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NOVEMBER 2024

Legal Updates, Insights and Summary Judgements

This update covers:

Insight and Foresight: our perspective on key global developments

M/s Mercedes Benz India Pvt Ltd. vs. State of Telangana [TS-679-HC(TEL)-2024]

In the recent case of M/s Mercedes Benz India Pvt Ltd. vs. State of Telangana [TS-679-HC(TEL)-2024], the Hon'ble Telangana High Court gave relief to the taxpayer from the condition of pre-deposit for appeal before the Appellate Authority. The petitioner had already paid IGST but the department issued him show cause notice, in respect of the same transaction, demanding payment of CGST and SGST.

The Court exercised its extraordinary powers to allow petitioner to file appeal against the order of adjudicating authority, while acknowledging that there is no such enabling provision with the appellate authority to give such exemption.

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

https://www.linkedin.com/feed/update/urn:li:activity:7260171097147375616

Hon’ble Kerala High Court in Sance Laboratories Pvt. Ltd.

This alert briefly encapsulates the current legal status of Rule 96(10) of the CGST Rules, in the light of the latest rulings of the Hon’ble Kerala High Court in Sance Laboratories Pvt. Ltd. regarding validity of this rule and the review order of the Hon’ble Gujarat High Court in Cosmo Films regarding date of applicability of the rule.

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

https://www.linkedin.com/feed/update/urn:li:activity:7262451422321922048

Recent judgment of the Hon’ble Supreme Court in Canon India

1.As the aftermath of the recent judgment of the Hon’ble Supreme Court in Canon India, whereby the DRI has been held to be the “proper officer” to issue show cause notice under the Customs Act, 1962, the pending adjudication / appellate / writ petition proceedings will now have to be dealt with basis the facts and merits of each of those proceedings.

In the alert, we have tried to summarise the key takeaways from the Supreme Court judgement which would be helpful in navigating though the pending proceedings and chalking out the strategy ahead.

To delve into the specifics, please review the information provided in the following link :
https://www.linkedin.com/feed/update/urn:li:activity:7262514328841461761

Our brand-new Lower Parel office in Mumbai, the first 2,000 sq ft of our 20,000 sq ft expansion across India.

Presenting few exclusive snapshots of this beautifully designed space, each one capturing the vision, energy, and excellence driving India’s fastest-growing law firm. This office is a bold testament to our commitment to innovation and growth .

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Lower Parel office, Mumbai

Insight and Foresight

Continuing our journey, we're proud to unveil our Nariman Point office in Mumbai, an impressive 6,000 sq ft of our 20,000 sq ft expansion across India.

This office reflects our commitment to speed and excellence, featuring the Bugatti-inspired main cabin, designed with vibrant colors to embody the energy that drives us as India's fastest-growing law firm. Presenting a few exclusive snapshots that capture the spirit and innovation within this remarkable space.

Entrance


Workspace

Nariman Point office in Mumbai

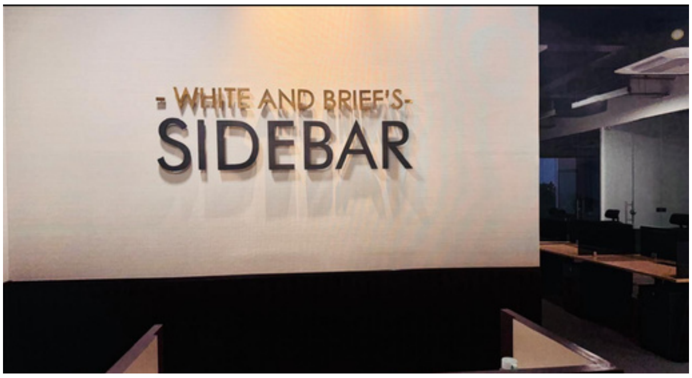
Managing Partner Cabin

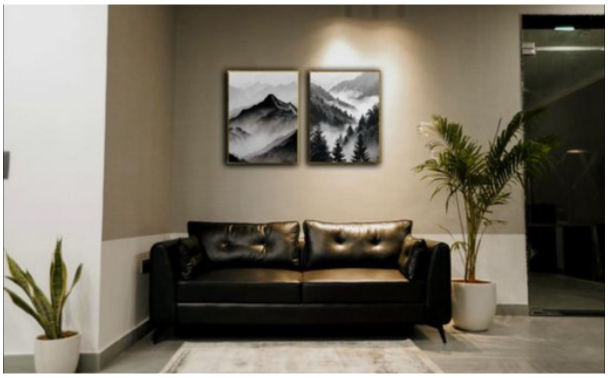
Managing Partner Cabin

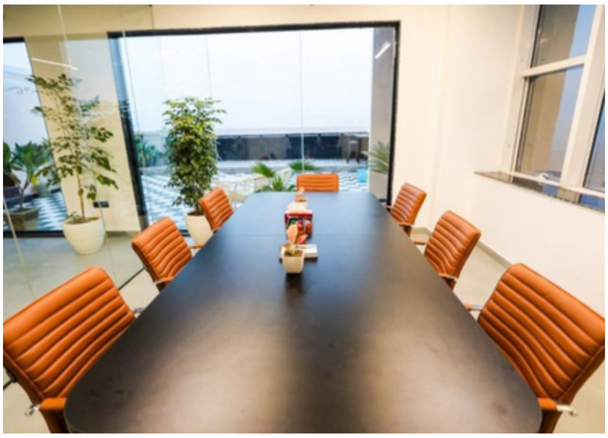
Managing Partner Cabin

Managing Partner Cabin

We proudly unveil our Delhi office, a significant milestone in our 20,000 sq ft expansion across India. Spanning an impressive 7,000 sq ft, this space is designed to inspire collaboration, foster innovation, and deliver excellence to our clients. Presenting a few exclusive snapshots of this beautifully crafted office, reflecting the vision and ambition of India's fastest-growing law firm.







Some More Snapshots of Our Delhi office

Recent Judgements

CIVIL

Union of India Vs. Pranav Srinivasan [Civil Appeal No. 5932 of 2023] [Writ Petition (C) No.123 of 2024] 2024 SCC OnLine SC 2920

In a landmark ruling on October 18, 2024, the Supreme Court clarified that Indian citizenship cannot be granted to foreign nationals through interpretations that alter the plain meaning of the Citizenship Act, 1955. This decision came in response to an appeal by the Union government against a Madras High Court ruling, which had favored Pranav Srinivasan (Petitioner), born in Singapore to Indian parents who later renounced their citizenship. Srinivasan sought to reclaim Indian citizenship under Section 8(2) of the Citizenship Act, 1955, arguing that his parents had formally renounced their citizenship, entitling him to resume his.

A bench consisting of Justices Abhay S. Oka and Justice Augustine George Masih ruled that the provisions of the 1955 Act were explicit and did not permit interpretations based on equitable considerations, particularly since the statute governs the process by which foreign nationals may acquire Indian citizenship.

The court observed that Sections 5, 8, and 9 contain simple, clear language that should be applied as written, without liberal interpretation. Petitioner's argument was rooted in the fact that his grandparents were born in undivided India and his parents were born in post-independence India before relocating to Singapore in 1998, where they acquired Singaporean citizenship. Pranav was born in Singapore in 1999 as a Singaporean citizen. His parents formally renounced their Indian citizenship in 2012, and Pranav subsequently submitted an application in Form XXV specified under Rule 24 of the Citizenship Rules, 2009, read with sub-section (2) of Section 8 of the Citizenship Act, 1955 for resumption of his Indian citizenship. However, the Supreme Court found that Pranav's case did not fall under Section 8(2) because his parents had automatically lost Indian citizenship in 1998 upon obtaining Singaporean nationality, per Section 9(1) of the 1955 Act. Since this loss was automatic, there was no need for Pranav's parents to renounce their citizenship in 2012. Therefore, Section 8(2), which pertains to cases where parents formally renounce Indian citizenship, was inapplicable to Pranav.

Court while dismissing the writ petition, however, clarified that this judgment will not preclude Pranav from applying for citizenship by invoking clause (f) of sub-section (1) of Section 5 of the 1955 Act. It will also be open for him to apply to the Central Government for the exercise of power under sub-section (1A) of Section 5 of the 1955 Act of relaxation of the period of twelve months provided in clause (f) of sub-section (1) Section 5 of the 1955 Act, it said. Additionally, the court dismissed arguments based on Article 8 of the Constitution, which grants citizenship rights to individuals with ancestors born in undivided India, as irrelevant to Pranav's case. The bench underscored that applying Article 8 in the manner argued by Pranav's counsel would create unintended consequences, potentially allowing foreign nationals born long after independence to claim citizenship based solely on ancestral ties.

N. Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board [Civil Appeal No. 6333 of 2013] 2024 SCC OnLine SC 3037

In the present matter, the Supreme Court ruled that a gift deed cannot be revoked simply because the gift's intended purpose was not followed. The Court supported the High Court's decision, which found that the Tamil Nadu Khadi and Village Industries Board, the respondent, had duly accepted and acted upon the gift deed, thereby establishing their absolute right and title to the property in question. Justice Pankaj Mithal and Justice Ujjal Bhuyan stated that while the property was not used for manufacturing Khadi Lungi and Khadi Yarn as outlined in the gift deed, leaving it vacant does not justify revoking the gift. There was no clause in the deed permitting its revocation if the property was not used as intended.

The respondent filed a suit seeking title and possession of the property based on a registered gift deed from the appellant, which the respondent claimed to have accepted. The Trial Court dismissed the suit, doubting the validity of the deed due to lack of acceptance. However, the appellate court overturned this decision, and the High Court upheld that the gift was valid, noting it was accepted and acted upon. In the absence of any revocation clause, the gift could not be revoked.

The Supreme Court rightly observed that the property was gifted to the respondent for manufacturing Khadi products, with a stipulation against transferring it for self-interest. The Court emphasized that the gift deed was absolute, with no condition allowing its revocation. That Section 126 of the Transfer of Property Act, 1882 (TPA) specifies that a gift deed generally cannot be revoked, except under certain circumstances. The Court explained that these exceptions are listed before the general rule in Section 126. The three contingencies are: an agreement for revocation based on a specific event, an agreement allowing revocation at the donor’s will, or a gift in the nature of a rescindable contract. None of these exceptions applied in this case, meaning the valid gift deed could not be revoked.

Ultimately, the Court concluded that once the deed was validly executed, transferring full ownership to the respondent, it could not be revoked. The revocation deed had no legal effect, especially concerning the limitation period for filing the suit. Thus, the Supreme Court dismissed the appeal.

ARBITRATION

Central Warehousing Corporation & Anr. v. M/S Sidhartha Tiles & Sanitary Pvt. Ltd.

CIVIL APPEAL NO.________/2024 Arising out of SLP (C) No. 4940 of 2022

In Central Warehousing Corporation & Anr. v. M/S Sidhartha Tiles & Sanitary Pvt. Ltd., the Supreme Court addressed two key issues: (1) whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996, and (2) whether the High Court erred in appointing an arbitrator under Section 11 of the Arbitration Act.

The dispute is between the appellant, Central Warehousing Corporation, and the respondent, Sidhartha Tiles & Sanitary Pvt. Ltd. with respect to a lease agreement between parties, concerning a storage space leased by the respondent for three years from September 12, 2012. The agreement, is subject to renewal by mutual consent of both the parties, also, this agreement contained an arbitration clause in it. Storage prices were changed throughout the lease, which led to disagreements over increased charges and the lease renewal. Due to the respondent's continuous occupancy, the appellant sought eviction under the Public Premises Act when the lease ended on September 11, 2015, and the respondent sought arbitration over the rate increases and terms of renewal.

The Estate Officer's order acknowledged the respondent's unauthorized occupancy post-lease expiration but the respondent had vacated the premises before the order was issued. The respondent then invoked the arbitration clause in the original agreement and filed for arbitration under Section 11(6) of the Arbitration Act. The High Court upheld the claim, holding that the arbitration clause applicable to the disagreement over renewal and storage charges.

Since the issues at hand were contractual responsibilities originating under the lease agreement, which was in effect until September 2015, the Supreme Court ruled on appeal that the Public Premises Act did not supersede the Arbitration Act in this particular case. The Court explained that while the Public Premises Act regulates the removal of unauthorized tenants and evictions, it does not prohibit arbitration for disagreements pertaining to contracts throughout the lease period.

Further, regarding the jurisdiction of Hon'ble High Court to appoint an arbitrator, the Supreme Court affirmed that the arbitration clause in the agreement was valid and applicable. Citing precedent from SBI General Insurance Co. Ltd. v. Krish Spinning, the Court noted that a referral court under Section 11 need only confirm the existence of an arbitration agreement without delving into the merits of the dispute, which are to be addressed by the arbitral tribunal.

The Hon'ble Supreme Court dismissed the appeal, directed to resume of arbitration proceedings, and imposed litigation costs of ₹50,000 on the appellant. The decision emphasizes the autonomy of arbitration in resolving contractual disputes, even when public premises are involved.

Judgment Summary: International Seaport Dredging Pvt. Ltd. v. Kamarajar Port Limited

Civil Appeal No 12097 of 2024(Arising out of SLP(C) No 25369 of 2024)

In International Seaport Dredging Pvt. Ltd. v. Kamarajar Port Limited, the Supreme Court addressed the conditions under which a stay can be imposed on the enforcement of an arbitral award, specifically regarding a statutory entity's obligation to deposit awarded sums.

International Seaport Dredging Pvt. Ltd. (Appellant in the present matter) was awarded a contract for dredging works at Kamarajar Port, which was valued at approximately Rs.274 crore and was to be completed by April 2017. After disputes arose between the parties, arbitration was invoked by Appellant, and thereafter in March 2024, a three-member tribunal awarded the Appellant Rs.21 crore plus interest. Both parties subsequently filed applications under Section 33 of the Arbitration and Conciliation Act, 1996 ("the Act"), for clarifications and corrections, which eventually led to an additional award of ₹12 lakh in costs to the Appellant.

Kamarajar Port (the Respondent in the present matter), challenged the Award under Section 34 of the Arbitration Act and requested a stay of execution. The High Court while granting a stay, has essentially furnished only two reasons. The first reason pertains to the question of cess, while the other reason is that the Respondent is not "a fly by operator". The appellant contested this and argued that, under the amended Arbitration Act a deposit of the awarded amount rather than a mere guarantee, should be required to uphold the sanctity of arbitral awards.

The Hon'ble Supreme Court examined the provisions of Sections 36(2) and 36(3) of the Arbitration and Conciliation Act, 1996, which delineate the conditions under which a stay on the enforcement of an arbitral award may be granted. These provisions mandate that courts consider the principles governing the grant of a stay on money decrees as outlined under the Code of Civil Procedure (CPC). Citing Pam Developments Pvt. Ltd. v. State of West Bengal, the Court emphasized that the Act's self-contained code does not differentiate between governmental and private parties regarding conditions for stays nor does it provide special treatment to government bodies. Hence, governmental bodies like Kamarajar Port should be subject to the same conditions as private parties reinforcing the Act's purpose of efficient dispute resolution without undue advantages based on status of the party.

The Court concluded that the High Court's reliance on the Respondent's statutory status was misplaced and directed instead that 75% of the awarded amount and including interest, be deposited by Kamarajar Port by November 30, 2024. The Hon'ble Supreme Court while modifying the High Court's decision and described that arbitral award as a form of "money decree," require substantial security rather than minimal guarantees, even for statutory entities.

The appeal was thus allowed, reinforcing principles of parity and procedural fairness in enforcing arbitral awards.

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GENERAL CORPORATE

Analysing the Hon'ble Supreme Court's Order to Liquidate Jet Airways

Jet Airways was launched in 1993 to provide premium air travel for discerning travelers in India. The company had a glorious past with over 65 destinations in India and across the globe, including Europe, the Middle East, Southeast Asia, and North America, with hubs in Mumbai, Delhi, Bengaluru, and gateways in Amsterdam, Paris, London, and Abu Dhabi. It flew more than 100 narrow-body and wide-body aircraft on nearly 1000 domestic and international routes, before suspending operations in 2019.

After a dramatic turn of events, in 2024 Airways which was once India's leading airline, culminated in a liquidation by the order of the Hon'ble Hon'ble Supreme Court of India, in its judgment STATE BANK OF INDIA AND ORS. Versus THE CONSORTIUM OF MR. MURARI LAL JALAN AND MR. FLORIAN FRITSCH AND ANR. C.A. No. 5023-5024/2024 and Connected. The Hon'ble Supreme Court invoked its extraordinary powers under Article 142 of the Constitution to order the liquidation of Airways due to the non-implementation of the resolution plan. The court called it a peculiar and alarming circumstance noting the fact that almost five years have elapsed since the Resolution Plan was duly approved by the NCLAT but still not implemented.

With this, the court, also set aside the NCLAT Order which allowed the cash-strapped Jet Airways' ownership transfer to the Successful Resolution Applicant (SRA) without complete payment in accordance with the resolution plan. The Court further directed the NCLT Mumbai Bench to appoint a liquidator forthwith in order to commence proceedings for the liquidation of the corporate debtor.

The facts and circumstances that led to the instant issue originated when the NCLT in 2019 admitted the application for initiation of Corporate Insolvency Resolution Process (CIRP) filed by State Bank of India (SBI) against Jet Airways (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Subsequently, SRA submitted a resolution plan. The plan was accepted by the CoC and the NCLT in 2021. Accordingly, a performance bank guarantee of INR 150 crore was submitted by SRA as per 36B(4A) of the CIRP Regulations. The Plan contained several conditions for its implementation to revive Jet's business but only some of them were achieved by the SRA although they argued that the rest could be done in a phase-wise manner. One such condition was the first tranche payment of Rs 350 crore to be made within 180 days. It must be noted that the Plan did not contain any provision for the satisfaction or waiver of the conditions. Despite this, the NCLT held that the relevant conditions were achieved.

Despite multiple extensions granted by the NCLT, the NCLAT, and the Hon'ble Supreme Court, the SRA failed to deposit the entire amount before the deadline. Their request to adjust the performance bank guarantee of INR 150 crore against part of its payment obligations was allowed by NCLAT. This is challenged by the lenders before the Hon'ble Supreme Court in the instant judgment.

The Hon'ble Supreme Court while allowing the lenders' appeal held that the NCLAT fell in error in allowing the adjustment of Performance Bank Guarantee of Rs. 150 Crore since it is contrary to the provisions of the Resolution Plan. Performance Bank Guarantee had to be kept alive until the complete implementation of the Plan. After placing reliance on, Ebix Singapore Private Limited v. Committee Of Creditors of Educomp Solutions Limited and Another, (2022) 2 SCC 401, the court held that based on the plain terms of the IBC, 2016, the Adjudicating Authority lacks the power to allow the withdrawal or modification of the Resolution Plan by a successful resolution applicant or to give effect to any such clauses in the Resolution Plan both post submission to the NCLT after approval by the CoC, and post-approval by the NCLT under Section 31(1) of the Code. In other words, once a CoC-approved resolution plan is submitted to the Adjudicating Authority i.e., NCLT, it immediately becomes binding on the CoC and the SRA, even if the Adjudicating Authority has not yet given its stamp of approval on the same.

The Court further held that the objective of the IBC is time-bound resolution. Hence, the obligations of an SRA under an approved resolution plan cannot be endlessly postponed under the garb of ongoing litigation. Therefore, the SRA cannot use pending litigation as an excuse to avoid its obligations under the Resolution Plan. Moreover, although the NCLT and NCLAT have powers to grant an extension of time, such powers cannot be exercised mechanically, without application of mind, and without weighing the consequences of such extension.

Bearing in mind that liquidation under the IBC is a matter of last resort, an opportunity was granted for making the said deposit and it was further extended. However, no payment was made. By underscoring that time is a crucial facet of the scheme under the IBC, the Court held that there was a failure on the part of the resolution applicant to implement the resolution plan and it was ordered that the liquidation proceedings against the corporate debtor be revived.

Accordingly, the Court used its plenary powers under Article 142 of the Constitution of India and ordered the Airways into liquidation under the Code. With that, the court permitted lenders to encash the performance bank guarantee of INR 150, and stated that the rest of the funds infused by the SRA stood forfeited.

The Court added that this litigation is an eye-opener highlighting certain deficiencies in the IBC, 2016, NCLTs, and NCLAT. These include: CoC should ensure to record reasons while approving or rejecting a resolution plan. The IBC, 2016 should provide for the constitution of a Monitoring Committee for a smooth handover of the Corporate Debtor to the successful resolution applicant. NCLTs, while approving a resolution plan, should record the next steps. The NCLTs and NCLAT should adjudicate applications in a time-bound manner. Appointment of an adequate number of members should be undertaken to aid the insolvency process.

This judgement is critical for future litigations ensuring clear guidelines regarding insolvency proceedings in a time-bound manner. The guidelines provided by the courts will ensure that the insolvency courts cautiously exercise their jurisdiction to extend timelines on SRA requests and allow liquidation as a viable option if the situation so warrants, to prevent any further value erosion.

Analysing the jurisprudence surrounding security interest for dissenting secured creditors based on Paridhi Finvest judgment.

The Hon'ble Supreme Court in Paridhi Finvest Private Limited v. Value Infracon Buyers Association and Another Civil Appeal Diary Number 14065 of 2024, upheld the order of National Company Law Appellate Tribunal, New Delhi, wherein it was observed that dissenting secured financial creditors cannot insist that their payment under a resolution plan should be calculated based on the value of the security interest they hold.

The facts and circumstances that led to the present dispute emerged when Value Infracon India Private Limited (Corporate Debtor) secured a loan from Paridhi Finvest Private Limited (Appellant) by creating a first and exclusive charge over 30 unsold units in its real estate project. When the Corporate Debtor entered into the Corporate Insolvency Resolution Process, the Appellant submitted a claim for INR 1.86 crore. A resolution plan proposed by the Value Infracon Buyers Association, backed by the Flat Buyers' Association (SRA), was approved by the Committee of Creditors. It was then sanctioned by the NCLT. Under this resolution plan, an amount of INR 1 crore was allocated to the Appellant. This was challenged by the appellant on the ground that he deserved the value of the security interest held by him.

On an appeal made by the appellant, the Appellant's arguments were rejected by the NCLAT. In order to arrive at its decision, NCLAT placed reliance on the Hon'ble Supreme Court's earlier judgment of India Resurgence ARC Private Limited v. Amit Metaliks Limited 2021 SCC OnLine SC 409 wherein it was held that a dissenting secured financial creditor cannot insist on payment of the amount as per the security interest it holds if there is a resolution of the Corporate Debtor through a resolution plan. This decision of NCLAT was challenged in the Hon'ble Supreme Court.

The Hon'ble Supreme Court summarily dismissed the appeal and held that the same does not involve any substantial questions of law which would warrant interference. Here it must be noted that the Hon'ble Supreme Court did not delve into the conflicting positions established in two of the Hon'ble Supreme Court's cases of Amit Metaliks Limited (supra) which was relied upon by the NCLAT to reject the Appellant's claim and DBS v. Ruchi Soya Industries Limited and Another [2024] 1 S.C.R. 114 which remains pending before the larger bench. Hence, the broader issue of whether dissenting secured financial creditors should be allowed to claim their payment on the basis of the value of the security interest they hold or based on the resolution plan remains inconclusive even though in the instant case the claim of the appellant on the basis of former criteria is rejected by both NCLAT as well as Hon'ble Supreme Court.

Insolvency proceedings are aimed at balancing stakeholder interests, but this should not erode the legal rights of secured creditors. Disregarding their security interests can result in unfair outcomes. Now the larger bench's decision in Ruchi Soya (supra) will determine if secured creditors' rights will remain subject to the CoC's discretion.

CRIMINAL

Analysing SC judgment of Neeraj Sud And Anr. Versus Jaswinder Singh on medical negligence

In the present case of Neeraj Sud And Anr. Versus Jaswinder Singh on medical negligence (2024 INSC 825), the Hon'ble Supreme Court provided the required clarity between the duties performed by the doctors and the legal penalties that it may attract while discharging the same in a negligent manner. The court held that a Doctor who follows the acceptable practice of the medical profession in the discharge of his duties would not be held liable for the patient's post-surgery complications.

The court further added that simply because of the reason that the patient did not respond favorably to the surgery or the treatment administered by a doctor or in case the surgery has failed, the doctor cannot be held liable for medical negligence straightway by applying the doctrine of Res Ipsa Loquitor unless it is established by evidence that the doctor failed to exercise the due skill possessed by him while discharging of his duties.

The Court clarified that the doctor is expected to follow the acceptable practice of the medical profession while discharging his duties. As long as he adheres to the same, no liability for medical negligence could be imposed on him.

The court reiterated basic constituents to impose actionable negligence in the context of the medical profession. These include a duty to exercise due care, breach of duty, and consequential damage. A simple lack of care, an error of judgment or an accident do not form the required constituents and hence, are not sufficient proof of negligence on the part of the medical professional so long as he follows the acceptable practice of the medical profession in the discharge of his duties.

Moreover, he cannot also be held liable for negligence merely because a better alternative treatment or course of treatment was available or because more skilled doctors were there who could have administered better treatment.

The case originated from a consumer complaint against the Doctor and hospital alleging the deterioration of vision post eye surgery.

The complainant's claim was initially rejected by the State Commission however, the NCDRC accepted the same. The Hon'ble Supreme Court reversed the NCDRC's finding and held that a medical professional can be held liable for negligence only when he does not possess the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment. None of the above two essential conditions for establishing negligence stands satisfied in the case at hand.

After applying the famous Bolam Test propounded in Bolam v. Friern Hospital Management Committee English Law (1957) 1 WLR 582 and later recognized in Jacob Mathews v. State of Punjab and Another 2005(6) SCC 1, the court held that the doctor was competent and skilled, possessed the requisite qualification to perform the present surgery and to administer the requisite treatment. He followed the accepted mode of practice in performing that surgery and there is no material to establish any overt act or omission to prove negligence on his part. Accordingly, the court allowed the appeal by the doctor and the hospital.

This Hon'ble Supreme Court's judgment provides a clear distinction between a doctor's professional duties and the circumstances under which legal liability for medical negligence may arise. Emphasizing adherence to acceptable medical practices, the Court held that liability cannot be imposed solely based on unfavorable outcomes or the availability of better alternatives unless there is concrete evidence of a breach of duty or lack of requisite skill.

Analysing SC direction for mandatory compensation to sexual assault victims by Sessions Court

Recently, the Supreme Court in Saibaj Noormohammad v. State of Maharashtra & Anr. Special Leave Petition (Crl.) No. 13890/2024 directed the Sessions Courts adjudicating a case concerning bodily injuries such as sexual assault etc. particularly on minor children and women to order for victim compensation after considering the facts and circumstances of the case along with the evidence on record while passing the judgment either convicting or acquitting the accused.

Further, the court added that this direction must be implemented by the District Legal Services Authority or State Legal Services Authority in letter and spirit in the quickest manner to ensure that the victim is paid the compensation at the earliest. This was ordered after the Court observed that a lack of a compensation order given by the Sessions Court ultimately delays benefits to victims.

The issue in the present case emerged when the appellant challenged the Bombay High Court's dismissal of his application seeking suspension of sentence and bail under Section 389 of CrPC. The appellant was convicted under The Indian Penal Code, 1860 (IPC) and Protection of Children from Sexual Offences (POCSO) Act, 2012.

In this case, concerns were raised about the lack of victim compensation because the Sessions Court had not ordered victim compensation under Section 357-A of the CrPC or the POCSO Act. Learned Amicus drew the Court's attention to the scheme as contemplated under Section 357-A of the CrPC and submitted that such a scheme is in vogue in every State but hardly being implemented in its true letter and spirit. For instance, the State of Maharashtra's "Manodhairya Scheme" for rape victims, children who are victims of sexual offenses, and acid attacks (women and children).

He further added that as per Section 357-B of the CrPC, the compensation is in addition to the fine under Section 376-D of the IPC and there is also provision for the treatment of victims, etc. but the same is lacking implementation in its true letter and spirit.

Based on this, the court ordered directions for mandatory compensation in cases involving bodily harm, especially in sexual assault involving minors or women. Further, the Court directed a copy of this order to be circulated to all High Courts to ensure that Principal District Judges pass it on to Sessions Judges, who are expected to mandate victim compensation as necessary. Further, in the current case, the Court recommended the High Court to consider granting interim compensation to the victim under Rule 7 of the POCSO Rules, 2012, and Rule 9 of the POCSO Rules, 2020.

The Supreme Court's directive underscores a significant shift toward prioritizing victim-centric justice in cases involving bodily harm, particularly sexual assault against minors and women. This decision highlights the need for Sessions Courts to actively implement victim compensation under Section 357-A of the CrPC and related provisions, ensuring immediate financial and psychological support for survivors. While the judgment addresses systemic delays in delivering compensation, it also exposes critical gaps in the implementation of victim compensation schemes like Maharashtra's "Manodhairya Scheme."

TAX

Metal One Corporation Pvt Ltd vs. Union of India [Order dated 22.10.2024 in WP(C) No. 14945 of 2023]

In this ruling, the Hon'ble Delhi High Court addressed the validity of the show cause notices issued to various companies demanding GST liability on supply of manpower service by the overseas group company to the Indian subsidiaries (petitioners).

While the contest was initially on the issue of whether of not there is secondment of employees during the pendency of the matter before the Court, the CBIC issued Circular No.210/4/2024-GST dated 26.06.2024 on this point. The petitioners later, sought to rely upon this clarification.

The main petitioner is registered in three states, under the CGST Act and entered into individual employment agreements with the employees of its parent entity in Japan, making such people the employees of the petitioner.

The respondents submitted that secondment of employees is a common global practice and the total consideration given to the persons on temporary deputation in India will be considered for valuation of taxable value. They submitted that the show cause notices and demand therein are valid because such persons are not in an employee-employer relationship. Hence GST shall be levied, along with interest and penalty under Section 73 of the CGST Act.

The petitioners submitted that this transaction does not attract levy of GST, replying upon the landmark judgment of the Hon'ble Supreme Court in CCE & Service Tax vs. Northern Operating Systems (P) Ltd. (2022) 17 SCC 90.

As per the petitioners, the Supreme Court had held that transactions in which an overseas entity had seconded employees to an Indian entity and then charged the employees' salaries borne by the Indian company in the form of reimbursement, then the same would qualify as manpower supply by the overseas group company and only then will be subject to levy of GST.

The petitioners further submitted that the show cause notices would not sustain based on the provisions of second proviso to Rule 28 read with para 3.7 of Circular No.210/4/2024-GST. The effect of this combined reading will be that value of import of services will be deemed to be 'Nil' when services have been received from a foreign related entity but no invoice has been raised by the domestic recipient entity.

The Court observed that while the payments have been made by the petitioners, as alleged in the counter affidavit of the respondents, the petitioners did not raise any invoices on such payments. Considering this, it cannot be argued that any tax is payable once the value of a supply has been deemed to be 'Nil'. The Court touched upon the correctness of the Circular in respect of the intent of the Second Proviso to Rule 28, but observed that the Court has to deliver the judgment as per the Circular. The Court held the show cause notices to be futile and quashed the notices and also orders, if any, consequently passed. One of the petitioners, Sony India, had paid the tax but the department order imposed penalty and interest on Sony. The Court held that Sony India shall stand absolved of all tax liabilities, in light of such circular. power of officers of the Directorate General of Intelligence ('DRI') to issue show cause notice under Customs Act, 1962.

W&B Comments: This judgment shall be a relief for those parties which are being relentlessly pursued by the DGGI for payment of GST by RCM on import of services. In this judgment, the Court did not go into the merits of the matter and the ruling of the Supreme Court in Northern Operating Systems was not relied upon by the Court. The Supreme Court judgment had ruled that taxability would depend upon the reading of the agreements to establish whether there is an employer-employee relationship or principal to principal relation between overseas company and the Indian company. The Delhi High Court rather than going into this question or the terms of the agreement, allowed the writ petition simply based upon the Circular coupled with the fact of non-issue of invoice by Indian entity, even while doubting its validity in relation to Rule 28.

M/s. J.S.B. Trading Co. vs. State of Punjab [Order dated 04.11.2024 in CWP No. 14843 of 2023]

In this case, the High Court has highlighted the importance of following the proper statutory process.

Notice was issued to the assessee under Section 61 of Punjab GST/CGST Act, 2017 was issued for scrutiny of the return to explain and prove the genuineness of the ITC claimed on the purchases, alleging that during the period 2017-18, the firm had claimed ITC from four different firms, whose registration had already been cancelled.

The petitioner replied to the notice and his reply was found to be satisfactory and such satisfaction was communicated by the department vide form ASMT-12 dated 28.02.2023. Simultaneously and prior to it, the petitioner was also served with a pre-show cause intimation under Rule 142 (1) (A) in Form GST DRC 01A dated 23.02.2023, stating that demand is payable as reply to the notice under Section 61 in Form ASMT-10 of GST Act, 2017 was not found to be satisfactory.

Following the pre-show intimation, show cause notice was issued under Section 74 of the CGST Act on the very same ground of genuineness of ITC availed from registration cancelled suppliers. Petitioner replied to the SCN and submitted that proceedings had already been dropped vide ASMT-12. However, order confirming the demand, interest and penalty was passed.

The petitioner submitted that once the notice under Section 61 stood dropped, the Proper Officer could not have proceeded further under Section 74. The respondents countered on the ground that no documentary evidence has been submitted by the petitioner in response to proceedings under Section 74(5).

The Court, ruling in favour of the petitioner, observed that initiating proceedings under Section 74 are that the concerned officer should reach to a conclusion that the ITC has been wrongly availed or utilized by reason of fraud or any wilful mis-statement or suppression of facts to evade tax. The Court observed that two different views have been expressed by the same Proper Officer, one while intimating the liability under Section 74(5) on 23.02.2023 and the other by subsequently dropping the proceedings under Section 61(2) on 28.02.2023. Therefore, it can be presumed that after the notice was given under Section 74(5) of the Act, the Authority has reached to the conclusion that no additional demand is payable/chargeable and therefore, the proceedings stand dropped.

W&B Comments: Under the GST regime, the assessees have faced several absurd actions from the department and the reply and clarifications submitted by the assessees as to any patent defect and error has little effect on the department which proceeds to confirm the demand. This judgment clarifies that once the department has formed a view and such view has been communicated vide a statutory process, the department cannot again initiate action based on a divergent view. This also demonstrates lack of robust IT system wherein a second proceeding qua the same FY and for the same issue cannot be initiated where any previous proceeding in respect of the same subject matter is pending for adjudication.

M/s. Ford India Private Limited vs. The Office of the Joint Commissioner (ST) [Order dated 22.11.2024 in W.P. No. 35448 of 2023]

The Hon'ble Madras High Court has held that an assessee, while filing appeal against a demand order, can used the Electronic Credit Ledger to make the statutorily requisite pre-deposit.

The petitioner is a manufacturer and was issued a show cause notice on the grounds of tx liability difference between GSTR-1 and GSTR-3B filed for the period 2017-18. After an adverse order was passed against him, he filed an appeal against it under Section 107 of the CGST Act.

While making the pre-deposit as required under sub-section (6), the petitioner chose to make it through his Electronic Credit Ledger and subsequently also filed the physical copies of the appeal.

The filing of the appeal was, however, not accepted by the department and a deficiency mem was issued to him stating that pre-deposit has to be made by debiting the Electronic Cash Ledger only within 7 days of the receipt of the deficiency memo. The petitioner challenged this memo and also prayed for upholding the validity of pre-deposit already made by him.

The High Court rejected the contentions of the department on the grounds that Electronic Credit Ledger and the amount available in the Electronic Credit Ledger can be utilized only for the purpose of payment towards output tax in terms of Section 49(4) of TNGST Act and in terms of Section 107(6) of TNGST Act, if 10% of the disputed tax has to be paid, it means that such deposit is made only towards discharging liability of output tax.

The Court also observed that under Section 49B of the CGST Act, government has the power to prescribe the order and manner of utilisation of the ITC on account of IGST, CGST, SGST or UTGST, towards payment of any such tax. In line with such provision, CBIC has issued Circular No. 172/04/2022-GST dated 06.07.2022, wherein it has been clarified that any payment towards output tax, can be made by utilization of the amount available in the electronic credit ledger. This payment can be made whether in terms of self-assessment in the return or as a consequence of any proceeding instituted under the provisions of GST Laws. Further, filing of APL-01 provides for the mechanism to pay pre-deposit by utilizing Electronic Credit Ledger as well.

W&B Comments: This question has already been decided by the Hon'ble Bombay High Court [Oasis Realty Vs. Union of India reported in 2023 (71) GSTL 158] and Hon'ble Patna High Court [Raiyan Traders Vs. State of Bihar reported in 2024-VIL-978 (Patna High Court)]. However, Hon'ble Orissa High Court [Jyoti Construction Vs. Dy. Commissioner of Central Tax & GST, Jaipur reported in 2021 (54) GSTL 279] has ruled that pre-deposit cannot be considered 'output tax' under Section 2(82). Since, GST is a country-wide law, the precedence value of judgments is pan India. Now that 3 High Courts have ruled in favour of the assessee and there is also a department circular, the issue should no longer be raised by the GST authorities.

Forms for Amnesty Scheme under Section 128A of the CGST Act

GSTN has issued an advisory on the waiver/amnesty scheme under Section 128 of the CGST Act. The advisory states that forms GST SPL-01 and GST SPL-02 are under development and will be available on the portal in January 2025.

It advises that, in the meanwhile, the taxpayers may pay the amount of tax demanded under Section 73 on or before 31.03.2025. Inc case of notices, such tax may be paid under the "payment towards demand" facility through DRC-03. In case of demand orders, payment may be made through DRC-03 and then such DRC-03 may be linked with the demand order though form DRC-03A. Payment and linking facility is already available on the portal.

It may be noted that Table 4 of form SPL-01 requires details of the DRC-03 though which tax demand has been paid by the beneficiary of the waiver scheme.

Virtual Hearing in case of Show Cause Notices and Appeals in GST

CBIC vide an instruction dated 05.11.2024 has amended the Instruction F. No. 390/Misc/3/2019-JC dated 21.08.2020. The amendment has deleted the paragraph which allowed personal hearing through virtual mode only at the request of the assessee.

The effect of such amendment is that personal hearing of all adjudication and appellate matters will now be done only though virtual mode. Physical hearing to be granted only on request of the assessee in rare cases and after recording the reason for it. It may be noted that this has been issued by the CBIC and may not be applicable to the SGST departments, unless a corresponding instruction is issued by them. The process to be followed will be as under:

- Department will provide the link and relevant e-mail address for correspondence to the registered person;
- Authorised representative of the registered person will have to file the vakalatnama and the photo ID card though e-mail;
- A Record of Personal Hearing will be prepared by the officer, containing submissions made by the assessee. The soft copy of such submissions in PDF format will be shared with the registered person on the e-mail.
- If assessee wants to amend the submissions, he can amend the PDF file and sign it and then send it back within 3 days. Additional documents may also be submitted along with it.

Articles

The government's move to remove the dual compliance requirement of Environmental Compliance and consent to operate/ consent to establish

There has been a long-standing demand from industry to remove dual compliance of Environmental Clearance (EC) and Consent to Establish (CTE) for setting up new industries. The Government of India has accepted the same recently via a notification (No. Q-15012/2/2022-CPW-Part(1)/e-240741) released by the Ministry Of Environment, Forests And Climate Change. Hence, the non-polluting "white category" industries will no longer be required to take CTE or Consent to Operate (CTO). The only requirement will be of EC and the industries who have taken EC will not be required to take CTE. This will reduce the compliance burden as well as prevent duplication of approvals. A total of 39 categories of industries will benefit from the exemption of the mandatory requirement of approaching State pollution control boards for permission to run their industries.

Central Pollution Control Board (CPCB) divided industries into different color codes in 2016 wherein the "Red category" encompasses industrial areas with a pollution index of 60 and above, and the "Orange category" are industrial areas with a pollution index of 41 to 59, "Green category" include industrial areas with pollution index of 21 to 40 and the "White category" with industrial areas of pollution index of 0 to 20.

The Pollution Index (PI) of any industrial sector ranges from 0 -100. These Index scores are prepared based on emissions, waste discharge, generation of hazardous waste, and consumption of natural resources. An increase in the value of PI indicates the increasing level of pollution load in the industry. This is the reason, in the above list, 'red category' industries are subjected to the strictest scrutiny as the goods being manufactured by them emit the most toxic wastes.

The white category on the other hand is the least polluting industry according to the above classification. These include manufacturing units to make solar cells and modules, wind and hydel power units, fly ash bricks, leather cutting, assembly of air coolers, repairing and servicing, Medical oxygen, Organic and inorganic nutrients (by physical mixing), Organic manure (manual mixing), Packing of powdered milk, Paper pins and u clips, Repairing of electric motors and generators (dry mechanical process), Diesel pump repairing and servicing (complete mechanical dry process), Electric lamp (bulb) and CFL manufacturing by assembling only, Electrical and electronic item assembling (completely dry process), Engineering and fabrication units (dry process without any heat treatment/metal surface finishing operations/painting), Flavoured betel nuts production/grinding (completely dry mechanical operations) etc. The current exemption from dual requirements aligns with India's broader environmental objectives like the National Action Plan on Climate Change (NAPCC) and the Paris Agreement to reduce emissions intensity and increase non-fossil fuel energy sources. There is no doubt that the policy reflects a growing emphasis on balancing economic growth with ecological sustainability to foster an environment conducive to green technologies while addressing pollution control through existing frameworks, however, critics have expressed concerns over the wider impact of the policy on the environment, humans as well as economy.

In order to understand the negative side of the policy it is pertinent to understand the legislative framework in India surrounding the issue. Environmental Clearance (EC) is governed by the Environmental Impact Assessment (EIA) Notification, 2006. This clearance is mandatory for new industrial and development projects. It requires rigorous assessment of potential environmental impacts, including public consultations for certain project categories.

Consent to Establish (CTE) is Issued under the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974. It is granted by State Pollution Control Boards to ensure industries comply with pollution control norms before operations begin.

It is a precondition for receiving Consent to Operate (CTO). Prior to these new norms, an amendment was made to the 'Water Act,' earlier this year. The Water (Prevention and Control of Pollution) Act, of 1974 prioritized the institutional structure to address water contamination. This led to the creation of Central Pollution Control Boards (CPCB) and State Pollution Control Boards (SPCB) in 1974. These boards monitored and prevented public water resources from getting contaminated by sewage and industrial effluents. As per the Act, the SPCB's permission was required for establishing any industry or treatment plant, which could discharge sewage into a water body, sewer, or land.

The new norms will reduce approval timelines significantly, aiding the ease of doing business, particularly for startups and MSMEs. By eliminating redundancies, industries can focus more on implementation rather than navigating bureaucratic hurdles. Moreover, simplified processes are likely to attract domestic and foreign investments by improving India's business environment. Earlier, there were imprisonment provisions for minor violations, which were simple infringements and did not lead to any injury to humans or damage to the environment. This often caused harassment to businesses and citizens and was not in consonance with the spirit of ease of living and ease of doing business. However, experts have warned of the negative impacts as well. Critics argue that merging EC and CTE processes may dilute pollution control oversight, particularly in states with limited monitoring capacities. Also, ensuring strict adherence to EC conditions without the CTE as an additional checkpoint might strain regulatory bodies. At a time when the air pollution season is at its peak in the country with some states like Delhi crossing severe levels and world leaders pondering over climate protection parameters in the Conference of Parties (COP29) meeting in Baku, the Environment Ministry's step allowing 'white category' sector to establish and operate industries without obtaining two major approvals will not only send a wrong message, but also infringe letter and spirit of environmental action. Nonetheless, the removal of dual compliance for EC and CTE represents a bold step towards regulatory reform, reflecting the government's commitment to reducing bureaucratic inefficiencies while balancing environmental responsibilities. However, the success of this policy will hinge on effective monitoring and robust enforcement mechanisms to prevent any compromise in environmental standards.

Streamlining Inbound Cross-Border Mergers: India's New Rules for Foreign Holding Companies and their Indian Subsidiaries

The inbound Mergers and Acquisitions (M&A) regime has evolved immensely throughout the years. It has attracted global interest making India an emerging destination of choice for companies seeking to establish their supply chains or production hubs. India's M&A success has been driven by various internal and external factors including the government's "Make in India" campaign, multiple progressive reforms for ease of doing business in India, India's rising tech prowess, robust base of skilled workforce, and domestic demand. Various amendments have been made in the regulatory landscape to simplify and facilitate cross-border Mergers and Acquisitions (M&A) in India. In August 2024, the Finance Ministry amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, to streamline FDI regulations regarding cross-border share swaps between Indian and foreign companies. These changes will enhance the global expansion capabilities of Indian businesses through mergers and acquisitions.

The settled position for M&A in India is that the shareholders and creditors approve the scheme of the merger and then file it in the National Company Law Tribunal (NCLT). NCLT then reviews the scheme of the merger to ensure that the interests of all stakeholders including minority shareholders, creditors, and employees are duly protected. There is no prescribed time limit for review within which the NCLT is required to provide its decision. This is the reason why inbound mergers can be time-consuming.

Further, Tax benefits for inbound mergers are available in those cases where all assets of the foreign merging company transfer to the surviving Indian company or a minimum of 75% of shareholders of the foreign company become shareholders of the Indian company. Tax exemptions include no capital gains tax on asset transfer for the merging company and no capital gains tax when receiving shares of an Indian company as consideration on the shareholders.

In other words, Inbound mergers qualify for tax neutrality when all assets transfer to an Indian company with 75% shareholder continuity. Both the merging company and its shareholders are exempt from capital gains tax when consideration is in the Indian company's shares.

Recently, to further streamline the procedure and pave the way for ease of doing business, the Ministry of Corporate Affairs issued a notification [F. No. 2/31/CAA/2013 – CL.V Part] notifying certain changes to the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. These amendments dealing with the merger of a foreign company with its domestic subsidiary unit in India, will take effect from September 17, 2024.

According to the notification, Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 has been amended. It will now include a sub-rule after sub-rule (4) stating that where the transferor foreign company incorporated outside India is a holding company and the transferee Indian company is a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation:
(a). Both the foreign transferor company and the Indian transferee subsidiary must secure prior approval from the RBI before proceeding with the merger or amalgamation.

(b). The transferee Indian company is mandated to comply with the provisions of section 233 of the Companies Act, 2013 which provides for a Fast-Track Merger Route for specific mergers, such as those between holding and subsidiary companies. Hence, they can bypass the National Company Law Tribunal (NCLT) approval route. This streamlines the merger process while maintaining transparency and regulatory oversight. It is suitable for transactions involving companies with straightforward financial and operational structures, such as wholly owned subsidiaries.

(c). The application must be made by the transferee Indian company to the Central Government under section 233 of the Act and provisions of rule 25 shall apply to such application. Rule 25 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 outlines the process for mergers or amalgamations of certain companies. As per the rule, a notice has to be issued to seek objections/suggestions from authorities or any affected parties under Section 233 of the Companies Act whenever any merger is proposed.

For the purpose of this rule, a scheme of merger or amalgamation under section 233 of the Act can be entered into between two or more start-up companies; or one or more start-up companies with one or more small companies.

Lastly, a declaration is required under Sub-Rule (4) of Rule 25. The declaration must accompany the merger application and include specific undertakings, such as compliance with the law and assurance that the scheme is not prejudicial to creditors, shareholders, or the public.

Removal of time-consuming clearance from the National Company Law Tribunal (NCLT) will lead to fast-track mergers and amalgamations, for example, between the merger of a start-up incorporated outside the country and its wholly owned Indian unit. In cases involving mergers with companies incorporated in countries that share a land border with India (for example, China), a declaration in Form No. CAA 16 has to be submitted to the Central Government. In light of these recent circumstances, the new rules require both the foreign parent company and its wholly-owned Indian subsidiary must first get approval from the Reserve Bank of India (RBI) for any mergers or amalgamations. Additionally, the Indian company involved in the merger must apply to the central government for approval, following the process outlined in Section 233 of the Companies Act and Rule 25 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.
Both foreign holding companies (transferor) and their Indian subsidiaries (transferee) are required to secure prior approval from the Reserve Bank of India (RBI). This ensures compliance with foreign exchange and cross-border capital flow regulations but may add procedural complexity if clarity on "deemed approval" is not addressed. This may delay implementation. The fast-track process bypassing the NCLT will reduce the overall merger completion timeline from 8-12 months to a shorter period, enhancing operational efficiency for companies. Moreover, India is witnessing a trend of reverse flipping. Many Indian subsidiaries are merging with their foreign parent companies, particularly startups. India's IPO market is also at its peak. The rules align with India’s efforts to attract companies back into the country, particularly in light of its maturing IPO market and increasing investor confidence. In order to ensure that the regulation achieves its intended purpose of providing a conducive environment for M&A, it is pertinent to address certain flaws that might hinder the progress. The RBI and Ministry of Corporate Affairs (MCA) should issue detailed guidelines to ensure predictability and reduce procedural delays.

Analysing Waiver of Inter-State Transmission System (ISTS) charges for solar and wind power

India is part of the global pledge for a sustainable future. In order to further its ambition, the country aims to transition from fossil fuel to greener, more renewable sources. As a result, it plans to have 500 GW of generation capacity from non-fossil energy-based sources by 2030. Solar and wind power projects, being clean, green, and sustainable play a paramount role in the country's clean energy transition journey. Hence, the success of India's pledge for non-fossil fuel-based energy is largely linked to the efficiency of electricity distribution grids and ISTS.

Inter-State Transmission System (ISTS) refers to the transport of electricity generated from any kind of source of energy. Through this, the surplus areas can share their excess electricity with deficit regions that have a higher demand for electricity but lack access to energy sources.
In order to promote the development of renewables in RE-rich states and encourage inter-state procurement of renewables, the Ministry of Power, Government of India notified waiver of ISTS charges and losses for solar and wind projects in 2016 via Tariff Policy. Since then the government has extended the deadline multiple times. Recently, the government waived the inter-state transmission system (ISTS) charges and losses on all solar and wind projects commissioned before June 30, 2023. The Ministry subsequently announced an extension of the waiver up to June 30, 2025. After the deadline ie 2025, ISTS charges will be levied on Renewable Energy projects commissioned after 30th June 2025 in a phased manner. A Central levy of 25% will be applicable on projects commissioned between 1st July 2025 and 30th June 2026. For RE projects commissioned after 1st July 2028, 100% ISTS charges will be levied.

The companies will benefit by Procuring Renewable Energy Via ISTS in multiple ways. Firstly, the waivers will ensure Cost-Effective Energy Solutions and companies can reduce energy costs by 20-50% annually thus increasing their competitiveness.

The companies will ultimately transfer this benefit to the consumers which will benefit them in the form of reduced costs. Further, the waiver of ISTS charges will encourage renewable capacity addition by reducing the cost of generation to help achieve the country's goal of non-fossil fuel energy capacity of 500 GW by 2030. Considering the fact that the Central Electricity Regulatory Commission has multiple separate transmission zones with the resultant ISTS charges for renewables ranging from about ₹1 ($0.012)/kWh to ₹2.30 ($0.028)/kWh, without the waiver, some projects may become unfeasible and lose their competitiveness in the market.

There is no doubt that ISTS will allow green power to be delivered through open access to states lacking favorable policies or availability of land thus benefitting both consumers and developers by allowing access to green power at a reasonable cost. While the initiative and relief provided by the extension of the waiver played essential roles, the critics warn about various flaws that can impact the fulfillment and effective implementation. One such challenge includes transmission infrastructure challenges including the shortage of substations. It is a huge concern for the project's development because delayed projects will miss out on the waiver, and the projects will end up being economically unviable. In such a situation it is important for the government to take proactive measures to address the infrastructure gap timely. Another concern arises from the fact that the power generators were required to pay the ISTS charges during the long-term access regime which led to the concentration of the majority of the renewable energy capacity in some regions like Rajasthan and Gujarat. This led to huge grid congestion. Now, ISTS charges are shifted to the beneficiaries. However, for projects developed through competitive bidding by implementing agencies, these charges discourage ISTS-connected projects. To address this, the government is promoting renewable energy development via state-level bids, especially in states with low renewable energy adoption and minimal grid congestion, such as Bihar, Uttar Pradesh, Punjab, and Haryana.

In the beginning, the ISTS waiver encouraged renewable energy (RE) growth in states with abundant solar and wind resources like Rajasthan, Gujarat, and Karnataka. These states exported surplus renewable energy to other states, helping them meet Renewable Purchase Obligations (RPOs) without worrying about transmission charges.

However, over time, the waiver resulted in uneven growth across states. Many states possess good solar potential, still, 83% of RE capacity is concentrated in just a few states, like Rajasthan, Gujarat, and Tamil Nadu. This is the result of the cost advantages created by the waiver. When power is imported from RE-rich states to low-RE states, the total cost includes generation and ISTS charges. The waiver offsets these costs and makes importing cheaper as compared to generating locally. Further, the unequal distribution of transmission costs leads to some states like those in the northeast paying more despite low usage of RE from the grid. Hence, it has become more pertinent now than ever to ponder over supportive measures like subsidies in low-RE states to counteract the negative effects and ensure fair growth and healthy competition. In the long run, phasing out of the waiver as planned can be an effective measure. The timeline for setting up all transmission projects is another concern for the companies, as not all projects can be completed within this timeframe. The reasons can be many including the involvement of numerous nodal agencies in the approval process, which creates obstacles in securing timely and seamless approvals. Recently, the government extended the ISTS waiver for green hydrogen and green ammonia projects until December 31, 2030, provided they utilize renewable energy.

There has been a demand for further extension of the waiver policy. It is true that extending the ISTS charges waiver will undoubtedly serve as a catalyst for exponential growth within the industry. Without such an extension, consumers could be exposed to an open risk of transmission charges. However, there are various challenges that will persist, the effective resolution of which is not only beneficial for the stakeholders and states but also for the overall realization of the goal for which the waiver policy was intended. It is essential to ensure infrastructure development, particularly the establishment of additional substations, for the seamless execution of ISTS projects. Also, it is essential to ensure equitable and inclusive growth along various states not only the ones which are RE surplus.

Understanding SEBI's New Delisting Framework: Key Features and Provisions

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

The capital market regulator Securities Exchange Board of India (SEBI) has notified new rules revamping the delisting framework in the country via SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2024 notified on 25.09.2024. The new rules have paved the way for fixed price delisting for companies with frequently traded shares as an alternative to the regular reverse book-built price delisting. The floor price for any delisting offer can be determined by taking into account the 'adjusted book value' of the listed entity. For a fixed-price delisting, the acquirer will have to offer a minimum 15% premium to the floor price to the public shareholders. These new rules are aimed at promoting ease of doing business and enhancing the efficiency of the delisting mechanism.

Earlier the reverse book building process (RBB) was followed under which a firm planning to delist its shares from the stock exchange would make a public announcement and set a minimum floor price for the delisting offer. After this, shareholders of the company would place offers to sell securities back to the promoters or large shareholders. This process was introduced in 2003 through the SEBI (Delisting of Securities) Guidelines 2003.

SEBI in its new rules has provided an alternative to this RRB process. Fixed-price delisting is the alternative for for delisting of companies whose shares are frequently traded. Moreover, SEBI has mandated minimum a premium of 15% on the offer price for the fixed-price delisting.

Earlier, the floor price was calculated as per Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. It was linked to the traded price of the stock over a specified period. Under the new rules, the floor price (minimum price) in the case of Frequently Traded Shares, will be calculated as the highest value among the following:

- 52-Week Average Price: The volume-weighted average price of shares acquired by the buyer or their associates during the 52 weeks before the reference date.
- 26-Week Highest Price: The highest price paid for shares by the buyer or their associates in the 26 weeks before the reference date.
- 60-Day Market Price: The volume-weighted average market price of shares over the 60 trading days prior to the reference date, on the stock exchange with the highest trading volume.
- Adjusted Book Value: The adjusted book value of the company's shares (based on consolidated financials), determined by an independent registered valuer.

For infrequently traded shares, the floor price will be determined as the highest value among the following criteria:

- 52-Week Average Price: The volume-weighted average price of shares acquired by the buyer or their associates during the 52 weeks before the reference date.
- 26-Week Highest Price: The highest price paid for shares by the buyer or their associates in the 26 weeks before the reference date.
- Valuation by an Independent Valuer: A price determined by a registered independent valuer, considering:
  1. The book value of the shares,
  2. Comparable trading multiples,
  3. Other common valuation metrics for similar companies in the same industry.
- D.Adjusted Book Value: The adjusted book value of the company's shares (based on consolidated financials), as assessed by an independent registered valuer.

As per the new rules, the reference date for computing the floor price is the date of the public announcement for the delisting offer, or the next trading day, if the public announcement is made after market hours or on a non-trading day. For instance, if the initial public announcement is made at 1:00 p.m. on August 4, 2023 (Friday), then August 4, 2023, will be the reference date. However, if the initial public announcement is made at 4:30 p.m. on August 4, 2023 (Friday), then August 5, 2023 (Saturday) will be the reference date.

Earlier, the Delisting Regulations allowed acquirers to make a counter-offer within two working days. However, the new rules lower the thresholds for counter-offers. The acquirer can now make a counter-offer if their post-offer shareholding, along with persons acting in concert (PACs), exceeds 75%, and at least 50% of public shareholders have tendered their shares in the delisting offer. Additionally, the counter-offer price must be the higher of two values: the volume-weighted average price (VWAP) of the shares tendered during the RBB process or any indicative price that exceeds the floor price. The counter-offer mechanism does not apply to fixed-price delisting offers that do not involve a bidding or price discovery process. This amendment aims to address past inefficiencies and facilitate smoother delisting processes.

The new rules contain provisions for Investment Holding Companies (IHCs). IHCs will have an additional route for delisting, apart from the Reverse Book Building (RBB) and fixed-price methods. This route involves pursuing delisting through a scheme of arrangement sanctioned by the National Company Law Tribunal (NCLT). SEBI has emphasized regulatory approvals and adherence to the Companies Act to maintain transparency and safeguard shareholder rights.

SEBI's new delisting framework represents a significant overhaul of the regulatory landscape, balancing innovation with investor protection. By introducing fixed-price delisting alongside the traditional Reverse Book Building (RBB) method, SEBI has expanded options for companies, ensuring greater flexibility in the delisting process. Key provisions, such as the redefined floor price calculation, mandatory premium for fixed-price offers, and a streamlined counter-offer mechanism, address historical inefficiencies and aim to promote transparency and fairness. Furthermore, fixed-price delisting reduces speculative volatility and provides upfront pricing certainty for shareholders and acquirers, facilitating smoother decision-making and fund arrangements.

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A Closer Look at Our Recent Features

Our Managing Partner Mr. NILESH TRIBHUVANN has been featured in the Mint article "US Indicts Adani: Spotlight on US Attorney Breon Peace."

This feature is available in both print and digital formats.

Read the full article here:
https://www.livemint.com/companies/us-indicts-gautam-adani-us-attorney-breon-peace-president-biden-civil-rights-fbi-energy-financial-market-donald-trump-11732426466471.html

Experts Warn of Severe Legal Fallout for Adani Group and Associates,”


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Business Standard

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Nilesh Tribhuvann
Managing Partner

Experts warn of severe legal fallout for Adani group and associates.

“Beyond the financial markets, the indictment could have far-reaching implications for India’s regulatory and business landscape Domestically agencies such as Sebi and the Reserve Bank of India might face mounting pressure to investigate Adani’s operations to reassure investors about the integrity of Indian capital markets. Internationally this incident could strain India-US business relations and dampen foreign investment enthusiasm as global stakeholders may view Indian conglomerates with increased caution”

Our Managing Partner, Mr. NILESH TRIBHUVANN , has been quoted in a Business Standard article titled “Experts Warn of Severe Legal Fallout for Adani Group and Associates,” offering insights into the current Adani situation.

To read the full article, click here: https://www.business-standard.com/companies/news/adani-associates-allegations-may-warrant-rigorous-legal-scrutiny-experts-124112101155_1.html

Here’s What’s Next for PSU Banks with Adani Group Exposures


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ET The Economic Times

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Nilesh Tribhuvann
Managing Partner

Heat's now on for PSU banks with Adani Group exposure

“In the short term this development could lead to a reassessment of risk perceptions for these banks potentially causing volatility in their stock prices Investors may worry about the group's ability to meet financial obligations, especially if sanctions or asset freezes are imposed The Nifty PSU Bank Index fell 2.7% on Thursday. Shares of Punjab National Bank dropped 4.5% to Rs 96.37, while Bank of Baroda closed 3.7% lower at 228.50. Canara Bank, Bank of India, and State Bank of India shares fell about 3%, closing at '94.46, '101.52, and 780.75, respectively. Over the long term this may also trigger regulatory scrutiny into how public sector banks (PSBs) assess and manage their exposure to large conglomerates operating in sensitive international markets”

Nilesh Tribhuvann our Managing Partner, has been featured in ***yet another prominent story on the Adani situation in*** The Economic Times . The article, titled “Here’s What’s Next for PSU Banks with Adani Group Exposures,” highlights his expert analysis of the unfolding developments.

Read the full article here:

https://economictimes.indiatimes.com/markets/stocks/news/heats-now-on-for-psu-banks-with-adani-group-exposure/articleshow/115545045.cms?from=mdr

Tighter H1B visa rules in Republican regime could hurt business for IT firms

Our Managing Partner NILESH TRIBHUVANN has been featured in Financial Express (India) article titled- Tighter H1B visa rules in Republican regime could hurt business for IT firms .

To read the full article click here :
https://www.financialexpress.com/business/investing-abroad-tigher-h1b-visa-rules-in-republican-regime-could-hurt-business-for-it-firms-3656532/

Quick Commerce's Love for Medicine Delivery Gets Shrouded in Criticism .


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Nilesh Tribhuvann
Managing Partner

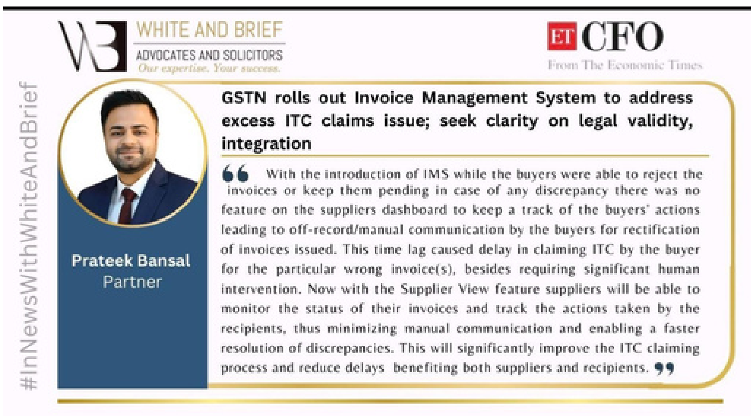
Quick Commerce's Love for Medicine Delivery Gets Shrouded in Criticism .

"Given the provisions of the Drugs and Cosmetics Act, 1940 the entry of non-pharmaceutical platforms into the medicine delivery space raises legitimate concerns around compliance and quality . With regards to laws dealing with e-pharmacies in India experts have highlighted that there is heightened uncertainty in the space. This is because the current regulations under the Drugs and Cosmetics Act 1940 and associated rules don't explicitly cover online medicine sales. Although draft rules for e-pharmacies were proposed back in 2018 to establish licensing and operational requirements these have yet to be finalized"

Our Managing Partner NILESH TRIBHUVANN has been featured in Outlook Start-Up article titled - Quick Commerce's Love for Medicine Delivery Gets Shrouded in Criticism .

To read the full article click here – https://www.outlookbusiness.com/start-up/news/quick-commerces-love-for-medicine-delivery-gets-shrouded-in-criticism

GSTN rolls out Invoice Management System to address excess ITC claims issue; seek clarity on legal validity, integration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ET CFO
From The Economic Times

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Prateek Bansal
Partner

GSTN rolls out Invoice Management System to address excess ITC claims issue; seek clarity on legal validity, integration

"With the introduction of IMS while the buyers were able to reject the invoices or keep them pending in case of any discrepancy there was no feature on the suppliers dashboard to keep a track of the buyers' actions leading to off-record/manual communication by the buyers for rectification of invoices issued. This time lag caused delay in claiming ITC by the buyer for the particular wrong invoice(s), besides requiring significant human intervention. Now with the Supplier View feature suppliers will be able to monitor the status of their invoices and track the actions taken by the recipients, thus minimizing manual communication and enabling a faster resolution of discrepancies. This will significantly improve the ITC claiming process and reduce delays benefiting both suppliers and recipients."

Our Partner, Prateek Bansal , has been featured in ETCFO article titled - "GSTN rolls out Invoice Management System to address excess ITC claims issue; seek clarity on legal validity, integration"

Read the full article here : https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/gstn-rolls-out-invoice-management-system-to-address-excess-itc-claims-issue-experts-seek-clarity-on-legal-validity-integration/115286841

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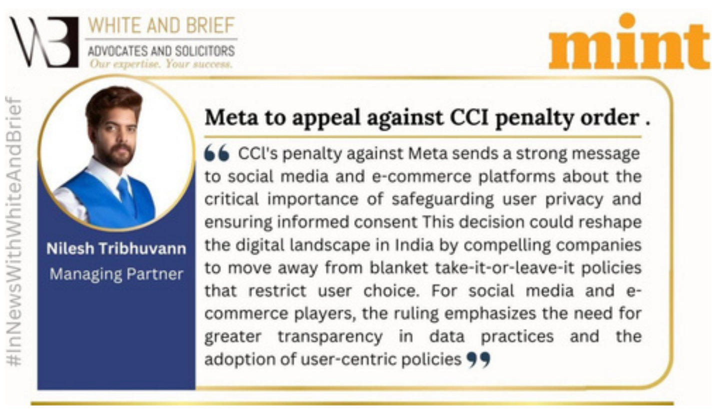
Edible oil or cosmetic? Small coconut oil packs pose a big tax question.

Our Partner Mr. Prateek Bansal has been featured in Mint article titled- Edible oil or cosmetic? Small coconut oil packs pose a big tax question.

Read the full article here: https://www.livemint.com/industry/coconut-oil-hair-oil-marico-parachute-bajaj-consumer-care-dabur-supreme-court-edible-oil-tax-classification-gst-slabs-11731928266809.html

Meta to Appeal Against CCI Penalty Order



Our Managing Partner, NILESH TRIBHUVANN , has been featured in the Mint National Edition for his insights on the article titled “Meta to Appeal Against CCI Penalty Order.”

The feature has been published in both the online and print editions.
Read the full article here : https://www.livemint.com/companies/news/meta-to-challenge-rs-213-crore-penalty-by-cci-over-whatsapp-privacy-policy-11732002765784.html

Our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in the Legal Era - Legal Media Group Leading Lawyer Rankings 2024-25.

Our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in the Legal Era - Legal Media Group Leading Lawyer Rankings 2024-25, recognizing his exceptional legal acumen and contributions.

Mr. Tribhuvann has been honored as a Leading Lawyer for White-Collar Crime, Dispute Resolution, Arbitration, and Litigation practice area.

Confederation of Indian Industry conference on India's Outlook on Clean Energy Storage: A Roadmap to Net Zero.

Purusharth Singh and Humera Niyazi represented White and Brief's Sidebar at the Confederation of Indian Industry conference on India's Outlook on Clean Energy Storage: A Roadmap to Net Zero.

The session delved into the critical role of clean energy storage in India's journey to net zero, addressing key challenges, policy reforms, and the importance of critical minerals and a circular economy.

Purusharth shared insights on navigating legal and commercial complexities, emphasizing measures like robust regulatory frameworks, battery life-cycle tracking, and licensing reforms to empower industry growth.

It was an honour to engage with leaders from academia, research, and industry and gain valuable perspectives from stalwarts such as Mr. Debi Prasad Dash and Mr. Vikram Handa on critical issues.

At White and Brief, we remain committed to supporting India's clean energy transition through strategic legal counsel.

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