision of facilities in connection with banking, financing, insurance, etc., but does not include rendering of any service free of charge or under a contract of personal service. The court 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.

The court further stated that the Lawyers owe fiduciary duties to clients, are bound by clients's 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[1]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.

As far as the issue as to whether a service hired or availed of an Advocate could be said to be the service under a "contract of personal service", the court further stated that

The Advocates Act defines "Advocate" separately from "Legal Practitioner" under section 2(1)(a) which states that "advocate" means an advocate entered in any roll
under the provision of this Act;". On the other hand, Section 2(1)(i) defines "legal practitioner' as an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent. The term "Advocate" is included in the definition of "Legal Practitioner," but the reverse is not true. An Advocate is a specific type of Legal Practitioner. The Advocates Act, 1961 was enacted to consolidate laws related to legal practitioners and establish Bar Councils. Under the Act, there are only two classes of Advocates - Senior Advocates and other Advocates. All Advocates whose names are entered in the State roll have the right to practice in all Courts, Tribunals, and before any authority. The Act and Bar Council of India Rules provide comprehensive provisions to deal with professional misconduct by Advocates and prescribe punishments. The disciplinary powers over Advocates lie with the State Bar Councils and the Bar Council of India under Chapter V of the Act. on the other hand, "Service" contained in Section 2(1)(o) of the CP Act 1986 and in Section 2(42) of the CP Act 2019 means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The definition of 'Deficiency' in Section 2(1)(g) of 1986 Act and Section 2(11) of 2019 Act are different. n the 1986 Act, the definition of "Deficiency" under Section 2(1)(g) covered any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance required by law or undertaken to be performed in relation to any service and in the 2019 Act, the definition of "Deficiency" under Section 2(11) is similar to the 1986 Act. However, it additionally includes two components:

i) Any act of negligence or omission or commission by the person rendering the service, which causes loss or injury to the consumer.
ii) Deliberate withholding of services by the person.
So the key difference is that the 2019 Act has an expanded definition of "Deficiency" which explicitly covers acts of negligence/omission causing consumer loss/injury, as well as deliberate withholding of services, in addition to the general faults/shortcomings in service performance covered in the 1986 Act.

The court further discussed that the definition of 'service' is divided into three parts.

1.Explanatory Part: It describes 'service' as any type of service that is available to potential users. This is a broad and inclusive definition, meaning that almost any kind of service that can be offered to someone else falls under this category.
2.Inclusionary Part: This part specifically includes the provision of facilities related to certain services. For example, if a company provides internet services, the provision of a modem or a router as part of that service would also be included in the definition of 'service'.
3.Exclusionary Part: This part excludes services rendered free of charge or under a contract of personal service. Essentially, if a service is provided for free or if it is under a personal employment contract (like a personal servant), it is not considered a 'service' under this definition.

Regarding whether the services provided by advocates (lawyers) could be considered under "a contract of personal service," which would exclude them from the definition of 'service' under the Act, the court stated that a Contract 'For Services' typically applies to independent contractors. These individuals provide services but are not under the direct control and supervision of the person or entity that hires them. They maintain a degree of independence in how they perform their work. Whereas, Contract 'Of Service' typically applies to employees. These individuals work under the control and supervision of their employer, who dictates how, when, and where the work is to be done. Dharangadhra Chemical Works Ltd. vs. State of Saurashtra and Others[1] highlighted that the correct approach is to consider the nature of work and the degree of control and supervision by the employer. Simmons v. Heath Laundry Company[2] reinforced the idea that the more control exercised over a worker, the more likely the relationship is a contract of service. As far as the advocates are concerned, they can act for clients only when appointed through a document called 'Vakalatnama'.

This document formalizes the relationship between the advocate and the client. Further, the Bar Council of India Rules especially 15 and 19 states that Advocates must uphold their client's interests by all fair and honorable means, regardless of any unpleasant consequences, and should only act on the instructions of their client or their authorized agent.

Hence, the advocate-client relationship, while involving a degree of independence typical of professional services, does not completely fall under a 'contract of personal service'. Advocates have specific duties and responsibilities, but the control exercised by clients over advocates is not as direct or comprehensive as in typical employment relationships. Therefore, based on the nature of the advocate-client relationship, advocates' services generally would not be excluded from the definition of 'service' under the Act merely because of the term "contract of personal service." The unique nature of legal services, with its mix of independence and duty-bound responsibilities, places it more in the realm of professional services rather than a simple contract of employment.

The court discussed the difference between a "contract for services" and a "contract of service" (personal service contract), stating that the degree of control exercised by the employer is the key factor in determining the nature of the contract. The court examined the relationship between an advocate and a client under the Code of Civil Procedure and Advocates Act provisions. It noted several attributes that show a unique relationship between an Advocate and his Client wherein a client exercises considerable direct control over how an advocate renders services, such as:

1) Advocates are generally perceived to be their client’s agents and owe fiduciary duties to their clients.
2) Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client’s autonomy to make decisions at a minimum, as to the objectives of the representation.
3) Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client.
4) It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client.
5) An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.

6) The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

Based on this, the court concluded that the very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from unfair trade practices and unethical business practices, and the Legislature never intended to include either the Professions or the services rendered by the Professionals within the purview of the said Act of 1986/2019. Legal Profession is sui generis i.e. unique in nature and cannot be compared with any other Profession. The services hired from an advocate would constitute a "contract of personal service" and thus be excluded from the definition of "service" under the Consumer Protection Act, 2019. As a corollary, complaints alleging deficiency in service against advocates practicing law would not be maintainable under the Consumer Protection Act, 2019.

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.

Supreme Court Verdict on Media One Case: Balancing National Security and Freedom of the Press

Madhyamam Broadcasting Limited v. Union of India
2023 SCC OnLine SC 366

Regulation of press freedom in India involves a complex framework. While the Constitution guarantees freedom of speech and expression under Article 19(1)(a), Article 19(2) allows for reasonable restrictions for specific reasons such as national security and public order. Laws like the Official Secrets Act[1] and the Press and Registration of Books Act[2] (repealed by Press and Registration of Periodicals Act, 2023) impose certain restrictions, while self-regulatory mechanisms such as the Press Council of India oversee press conduct. This framework aims to strike a balance between preserving press freedom and protecting national interests while promoting ethical journalism.

Supreme Court's past stand on freedom of the press has been significant. It has consistently upheld the freedom of the press as an integral part of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Supreme Court of India has consistently upheld the freedom of the press as an integral part of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In landmark cases such as Romesh Thapar v. State of Madras, Brij Bhushan v. State of Delhi, and Indian Express Newspapers v. Union of India, the Court established that press freedom is fundamental to democracy, can only be curtailed in cases of imminent danger to public safety, and includes freedom from interference affecting content and circulation of newspapers. More recently, in Vinod Dua v. Union of India & Others, the Court affirmed that criticism of the government is not seditious.

[1] The Official Secrets Act, 1923
[2] THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

These judgments are significant as they uphold press freedom as a fundamental right, curtail government overreach, set a precedent for future cases, protect journalists' rights, and strengthen democracy by ensuring an independent press. These decision reaffirms the importance of the press as a watchdog of democracy and put a check on the government's ability to use vague allegations to restrict press freedom.

Continuing the legacy of protecting the freedom of the press, the Supreme Court of India delivered a significant judgment on the case of Madhyamam Broadcasting Limited (MBL) versus Union of India & Others, addressing the issues surrounding the denial of security clearance for the operation of the news channel "Media One". This judgment, delivered by Dr. Dhananjaya Y. Chandrachud, CJI, is pivotal in understanding the intersection of national security and the principles of natural justice.

Facts of the case involved, Madhyamam Broadcasting Limited (MBL) and the Union of India wherein Madhyamam Broadcasting Limited, which operates the news channel "Media One," initially received permissions to uplink and downlink its channel from the Ministry of Information and Broadcasting (MIB) in 2011. In 2016, MIB issued a show cause notice to MBL for alleged violations of regulatory guidelines. Despite this notice, the permissions were renewed in 2019. In 2021, MBL applied for another renewal of its permissions. During this renewal process, the Ministry of Home Affairs (MHA) conducted a security clearance check and subsequently denied the clearance without providing specific reasons. Following this denial, on January 5, 2022, MIB issued a show-cause notice to MBL, indicating that the denial of security clearance was the reason for the potential revocation of permissions. Subsequently, on January 31, 2022, MIB officially revoked MBL's permissions to uplink and downlink "Media One." MBL challenged the revocation in the Kerala High Court, which upheld the decision of the MIB, leading MBL to appeal to the Supreme Court.

Issues involved in the dispute were whether the denial of security clearance by MHA justified the revocation of MBL’s uplinking and downlinking permissions. Another issue was, whether the principles of natural justice were adhered to in the denial of security clearance and subsequent revocation of permissions.

The petitioner, MBL, argued that the Ministry of Information and Broadcasting (MIB) did not comply with the principle of Audi Alterum Partem, thereby infringing upon their right to a fair hearing. Conversely, MIB contended that principles of natural justice were not applicable due to national security concerns.

The petitioners further argued that the denial of renewal of their license by the Ministry of Information and Broadcasting (MIB) was done without providing a reasoned order. This, they claimed, infringed upon their right to a fair hearing under Article 21 of the Constitution. They emphasized that the material forming the basis of the denial was disclosed solely to the High Court in a sealed cover, without giving them access to the same. This procedure, they argued, violated the principles of natural justice and transparency. The petitioners contended that the use of the sealed cover procedure deprived them of the opportunity to effectively challenge the decision. They highlighted that such a procedure perpetuates secrecy and opaqueness, preventing the affected party from identifying errors, omissions, and challenging the credibility of the information used against them. They argued that the High Court's acceptance of the sealed cover material without examining less restrictive alternatives was flawed. It was argued that public interest immunity should have been considered as a less restrictive means compared to the sealed cover procedure. The petitioners claimed that the High Court should have explored alternatives such as redacting confidential portions of the documents and providing summaries. The petitioners highlighted that the denial of the renewal of their license and the lack of transparency infringed upon their freedom of press protected under Article 19(1)(a) of the Constitution. They asserted that their inability to challenge the decision effectively restricted this fundamental right.
Arguments of the Respondents
National Security Concerns:

The respondents, primarily the Ministry of Information and Broadcasting (MIB) and the Ministry of Home Affairs (MHA), argued that the denial of the renewal of the license was based on national security concerns. They maintained that the material forming the basis of their decision was sensitive and its disclosure would harm national security interests. They defended the use of the sealed cover procedure by stating that it was necessary to protect the confidentiality of the sensitive information.

The respondents argued that the High Court was the appropriate authority to review such material to balance the interests of national security and fairness. The respondents contended that their actions were in accordance with the legal framework governing public interest immunity and the protection of sensitive information. They argued that the procedure adopted was in line with established legal principles and precedents. It was argued that the denial of the license was a proportionate and reasonable measure considering the potential threats to national security. The respondents emphasized that their assessment of the security threat should be given due weight and deference.

The court identified three critical considerations including Non-Disclosure and Fair Hearing, Void Decision Due to Infringement, and Balancing National Security and Natural Justice. The court emphasized the importance of natural justice, which includes Audi Alterum Partem (the right to a fair hearing) and Nemo Judex In Causa Sua (the rule against bias). The court concluded that MIB's refusal to disclose the reasons and material relevant to the decision infringed upon MBL's right to a fair hearing. The court noted that procedural fairness is integral to upholding the rule of law and transparency in governance.

Regarding, the application of Judicial Review Principles, the court stated that Administrative actions can be challenged for being unreasonable, irrational, illegal, or procedurally improper.[1] Actions can also be reviewed for proportionality when they affect freedoms guaranteed under Articles 19 and 21.[2] The court however rejected the contention that national security concerns automatically justify a departure from natural justice. It was held that while national security is a significant consideration, it does not permit an absolute abrogation of natural justice principles. Instead, a balance must be struck, ensuring that restrictions on procedural guarantees are reasonable and proportionate.

[1] State of Andhra Pradesh v. McDowell, Tata Cellular v. Union of India, Council of Civil Service Unions v. Minister for Civil Service

[2] Om Kumar v. Union of India (2001) 2 SCC 386 and Union of India v. G. Ganayutham (1997) 7 SCC 463

Regarding the Proportionality Standard, the court applied the proportionality standard to assess if the restriction on procedural guarantees was reasonable. This test requires measures to be tested on:

Legitimate Goal: The measure must pursue a legitimate goal.
Suitability: The measure must be a suitable means of furthering the goal.
Necessity: The measure must be necessary, i.e., the least restrictive means available.
Balancing: There must be a balance between the adverse effects of the measure and its benefits.

Upon review, the court found that the denial of security clearance without disclosing reasons or material to MBL was disproportionate and violated the principles of natural justice. This lack of disclosure precluded MBL from effectively challenging the decision, undermining their right to a fair hearing and the procedural guarantees enshrined in the Constitution. Therefore, the court held that MIB's decision to deny security clearance was void due to procedural unfairness and lack of adherence to natural justice principles. The judgment reinforced the requirement for the state to justify any departure from natural justice on grounds of national security with cogent material and proportionality analysis.

In view of the discussion above, the appeals were allowed and the order of the MIB and the judgment of the High Court are set aside. Supreme Court summarised its findings as:
(i) Security clearance is one of the conditions required to be fulfilled for renewal of permission under Uplinking and Downlinking Guidelines;
(ii) The challenge to the order of the MIB and judgment of the High Court on procedural grounds is allowed for the following reasons:
(a) The principles of natural justice were constitutionalized by the judgment of this Court in Maneka Gandhi v. Union of India[1]. The effect is that the courts have recognised that there is an inherent value in securing compliance with the principles of natural justice independent of the outcome of the case. Actions that violate procedural guarantees can be struck down even if non-compliance does not prejudice the outcome of the case. The core of the principles of natural justice breathes reasonableness into the procedure. The burden is on the claimant to prove that the procedure followed infringes upon the core of procedural guarantees;

(b) The appellants have proved that MBL's right to a fair hearing has been infringed by the unreasoned order of the MIB dated 31 January 2022, and the non-disclosure of relevant material to the appellants, and its disclosure solely to the court. The burden then shifts on the respondents to prove that the procedure that was followed was reasonable and in compliance with the requirements of Articles 14 and 21 of the Constitution. The standard of proportionality has been used to test the reasonableness of the procedure. The state failed to prove that national security concerns outweighed the duty of fairness in this case.

(c) The principles of natural justice may be excluded when on the facts of the case, national security concerns overweigh the duty of fairness as per the judgment of Ex-Armymen's Protection Services Private Limited v. Union of India[1].

(d) Confidentiality and national security are legitimate aims for limiting procedural guarantees. However, in this case, the state has failed to prove that these considerations are relevant to the present factual scenario. A blanket immunity from disclosure of all investigative reports is not permissible. The state must provide specific justifications for withholding information rather than relying on general claims.

(e) The validity of national security considerations must be assessed using a two-part test:
(i) There must be material evidence to conclude that non-disclosure of information serves national security interests.
(ii) A reasonable prudent person would draw the same inference from the available material on record.
This test ensures that national security claims are objectively justifiable and not made arbitrarily.
(f) Applying the proportionality standard, even if non-disclosure serves confidentiality and national security interests, the means adopted by the respondents fail to satisfy other aspects of the test. The non-disclosure of a summary of reasons for denying security clearance to MBL violates the core irreducible minimum of procedural guarantees. This failure does not meet the suitability prong of the proportionality test, indicating that the chosen method is inappropriate for achieving the stated goal while respecting fundamental rights.

[1] (2014) 5 SCC 409

(g) Courts assess public interest immunity claims using a structured proportionality standard. These claims address similar issues as sealed cover procedures. However, the use of sealed covers is unguided and ad-hoc compared to the scope of assessment for public interest immunity claims. The lack of a standard in sealed cover proceedings to protect procedural safeguards indicates that public interest immunity claims are less restrictive means. Public interest immunity claims may impact natural justice principles, but sealed cover proceedings infringe upon both natural justice and open justice principles more severely.

(h) Courts have the option to redact confidential portions of documents and provide summaries of the contents. This approach allows for the exclusion of sensitive material after a successful public interest immunity claim while still providing some information to affected parties.

(iii) The challenge to the MIB's order is allowed on substantive grounds. Non-renewal of permission to operate a media channel restricts press freedom, which can only be reasonably limited based on grounds stipulated in Article 19(2) of the Constitution. The reasons for denying security clearance to MBL - its alleged anti-establishment stance and supposed shareholder links to JEI-H - are not legitimate purposes for restricting the right to freedom of speech protected under Article 19(1)(a) of the Constitution. Moreover, there was no material evidence to demonstrate any link of the shareholders, as alleged.

Consequently, the court concluded that Public interest immunity claims, while less restrictive, still dilute procedural guarantees during hearings. Only the Court and the party seeking non-disclosure are privy to these proceedings. The Court must consider factors like the relevance of the material to the applicant's case when applying the proportionality standard to test the claim. The applicant, being unrepresented, is effectively impaired in these proceedings.

Furthermore, While national security concerns may necessitate non-disclosure of certain material, the constitutional principle of procedural guarantees is equally important and must not be rendered ineffective.

To protect claimants against potential procedural injuries in public interest immunity proceedings, the Supreme Court recognized its power to appoint an amicus curiae. This appointment will balance confidentiality concerns with the need to maintain public confidence in the objectivity of the justice system.

As per the court, the court-appointed amicus curiae shall have access to materials the State seeks to withhold. They may interact with the applicant and their counsel before proceedings to understand their case and make effective submissions on the necessity of disclosure. However, once the proceedings begin and the counsel has viewed the withheld document, the amicus curiae must cease interaction with the applicant or their counsel. The amicus curiae shall represent the applicant's interests to the best of their ability and is bound by oath not to disclose or discuss the material with anyone, including the applicant or their counsel.

Additionally, the court noted that Article 145 of the Constitution requires all Supreme Court judgments to be delivered in open court. Though public interest immunity proceedings occur in closed settings, the Court must pass a reasoned order in open court to allow or dismiss the claim. The Court must provide a reasoned order on the principles considered and applied, even if sensitive material is redacted. The redacted material shall be preserved in court records for potential future access by courts if needed.

Hence, MIB is allowed to issue renewal permissions as per this judgment.

The Supreme Court's judgment in the Madhyamam Broadcasting Limited v. Union of India case marks a significant milestone in balancing national security concerns with the fundamental right to freedom of the press. This verdict reaffirms the court's commitment to upholding constitutional principles and ensuring procedural fairness, even in matters involving sensitive national security issues. The court's decision emphasizes the critical importance of natural justice principles, particularly the right to a fair hearing, in administrative decisions. By invalidating the Ministry of Information and Broadcasting's order on procedural grounds, the Supreme Court has set a high standard for governmental actions that impact fundamental rights.

This ruling underscores that even when national security is invoked, the state must provide specific, justifiable reasons for withholding information or denying rights. The introduction of a two-part test for assessing the validity of national security considerations adds a layer of objectivity to such claims.

This test, requiring material evidence and the perspective of a reasonable prudent person, serves as a safeguard against arbitrary decisions made under the guise of national security. Furthermore, the court's critique of the sealed cover procedure and its preference for public interest immunity claims demonstrates a shift towards greater transparency in judicial proceedings. The appointment of an amicus curiae in such cases is an innovative solution that attempts to balance the need for confidentiality with the principles of natural justice.

This judgment also reinforces the freedom of the press as an essential component of Indian democracy. By ruling that an alleged anti-establishment stance is not a legitimate ground for restricting media operations, the court has protected the media's role as a watchdog of democracy. However, the challenge remains in implementing these principles in future cases. The delicate balance between national security and fundamental rights will continue to be tested, and the judiciary will play a crucial role in maintaining this equilibrium.

This verdict not only resolves the immediate case at hand but also provides a comprehensive framework for addressing similar issues in the future. It strengthens the foundations of India's democratic institutions by ensuring that the principles of natural justice, transparency, and freedom of the press are upheld, even in the face of national security concerns.

Decoding the validity of modification of Resolution Plan Approved By CoC By Resolution Applicant

Deccan VALUE INVESTORS

The Supreme Court of India, in a significant judgment delivered on March 6, 2024, titled Deccan Value Investors L.P. & Anr Vs Dinkar Venkatasubramanian & Anr.[1] has reinforced the sanctity of the resolution plan under the Insolvency and Bankruptcy Code, 2016 (IBC). The apex court has ruled that a resolution applicant cannot withdraw or modify the resolution plan after it has been approved by the Committee of Creditors (CoC), even if the adjudicating authority (NCLT) is yet to grant its final approval under Section 31(1) of the IBC.

The case pertains to Metalyst Forgings Ltd. (the corporate debtor), which was undergoing the Corporate Insolvency Resolution Process (CIRP) under the IBC. Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd. (the appellants) were the successful resolution applicants whose resolution plan was approved by the CoC.

However, after the CoC's approval, the appellants sought to withdraw their resolution plan, citing various reasons, including alleged concealment of information and fraud on the part of the Resolution Professional (RP). They claimed that:

- It was concealed that 70% of the corporate debtor's revenue came from trading and not manufacturing.
- The Mott Macdonald Report dated September 30, 2016, which was part of the information memorandum, was factually incorrect and flawed.
- Misleading statements were made regarding uninstalled imported components of a 12,500 M.T. Press stored at a sister concern's land.
- The financial data provided was unreliable as an ongoing financial/forensic audit was underway.

[1] Civil Appeal No. 2801/2020

The National Company Law Tribunal (NCLT), Mumbai Bench, allowed the appellants to withdraw their resolution plan, and this order was upheld by the National Company Law Appellate Tribunal (NCLAT).

The Supreme Court, in its judgment, made several crucial observations and addressed the key arguments raised by the parties. The Court heavily relied on its earlier judgment in Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another[1], which held that a resolution applicant could not withdraw or modify the resolution plan after its approval by the CoC. The reasons cited included delay, consequences of delay, uncertainty, and complexities in the CIRP process, which are unacceptable and not contemplated under the law. This Court has inter alia held that the resolution applicant cannot withdraw or modify the resolution plan, after the same is approved by the Committee of Creditors. It is immaterial that post approval by the Committee of Creditors, there is consideration under Section 31(1) of the Code by the adjudicating authority for final approval.

Section 31 of the Insolvency and Bankruptcy Code, 2016 deals with the approval of the resolution plan by the Adjudicating Authority (NCLT). It empowers the Adjudicating Authority to approve or reject the resolution plan after examining if it meets the requirements of the Code and has provisions for effective implementation. The approved plan is binding on all stakeholders, subject to the resolution applicant obtaining necessary statutory approvals within the stipulated timeline.
Sub-section (1) states that if the Adjudicating Authority is satisfied that the resolution plan approved by the Committee of Creditors meets the requirements under Section 30(2), it shall approve the plan by order. This approved plan is binding on the corporate debtor, employees, members, creditors (including government dues), guarantors and stakeholders.
The proviso to sub-section (1) requires the Adjudicating Authority to satisfy itself that the resolution plan has provisions for its effective implementation before approving it.
Sub-section (2) allows the Adjudicating Authority to reject the resolution plan if it does not confirm to the requirements under sub-section (1).
After approval under sub-section (1), the moratorium under Section 14 ceases to have effect [sub-section (3)(a)],
[1] (2022) 2 SCC 401

and the Resolution Professional has to forward all CIRP records to the Insolvency and Bankruptcy Board of India [sub-section (3)(b)].
Sub-section (4) requires the resolution applicant to obtain necessary approvals required under any law within one year of the Adjudicating Authority's approval of the plan. If the plan involves a combination under the Competition Act, CCI approval is required before CoC approval.

The appellants argued that the proviso to Section 31(1) of the IBC, which requires the adjudicating authority to satisfy itself that the resolution plan has provisions for its effective implementation, should allow them to withdraw or modify the plan.

The Court rejected this argument, stating that Ebix Singapore Private Limited had examined this provision and held that it does not allow or permit the resolution applicant to unilaterally amend, modify, or withdraw the resolution plan post-approval by the CoC. The Court examined the grounds raised by the appellants regarding alleged fraud and concealment of information by the RP. It found that these grounds did not qualify as fraud and were not instances where misinformation or wrong information was given to the resolution applicants. The Court observed that resolution plans are submitted by financial experts after in-depth analysis, and pointing out ambiguities or lack of specific data post-acceptance should be rejected, except in egregious cases where data and facts are fudged or concealed.

Based on the above observations and relying on the principles laid down in Ebix Singapore Private Limited, the Supreme Court set aside the NCLAT's judgment and upheld the resolution plan submitted by the appellants. The key reasons for the decision included the resolution plan approved by the CoC being a creature of the IBC and not a pure contract between two consenting parties. The scrutiny by the adjudicating authority under Section 31(1) is limited and restricted and does not allow the resolution applicant to unilaterally amend, modify, or withdraw the plan post-CoC approval. The reasons cited by the appellants for withdrawal did not qualify as fraud or concealment of information by the RP. Records of companies in financial distress may suffer from data asymmetry or debatable data, but financial experts are expected to exercise caution and discretion while submitting resolution plans.
This judgment by the Supreme Court reinforces the sanctity and finality of the resolution plan once approved by the CoC. It upholds the principles of certainty, transparency, and timely resolution in the CIRP process under the IBC.

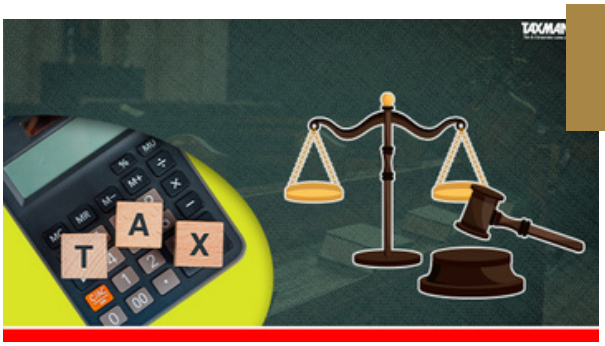
The decision underscores the importance of due diligence by resolution applicants and their inability to withdraw or modify plans based on alleged inadequacies or ambiguities in information unless there is clear evidence of fraud or concealment.

The judgment also clarifies the limited scope of scrutiny by the adjudicating authority under Section 31(1) of the IBC, which does not extend to allowing unilateral modifications or withdrawals by the resolution applicant post-CoC approval. This landmark judgment strengthens the framework of the IBC and safeguards the interests of stakeholders, ensuring that the resolution process is not derailed by unilateral actions of resolution applicants after committing to a resolution plan approved by the CoC.

Earlier the Supreme Court in M.K Rajagopalan v. Dr. Periasamy Palani Gounder[1], decided on May 03,2023, the Supreme Court has held that approval of the CoC is mandatory to make a procedural/technical change to a Resolution Plan. the court further emphasized that bypassing the Committee of Creditors (CoC) by directly submitting a revised resolution plan to NCLT without CoC approval is a material irregularity, and cannot be dismissed as a mere technicality. The financial details of a resolution plan need to be considered by the CoC before being deemed a well-considered decision. Presenting a modified resolution plan, even with minor changes, to the NCLT without obtaining final approval from the CoC constitutes a significant and incurable material irregularity. The Court rejected the post facto approval of a revised resolution plan by the CoC. The conditional approval given by the CoC in its 9th meeting was not considered final approval. The court held that the modified plan should have undergone final approval by the CoC before being submitted to the NCLT. Failure to follow this process was an irreparable material irregularity. Strict compliance with the CIRP Regulations is necessary, particularly in presenting the final resolution plan to the CoC. Approving the flawed process in this case would make the IBC scheme susceptible to arbitrariness. Court concluded that the NCLT could not have approved the resolution plan for two reasons:

a) The successful resolution applicant failed to present the revised plan to the CoC before seeking NCLT approval.
b) The successful resolution applicant was ineligible under Section 88 of the Trusts Act.
Consequently, the Supreme Court set aside the NCLAT's order approving the resolution plan.

Analysing tests outlined in DTAA for a Subsidiary to be deemed a PE



This case revolves around the reassessment notices issued by the Deputy Commissioner of Income Tax (International Taxation) to Progress Rail Locomotive Inc. (formerly Electro-Motive Diesel Inc.), a U.S. company with significant business operations in India. The central issue is whether the Indian subsidiary of the company constitutes a Permanent Establishment (PE) under the India-USA Double Taxation Avoidance Agreement (DTAA), thereby making the income attributable to this PE taxable in India. In the case of Progress Rail Locomotive Inc. (formerly Electro Motive Diesel Inc.) vs. DCIT (International Taxation), the primary issue was whether Progress Rail Locomotive Inc. (PRL), a company incorporated in the USA, had a Permanent Establishment (PE) in India, thereby making its income taxable in India. The contention centered around whether PRL's Indian subsidiary, PRIPL (Progress Rail Innovation Pvt. Ltd.), constituted a PE under the India-USA Double Taxation Avoidance Agreement (DTAA).

Parties Involved in the dispute were Progress Rail Locomotive Inc. (formerly Electro-Motive Diesel Inc.) (Petitioner), a Delaware-based company in the U.S., part of the Caterpillar Group and Deputy Commissioner of Income Tax (International Taxation), Circle-Noida, and others (Respondents).

Facts that led to the dispute were, that the petitioner has a wholly-owned subsidiary in India, initially known as Electro Motive Diesel Inc., now Progress Rail Innovation Pvt. Ltd., engaged in providing technical and marketing support services to its parent company. The subsidiary was regularly assessed for tax in India and subjected to transfer pricing assessments. The tax authorities issued reassessment notices under Section 148 of the Income Tax Act, 1961, for the Assessment Years (AYs) 2012-13 to 2018-19. The primary ground for reassessment was the alleged existence of a Permanent Establishment (PE) in India under Article 5 of the India-USA DTAA.

making the income from sales in India attributable to this PE taxable in India. The non-resident company reported significant sales in India for the years 2011 and 2012, amounting to INR 832.10 crores and INR 1028.50 crores, respectively. The tax authorities argued that no income tax returns were filed by the non-resident company in India, despite substantial business activities.

Issues Involved in the dispute were:
1. Whether the Indian subsidiary of Progress Rail Locomotive Inc. constitutes a PE in India under Article 5 of the India-USA DTAA.
2. Whether the income attributable to the alleged PE in India should be taxed in India.

Arguments on behalf of Petitioners:

The petitioner challenged the jurisdiction of the tax authorities to issue reassessment notices, arguing that the initial assumption of jurisdiction was flawed. They further contended that the Indian subsidiary, incorporated in 1996, was engaged in providing back-office support and technical support services to the parent company on a cost-plus basis. The subsidiary's activities were primarily preparatory or auxiliary, thus not constituting a PE under the DTAA. The petitioner emphasized that the subsidiary's transactions were conducted at arm's length and had been subject to regular transfer pricing assessments. The petitioner argued that the activities of the subsidiary did not meet the criteria for a Fixed Place PE, Service PE, or Dependent Agent PE under Article 5 of the India-USA DTAA. Further, reliance was placed on the Supreme Court's decision in Formula One World Championship Ltd. vs. CIT[1], to support their argument that the mere existence of a subsidiary does not constitute a PE.

Article 5 of the India-USA DTAA outlines the definition and criteria for what constitutes a Permanent Establishment (PE). This is crucial in determining tax liability for businesses operating across both countries. The key elements under Article 5 are:

[1] 394 ITR 80/295 CTR 12/248 Taxman 192 (SC)

Fixed Place PE: A PE includes any fixed place of business through which the business of an enterprise is wholly or partly carried on. The existence of a physical location (e.g., office, factory, workshop). The location is fixed, i.e., it is established at a distinct place with a certain degree of permanence. Business activities are conducted through this fixed place.

Service PE: A PE is also created if an enterprise furnishes services, including consultancy services, through employees or other personnel in the other country. Services are rendered for a period or periods aggregating more than 90 days within any 12-month period. The services are performed within the other country.

Dependent Agent PE: A dependent agent constitutes a PE if they act on behalf of an enterprise and have the authority to conclude contracts in the name of the enterprise. The agent habitually exercises the authority to conclude contracts or maintains a stock of goods for delivery on behalf of the enterprise. The agent is not an independent agent acting in the ordinary course of their business.

Auxiliary and Preparatory Activities: Certain activities are excluded from constituting a PE if they are of a preparatory or auxiliary nature (e.g., storage, display, or delivery of goods).

Arguments on behalf of Respondents:
The tax authorities contended that the Indian subsidiary constituted a PE as it engaged in core business activities of the parent company and not merely auxiliary services. They relied on email communication and statements of key personnel indicating significant operational roles of the subsidiary in India. They further argued that substantial income generated from sales in India should be attributed to the alleged PE and taxed accordingly. Respondents emphasized the provisions of Article 5 of the India-USA DTAA and Sections 148 and 151 of the Income Tax Act, 1961, to justify the reassessment. They placed reliance on CIT vs. Vishakhapatnam Port Trust[1] to support the argument that the activities carried out by the Indian subsidiary (PRIPL) were preparatory or auxiliary in nature and did not constitute a PE under the DTAA. The Vishakhapatnam Port Trust case established the principle that mere auxiliary or preparatory activities do not form a PE. The tax authorities discussed Rule 10D during the proceedings to emphasize that the Indian subsidiary's transactions with the parent company were scrutinized under transfer pricing regulations.

Section 148 deals with the process of issuing a notice when the Assessing Officer believes that income has escaped assessment. Notice Requirement under this section requires the Assessing Officer to serve a notice to the assessee before making an assessment, reassessment, or recomputation under section 147. The notice requires the assessee to furnish a return of income for the relevant assessment year within a specified period. The provisions of the Income Tax Act apply to this return as if it were a return required under section 139. The text provides for scenarios where notices served under certain conditions are deemed valid, even if they were served after certain time limits. The text mentions specific time periods (October 1, 1991 to September 30, 2005) for which certain rules apply regarding the validity of notices. These rules apply to cases where:

a) A return was furnished between October 1, 1991 and September 30, 2005 in response to a notice under this section (148).
b) Subsequently, a notice was served under section 143(2) after the expiry of the 12-month period specified in section 143(2), but before the expiry of the time limit for assessment/reassessment specified in section 153(2).
In such cases, the notice is deemed to be valid.
The explanation at the end clarifies that the provisions about the validity of notices do not apply to returns furnished on or after October 1, 2005. The Assessing Officer must record reasons before issuing any notice under this section.

Section 151 outlines the rules for obtaining sanction before issuing a notice under Section 148 (which deals with income escaping assessment). It provides that No notice can be issued under Section 148 after 4 years from the end of the relevant assessment year. The exception is if the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner, or Commissioner is satisfied that it's a fit case. The Assessing Officer must record reasons, which are reviewed by the higher authority. For cases within the 4-year limit, if the Assessing Officer is below the rank of Joint Commissioner:

- The Joint Commissioner must be satisfied that it's a fit case to issue the notice.
- The Assessing Officer must record reasons for the Joint Commissioner to review.

The higher authorities (mentioned above) need to be satisfied with the reasons recorded by the Assessing Officer. Once satisfied, they don't need to issue the notice themselves. They can authorize the Assessing Officer to issue the notice.

This section acts as a check on the powers of Assessing Officers to issue notices for reassessment. It introduces a hierarchical approval system, especially for older cases (beyond 4 years). It ensures that notices for reopening assessments, particularly older ones, are not issued frivolously. The requirement for recorded reasons ensures transparency and accountability in the process.

Article 5 of the India-USA DTAA, the CIT vs. Vishakhapatnam Port Trust case, and Rule 10D of the Income Tax Rules played pivotal roles in the arguments presented by both parties. The petitioner used these references to argue against the existence of a PE, while the respondents used them to support their claim that significant business activities conducted through the Indian subsidiary constituted a PE.

Decision

The court examined the facts of the case, where PRIPL, a wholly-owned subsidiary of the petitioner, was engaged in providing technical and marketing support to Indian Railways. The tax authorities had conducted a survey under Section 133A, gathering evidence indicating that PRL exercised significant control over PRIPL's activities. This included email communications and the physical presence of PRL's senior officers in India, suggesting that PRIPL's functions were not merely preparatory or auxiliary but integral to PRL's business operations.

Key legal provisions considered by the court were:

- Article 5 of the India-USA DTAA: This article defines the conditions under which a non-resident entity can be considered to have a PE in India, including a Fixed Place PE, Service PE, and Dependent Agent PE.
- Sections 147 and 148 of the Income Tax Act, 1961: These sections deal with the reassessment of income escaping assessment.
- Rule 10D of the Income Tax Rules, 1962: This rule outlines the documentation requirements for international transactions to ensure compliance with transfer pricing regulations.

The court provided a detailed analysis of the tests outlined in Article 5 of the DTAA to determine whether the activities of a subsidiary, in this case, Progress Rail Innovation Pvt. Ltd. (PRIPL), constituted a Permanent Establishment (PE) of the parent company, Progress Rail Locomotive Inc. (PRL).

Fixed Place PE:

The court examined whether PRIPL provided a fixed place of business for PRL in India. The physical premises used by PRIPL for its operations, including offices and factories, were scrutinized. The court concluded that since these premises were used for substantial business activities that went beyond mere preparatory or auxiliary functions, they constituted a Fixed Place PE. The court emphasized that the physical presence and business activities at these locations had a degree of permanence and were integral to PRL's business operations.

Service PE:

The court analyzed the service activities conducted by PRIPL on behalf of PRL. Evidence showed that PRL's senior officers frequently visited India for business meetings and oversight, which contributed to PRL's overall business. The court held that these service activities, carried out for a significant period, created a Service PE under the DTAA. The regular presence of PRL's personnel in India for business purposes further strengthened this position.

Dependent Agent PE:

The court also considered whether PRIPL acted as a dependent agent of PRL. It was found that PRIPL habitually exercised authority to conclude contracts and made sales on behalf of PRL, which indicated a dependent-agent relationship. The court noted that PRIPL's activities were directed and controlled by PRL, highlighting the dependent nature of the subsidiary.

By applying these tests, the court determined that PRIPL constituted a PE of PRL in India, making PRL's income attributable to its Indian operations taxable under Indian law. The court's analysis underscored the significance of the subsidiary's role and activities in establishing the presence of a PE as per the DTAA.

RBI's Proposed Project Finance Regulations: Balancing Risk Mitigation and Economic Growth

The RBI's draft prudential framework provides rules for how banks and other financial institutions should manage loans given for projects, especially in infrastructure, non-infrastructure, and commercial real estate sectors. It aims to ensure that projects are funded and completed successfully without financial stress. The purpose is to set clear rules for how loans for projects should be handled, ensuring early detection and resolution of any financial problems. The prudential norms are aimed at banks, NBFCs (Non-Banking Financial Companies), urban cooperative banks, and other major financial institutions, but not smaller banks like payments banks or rural banks. It divides projects into three phases - design, construction, and operation. Further, banks are required to have clear policies, make sure all necessary approvals are in place before funding, and disburse money according to project progress. They should monitor projects closely and have plans ready to handle any financial issues early. It has further provided guidelines for what to do if the project's completion date needs to be extended. Risk is distinguished from external factors (like natural disasters) and internal factors (like poor planning). Provisions for regular checks on project value to catch any financial problems early are provided.

The draft document titled "Prudential Framework for Income Recognition, Asset Classification, and Provisioning Pertaining to Advances - Projects Under Implementation" has outlined the regulatory norms for the financing of projects in various sectors, including infrastructure, non-infrastructure, and commercial real estate with an aim to harmonize and rationalize the guidelines for all regulated entities involved in project finance.

Each project, as previously mentioned, is categorized into three distinct phases:

1. Design Phase: Involves conception, designing, planning, and obtaining all necessary approvals and financial closure.
2. Construction Phase: Begins post-financial closure and ends before the date of commencement of commercial operations (DCCO[1]).
3. Operational Phase: Starts with the commencement of commercial operations.

Further, lenders engaging in project finance are required to adhere to several prudential conditions. They must have a board-approved policy for the resolution of stress in projects. Financial closure should be achieved with all mandatory prerequisites, such as land availability, environmental clearance, and legal approvals. Disbursements should be proportional to the stages of completion and progress in equity infusion. In PPP projects, disbursement should start only after the declaration of the appointed date.

The framework emphasizes the need for lenders to monitor projects continuously and initiate resolution plans well in advance of any credit event. The occurrence of a credit event triggers a collective resolution process in line with the Prudential

Framework for Resolution of Stressed Assets.

Resolution plans involving changes in the DCCO are considered implemented if:

- All required documentation is completed.
- The new capital structure and changes in the financing agreement are reflected in the books of all lenders and the debtor.

The framework provides guidelines for the classification of project finance accounts and the provisioning norms. An account classified as 'standard' can continue to maintain this classification upon the extension of DCCO under certain conditions related to exogenous and endogenous risks, and litigation.

The framework differentiates between exogenous and endogenous risks. External factors such as natural calamities, pandemics, or changes in government policies impact the project. Internal project-specific risks arising from deficiencies in planning or execution capabilities.

Further, Lenders are required to monitor the net present value (NPV) of projects annually to detect any potential credit impairment. Any diminution in NPV during the construction phase is considered a credit event, necessitating re-evaluation, and potential resolution measures.

Several factors prompted the RBI to issue these new guidelines. These include rising Non-Performing Assets (NPAs), which have increased significantly specifically within the banking sector. Another reason was the need for standardization since the existing guidelines were fragmented across different types of financial institutions. RBI wanted to ensure a robust framework for project finance since it believed it is critical for economic growth and stability. The present guidelines are a result of learning from previous project failures and successes to create an even more comprehensive set of guidelines.

The impact of these guidelines can be expected to be broad and beneficial. Early detection and resolution of financial stress in projects will ensure better risk management in the capital market which will in turn boost lender and investor confidence in project financing. The overall impact on the economy will improve financial health and reduce the number of bad loans. Clear and standardized rules make the financing process more transparent and accountable.

This is not the first time the RBI has released guidelines on project finance and the management of stressed assets. In 2001, the RBI released the Guidelines on Income Recognition, Asset Classification, and Provisioning for Advances to standardize the classification and provisioning for bad and doubtful debts. It introduced norms for recognizing income and classifying assets as non-performing based on overdue periods.

In 2014, it released Framework for Revitalizing Distressed Assets in the Economy[1] to provide a systematic framework for early recognition, reporting, and resolution of distressed assets. It provided for the Formation of Joint Lenders' Forum (JLF) to enable lenders to take a coordinated approach in addressing stress. Further, in the guidelines, a Corrective Action Plan (CAP) included rectification, restructuring, and recovery actions. It established the Central Repository of Information on Large Credits (CRILC) for better monitoring of large credit exposures.

In 2015, it released the Strategic Debt Restructuring (SDR) Scheme[1] to empower banks to convert debt into equity and take control of defaulting companies. It allowed banks to acquire a majority stake in defaulting companies by converting debt to equity, with a view to changing management and reviving operations.

In 2016, it released the Scheme for Sustainable Structuring of Stressed Assets (S4A) [2] to provide a structured approach to resolving large corporate stressed assets wherein it provided for the Bifurcation of Debt into sustainable and unsustainable portions. Further, it suggested the Conversion of Unsustainable Debt into equity/quasi-equity instruments, thus transferring part of the risk to the promoters.

In 2018, it released the Revised Framework for Resolution of Stressed Assets[3] to replace earlier schemes like SDR and S4A with a comprehensive and streamlined approach. It provided for a time-bound implementation wherein the banks were required to implement a resolution plan within 180 days of default.

Finally, it was in 2019 that the RBI released the Prudential Framework for Resolution of Stressed Assets[4] to provide detailed guidelines for the resolution of stressed assets, emphasizing early identification and quick resolution. It provided detailed requirements for formulating and implementing a Resolution Plan (RP). Furthermore, the Inter-Creditor Agreement (ICA) is mandated for collective decision-making among lenders.

[1] RBI "RBI/2014-15/627 DBR.BP.BC.No.101/21.04.132/2014-15" dated June 8, 2015 available at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9767
[2] RBI "RBI/2015-16/422DBR.No.BP.BC.103/21.04.132/2015-16" dated June 13, 2016 available at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10446&Mode=0
[3] RBI "RBI/2017-18/131DBR.No.BP.BC.101/21.04.048/2017-18" dated February 12, 2018 available at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11218&Mode
[4] RBI "RBI/2018-19/203DBR.No.BP.BC.45/21.04.048/2018-19" dated June 7, 2019 available at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11580

It is likely that the RBI will continue to issue similar guidelines in the near future. As the financial environment evolves, the RBI will need to update and refine regulations for this dynamic area. Based on feedback from the implementation of these guidelines, the RBI may issue further clarifications or additional guidelines. Further, with the rise of fintech and digital lending, new regulations may be necessary to address emerging challenges and opportunities.

Some specific instances can be:

Technological advancements in the field of digital lending:

With the rise of fintech companies and digital lending platforms, the RBI may introduce specific guidelines to regulate digital loan origination, disbursement, and recovery processes. New and emerging trends in blockchain and cryptocurrencies. As these technologies gain traction, the RBI might release guidelines to ensure their safe and secure use in financial transactions.

Emergency Credit Line Guarantee Scheme (ECLGS):

ECLGS was introduced to support MSMEs affected by the COVID-19 pandemic. Further guidelines may be expected to handle the aftermath of the pandemic on financial institutions and borrowers.

International Best Practices:

As global regulatory standards evolve, the RBI will likely update its guidelines to align with Basel III norms and other international best practices.

Consumer Protection:

Enhancing consumer protection norms, especially in digital and fintech sectors, and Strengthening cybersecurity measures and guidelines for financial institutions to mitigate the risks associated with digital transactions.

ITAT Delhi Rules Salary Reimbursements Not Subject to Withholding Tax as Fees for Technical Services in Serco India Case

The Income Tax Appellate Tribunal (ITAT) Delhi Bench has delivered its verdict in a case involving significant issues regarding the disallowance of expenditure and additions under section 68 of the Income Tax Act, of 1961. [1]

Serco India Pvt. Ltd., a subsidiary of Serco Group PLC, UK, was incorporated on February 27, 2006, as a captive service center providing IT and IT-enabled services to its parent company. For the assessment year 2013-14, Serco India declared a loss of Rs. 5,68,34,642/- in its income tax return. The assessment was completed under section 143(3) of the Income Tax Act, 1961, resulting in the addition of Rs. 11,73,19,373/- under section 68 and an ad-hoc disallowance of Rs. 4,43,77,875/- under section 37. Subsequently, the Commissioner of Income Tax (Appeals)-1, Gurgaon, enhanced the disallowance to Rs. 10,18,44,938/-.

The primary issues in this case are:

- The disallowance of expenditure amounting to Rs. 10,18,44,938/- by CIT(A) on the grounds that it was not incurred for business purposes.
- The addition of Rs. 11,73,19,373/- under section 68 of the Income Tax Act, 1961, which the assessee contended was suppliers' credit/provisions and not cash credit.
- The inability of the new management of Serco India to produce books of account and supporting documents during the assessment proceedings.

Assessee (Serco India Pvt. Ltd.) argued that the expenditure of Rs. 10,18,44,938/- was incurred in connection with a new line of business, which subsequently generated revenue. The assessee provided detailed explanations, including the nature of services, invoices, and bank statements evidencing payments

[1] Serco India Pvt. Ltd v. DCIT, TS-363-ITAT-2023

Additionally, the assessee contended that the addition under section 68 was incorrect, as the amount represented suppliers' credit, which was adjusted in subsequent years through a share purchase agreement. The assessee also explained that the new management was unable to produce the books of account and supporting documents as the previous management (Serco Group UK) did not provide them despite repeated requests.

The Revenue defended the addition of Rs. 11,73,19,373/- under section 68, citing the difference between the opening and closing balances of sundry creditors. The Revenue justified the disallowance of Rs. 4,43,77,875/-, arguing that the assessee failed to substantiate the expenses with necessary evidence.

The ITAT Delhi Bench, comprising Dr. B. R. R. Kumar (Accountant Member) and Ms. Astha Chandra (Judicial Member) carefully reviewed the expenses totaling Rs. 22,18,89,377/-, which included charges for legal and professional services, rent, repair, and maintenance, travel, communication, power, and other miscellaneous costs. The assessee provided details for these expenses, including the name and address of the parties involved, their PAN numbers, the nature of the services rendered, invoices, and bank statements evidencing the payments. The CIT(A) had enhanced the disallowance from Rs. 4,43,77,875/- to Rs. 10,18,44,938/-, which included a markup factor of 15% as per the agreement with related parties for management services. The tribunal scrutinized the evidence provided by the assessee and concluded that the expenses were incurred for business purposes.

The tribunal also examined the addition of Rs. 11,73,19,373/- under section 68 for cash credits. The assessee argued that this amount was related to suppliers' credit and was adjusted in subsequent years through a share purchase agreement. The tribunal took into consideration the detailed explanations and supporting evidence provided by the assessee, including adjustments made in the subsequent financial years. The tribunal found that the addition under section 68 was not justified, as the amount represented suppliers' credit and not unexplained cash credits. The tribunal addressed all the grounds raised by the assessee, considering the evidence provided and the arguments made during the proceedings. The tribunal's decision detailed the justification for the disallowance and the interpretation of section 68 in the context of the presented facts.

Ultimately, the tribunal concluded that the disallowance of expenses and the addition under section 68 were not warranted based on the evidence provided by the assessee. The decision emphasized the importance of proper documentation and substantiation of expenses for tax purposes.

Salary reimbursements as fees for technical services.

The tribunal made a significant ruling regarding the nature of salary reimbursements. The core issue was whether the salary reimbursements made by Serco India to Serco UK for the expatriate employees should be classified as fees for technical services and thereby be subject to withholding tax under Section 195 of the Income Tax Act, 1961.

- The court observed that the salary payments made by Serco UK to the expatriate employees were purely in the nature of reimbursements. Serco UK paid the salary on behalf of Serco India, and these payments were subsequently reimbursed by Serco India on a cost-to-cost basis without any profit element. This arrangement was governed by a Salary Reimbursement Agreement between the two entities.
- The Tribunal analyzed whether the salary payments could be considered as fees for technical services under Section 9(1)(vii) of the Income Tax Act. According to the Act, fees for technical services imply consideration for the rendering of managerial, technical, or consultancy services. The court determined that the payments were merely salary reimbursements and did not fit the definition of fees for technical services.
- The court referred to several precedents to support its decision. In particular, it highlighted that reimbursements, where there is no profit element and the payment is on an actual basis, cannot be taxed as fees for technical services. This stance aligns with previous rulings where reimbursements without any markup were not subjected to withholding tax.
- As the reimbursements were not for technical services, they did not attract the withholding tax provisions under Section 195. The Tribunal emphasized that the substance of the transaction must be examined over its form, reiterating that the nature of these payments was purely compensatory.

Hence, the Tribunal ruled in favor of Serco India, establishing that salary reimbursements to Serco UK for expatriate employees were not subject to withholding tax as fees for technical services.

A Closer Look at Our Recent Features

Bombay High Court's Judgement in the #Porsche 'brat' allowed to go home matter

Our Managing Partner NILESH TRIBHUVANN demystifies the Bombay High Court's Judgement in the #Porsche 'brat' allowed to go home matter.

Sharing views with Mirror Now in a panel discussion today, he explains Sneha Koshy as to why the Bombay High Court called the Juvenile Justice Board's order as illegal. Here's a preview of the episode.

Click on the link to see the full video
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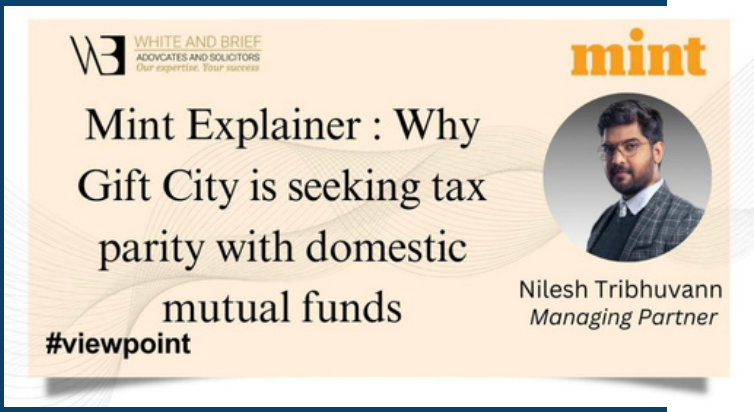


Mint Explainer: Why GIFT City is Seeking Tax Parity with Domestic Mutual Funds.

We are pleased to announce that our Managing Partner, Mr. NILESH TRIBHUVANN , has been quoted in the LiveMint article titled "Mint Explainer: Why GIFT City is Seeking Tax Parity with Domestic Mutual Funds."

To read his insights, please click on the link below.
https://www.livemint.com/money/mint-explainer-why-gift-city-is-seeking-tax-parity-with-domestic-mutual-funds-11719202308672.html

Misleading Ads: Ambiguous Self-Declaration Rules Leave Advertisers in Compliance Limbo.

We are pleased to announce that our Managing Partner, Mr. NILESH TRIBHUVANN , has been quoted in the NDTV Profit article titled "Misleading Ads: Ambiguous Self-Declaration Rules Leave Advertisers in Compliance Limbo."

To read his insights, please click on the link below.
https://www.ndtvprofit.com/profit-insights/misleading-ads-ambiguous-self-declaration-rules-leave-advertisers-in-compliance-limbo

GST Rate Rationalisation Gets Tricky for NDA 3.0

We are delighted to share that our Taxation Partner, Prateek Bansal has been featured in amoneycontrol.com article titled "GST Rate Rationalisation Gets Tricky for NDA 3.0."

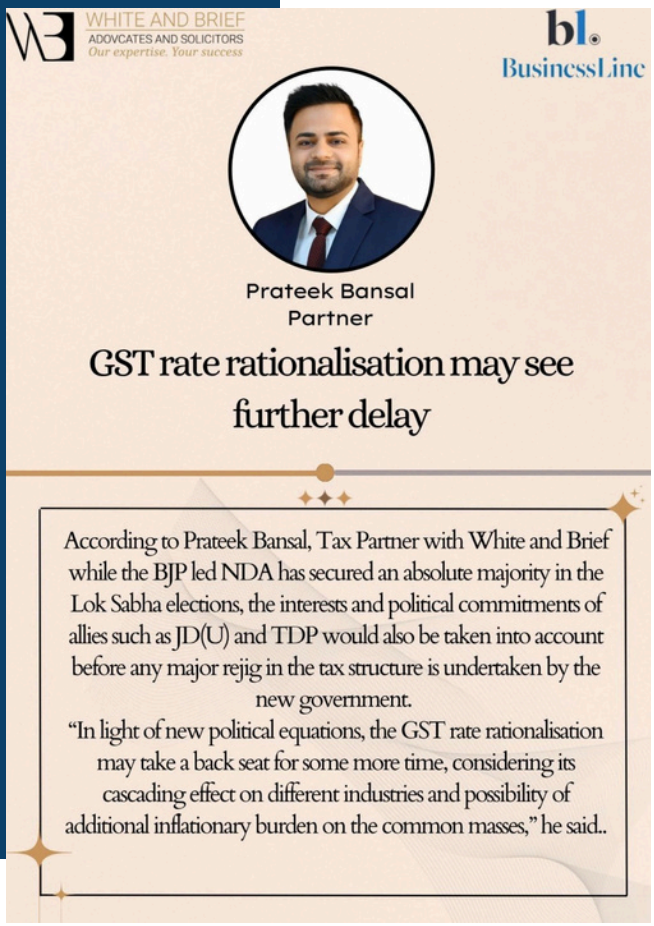
To read his valuable insights, please click on the link below.

https://www.moneycontrol.com/news/business/gst-rate-rationalisation-gets-tricky-for-nda-3-0-12745403.html

IBBI Proposes to Reduce Compliance Burden on Insolvency Professionals.

1.We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in the Business Today article titled "IBBI Proposes to Reduce Compliance Burden on Insolvency Professionals."

To read his insights, click on the link below.
https://www.businesstoday.in/latest/corporate/story/ibbi-proposes-to-reduce-compliance-burden-on-insolvency-professionals-432914-2024-06-11



GST Rate Rationalisation May See Further Delay,

1.We are delighted to share that our Taxation Partner, Mr. Prateek Bansal has been featured in businessline. His quote is included in the article titled "GST Rate Rationalisation May See Further Delay," which also appeared in the print edition.

To read his insights, please click the link below.

https://www.thehindubusinessline.com/economy/gst-rate-rationalisation-may-see-further-delay/article68259465.ece

7th Annual Banking and Finance Legal Summit

We are delighted to share that our Founder and Managing Partner, Mr. NILESH TRIBHUVANN, was a distinguished speaker at the 7th Annual Banking and Finance Legal Summit. Hosted by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs this summit is a beacon of knowledge and innovation in the legal and corporate sectors.

Mr. Tribhuvann contributed to a thought-provoking panel discussion titled

"India's Fintech Moment Has Arrived – Fact or Fiction?" He delivered insightful perspectives on "The NBFC Conundrum: Compliance Challenges, KYC Norms, and the RBI Crackdown on Fintech and Credit Card Issuers."

Sharing the stage with a panel of esteemed experts, including:

- Sheetal Sawhney Kapur , Head of Payments and Privacy Legal, Amazon Pay
- Naveli Reshamwalla , Associate Partner,Dhir & Dhir Associates
- Sameer Vyas, Head of Compliance, HDFC Credila Financial Services Limited
- Ashish Chandra General Counsel, CoinSwitch

Mr. Tribhuvann's contributions underscored the critical issues and opportunities within the fintech landscape, offering valuable insights into regulatory compliance and the evolving challenges faced by the NBFC sector.

This event highlighted the ongoing dialogue and collaboration among leading professionals to drive innovation and regulatory excellence in India's fintech industry.

10th Annual Real Estate & Construction Legal Summit, 2024

We are thrilled to announce that our Taxation Partner, Mr. Prateek Bansal graced the **10th Annual Real Estate** & **Construction Legal Summit, 2024** as a distinguished speaker. Hosted by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs India's pioneering magazine on Legal & Corporate Affairs, this Summit stands as a beacon of knowledge and innovation for the growth of real estate industry.

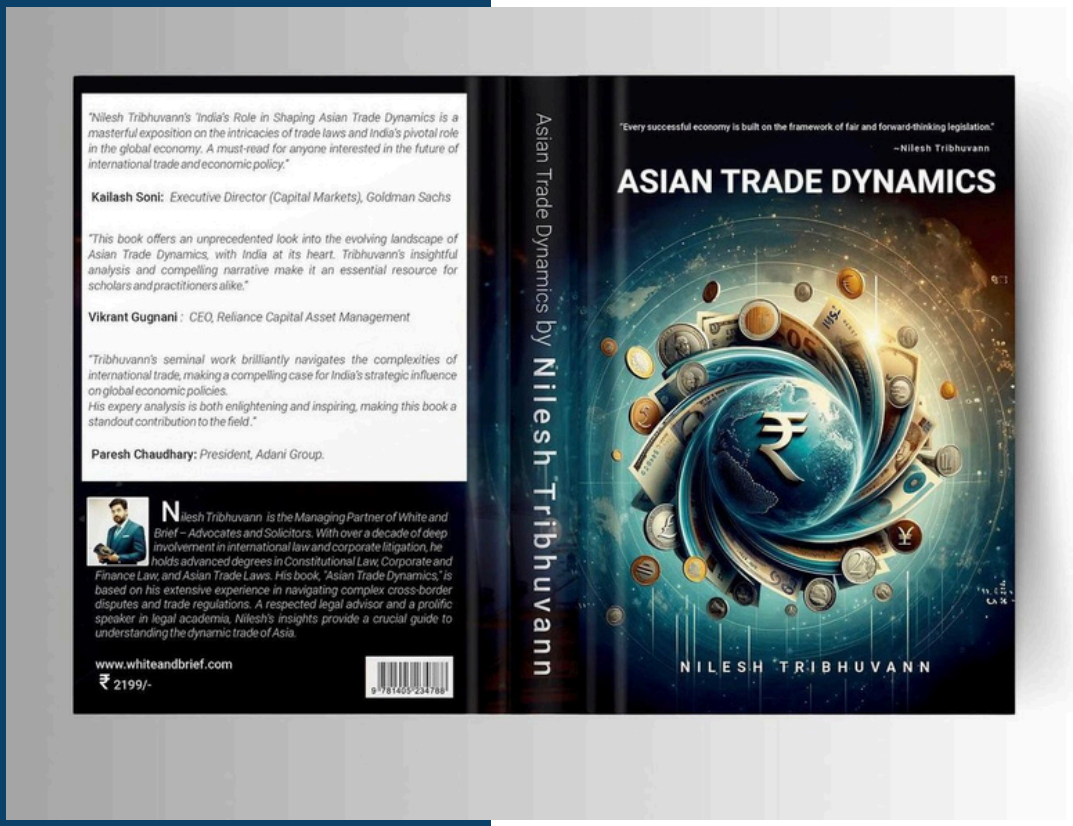
Mr. Bansal contributed to a thought-provoking panel discussion titled "**2024** & **Beyond**! **Revisiting Legal, Regulatory** & **RERA Roars" wherein he delved into "Challenges in the Real Estate Sector Post-GST Implementation** " After highlighting various ongoing contentious GST issues in the sector, he also stressed on the need for certainty / predictability so as to salvage the spirit of 'Good and Simple' tax.

EPFO Discontinues GIS, to Refund Past Deductions:

We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN , has been quoted in The Economic Times article titled "EPFO Discontinues GIS, to Refund Past Deductions: These Government Employees to Get Higher Salary." He shared his expert insights on the matter.

To read his comments, please click on the link

https://m.economictimes.com/wealth/save/epfo-discontinues-gis-to-refund-past-deductions-these-government-employees-to-get-higher-salary/articleshow/111311450.cms



Launch of Asian Trade Dynamics, a book by our Managing Partner, Mr. Nilesh Tribhuvan

We are delighted to share that our Managing Partner, Mr. Nilesh Tribhuvan, has launched his book, Asian Trade Dynamics .

This book is more than just an academic exploration—it is a heartfelt journey through the vibrant and complex web of economic and trade relationships that define Asia today. Born from Mr. Tribhuvan's deep-seated passion for understanding how our worlds connect, this work reflects countless hours spent analyzing, debating, and synthesizing ideas with experts across continents.

It is his earnest desire that this book sparks conversations and cultivates a deeper appreciation for the dynamic forces that shape our global economy daily.

WHITE AND BRIEF
ADVOCATES AND SOLICITORS
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Head Office

**62 A & 63 A , Mittal Court "A" Wing Jamnalal Bajaj Marg,
Nariman Point Mumbai, Maharashtra 400021.**

Branch Offices

Mumbai

Enam Sambhav C-20, G-Block Rd, G Block - Banra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051

New Delhi

Forum, DLF Cyber City rd. DLF Phase 3, Gurugram, Harayana 122002

Bangalore

62/63 The Pavillion, Church Street, Bangalore, Karnataka 560001