

# Disputes Newsletter

September – December 2024

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## SUPREME COURT

### SUPREME COURT STRIKES DOWN UNILATERAL APPOINTMENT OF ARBITRATORS AS WELL AS APPOINTMENT FROM A PANEL OF ARBITRATORS

8 November 2024 | In a landmark ruling, a constitution bench of the Supreme Court has finally settled the longstanding issue of appointment from a panel of arbitrators. By a 3-2 majority in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.* (2024 SCC OnLine SC 3219), the Supreme Court has *inter alia* held that appointment of arbitrator(s) from a unilaterally curated panel of arbitrators is against the principle of equal treatment of parties. The court further held that unilateral appointment of a sole arbitrator would give rise to justifiable doubts as to the independence and impartiality of the arbitrator. [Click here](#) for more.

### AN APPLICATION FOR EXTENSION OF TIME CAN BE FILED EVEN AFTER THE EXPIRY OF THE PERIOD FOR MAKING OF THE ARBITRAL AWARD

12 September 2024 | In a landmark ruling in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.* (2024 SCC OnLine SC 2494), the Supreme Court has settled a long-standing debate, clarifying that an application u/s 29A of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") for extension of time can be filed even after the expiry of the standard period prescribed for making the arbitral award, i.e., the twelve-month period stipulated u/s 29A(1) or extended six-month period u/s 29A(3) of the Arbitration Act, as the case may be. [Click here](#) for more.

# TT&A

Advocates and Solicitors

## **NCLAT CANNOT ALLOW WITHDRAWAL OR SETTLEMENT OF CLAIMS IN EXERCISE OF ITS INHERENT POWERS UNDER RULE 11, RULES SUPREME COURT**

23 October 2024 | The Supreme Court, through a detailed judgment in *Glas Trust Company LLC v. Byju Raveendran* (2024 SCC OnLine SC 3032), has overturned an order of the NCLAT whereby the NCLAT allowed the settlement of dues and set aside NCLT's order initiating CIRP against the corporate debtor, in exercise of its inherent powers under Rule 11 of the National Company Law Appellate Rules, 2016. [Click here](#) for more.

## **SUPREME COURT SETS ASIDE DEFERMENT OF THE CIRP BY THE HIGH COURT**

14 October 2024 | The Supreme Court, in *COC of KSK Mahanadi Power Co Ltd v. M/s Uttar Pradesh Power Corporation Ltd* (C.A. 11086 of 2024), has set aside an interim order passed by the High Court of Telangana, directing the deferment of the CIRP.

During the CIRP of KSK Mahanadi Power Co Ltd, the Respondent had filed a writ petition, *inter alia* seeking the consolidation of the Appellant with the COCs of two other companies. The High Court declined to consolidate the COCs on the ground that an application for consolidation had already been dismissed by the NCLT, Hyderabad and an appeal had been pending before the NCLAT. However, the Respondent had neither approached the NCLT nor the NCLAT for the consolidation and instead filed a writ petition before the High Court.

The High Court relegated the Respondent to file an application before the NCLT and directed the NCLT to pass appropriate orders within two weeks. However, the High Court directed the deferment of the CIRP in the meantime.

The Supreme Court held that such a direction under Article 226 breaches the discipline of the law which has been laid down in the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC”).

## **SUBSTANCE OVER FORM – SUPREME COURT UPHOLDS CLAIMS FOR FINANCIAL DEBT UNDER DEED OF HYPOTHECATION**

20 December 2024 | In *China Development Bank v. Doha Bank Q.P.S.C.* (2024 SCC OnLine SC 3829), the Supreme Court has upheld the classification of the Appellants as financial creditors based on their claims under Deeds of Hypothecation on the ground that the underlying obligations were in the nature of a guarantee. [Click here](#) for more.

## **SUPREME COURT: UNCONDITIONAL WITHDRAWAL OF APPLICATION FOR**

## **APPOINTMENT OF ARBITRATOR AMOUNTS TO ABANDONMENT OF RIGHT**

7 November 2024 | In a detailed judgment in *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad* (2024 SCC OnLine SC 3190), the Supreme Court has held that withdrawal of an application for appointment of an arbitrator u/s 11(6) of the Arbitration Act without seeking liberty to file a fresh application amounts to an abandonment of right to arbitrate. [Click here](#) for more.

## **SUPREME COURT RECALLS ITS JUDGMENT DECLARING SECTIONS 3(2) AND 5 OF THE UNAMENDED BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 UNCONSTITUTIONAL**

18 October 2024 | In *Union of India v. Ganpati Dealcom (P) Ltd.* (2024 SCC OnLine SC 2981), the Supreme Court has allowed a review petition by the Union of India, recalling its 2022 judgment reported in (2023) 3 SCC 315, wherein the court had *inter alia* declared Section 3(2) and 5 of the Benami Transactions (Prohibition) Act, 1988, as it existed prior to the 2016 amendment, unconstitutional. [Click here](#) for more.

## **SUPREME COURT DIRECTS BANKS AND FINANCIAL INSTITUTIONS TO VERIFY COMPLETION/ OCCUPATION CERTIFICATE BEFORE SANCTIONING LOAN AGAINST ANY BUILDING AS A SECURITY**

17 December 2024 | In *Rajendra Kumar Barjatya & Anr. v. U.P. Avas Evam Vikas Parishad & Ors.* (Civil Appeal Nos. 14604-14605 of 2024), a case concerning a challenge against a demolition order passed by the High Court of Allahabad, the Supreme Court has issued detailed directions to curtail illegal constructions.

Among the various directions, the Supreme Court has also directed the banks/ financial institutions to sanction loan against any building as a security only after verifying the completion/ occupation certificate issued to a building on production of the same by the parties concerned.

These directions have been issued in addition to the recent directives issued by the Supreme Court in *Re: Directions in the matter of demolition of structures*, 2024 SCC OnLine SC 3291.

### **HIGH COURTS**

## **RIGHT TO FILE AN APPLICATION U/S 14 IS ABSOLUTE AND UNTRAMMELED BY ANY OTHER CONSIDERATION: DELHI HIGH COURT**

18 September 2024 | The High Court, in *Yves Saint Laurent v. Brompton Lifestyle Brands Private Limited & Anr.* (2024 SCC OnLine Del 6519), has clarified that

the dismissal of an application u/s 16 is not a bar to challenge the mandate of the arbitrator u/s 14 of the Arbitration Act. The High Court further clarified that the appointment of arbitrator cannot be treated as 'unilateral' merely because a non-signatory did not consent to it. [Click here](#) for more.

### PRE-INSTITUTION MEDIATION IS MANDATORY FOR FILING COUNTERCLAIMS IN A COMMERCIAL SUIT, CLARIFIES DELHI HIGH COURT

2 September 2024 | In *Aditya Birla Fashion and Retail Ltd. v. Saroj Tandon* (2024 SCC OnLine Del 6099), the High Court clarified that the requirement of pre-institution mediation under Section 12-A of the Commercial Courts Act, 2015 is applicable to any counterclaim filed in the commercial suit as well. However, this requirement shall be applicable prospectively, on the counterclaims filed after 20 August 2022 (i.e., the cut-off date for prospective application in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, 2022 SCC OnLine SC 1028). [Click here](#) for more.

### SUBSTITUTION OF ARBITRATOR IS PERMISSIBLE ONLY IN CASE OF UNDUE DELAY: DELHI HIGH COURT

19 September 2024 | The High Court has clarified that the Court can exercise its power u/s 29A(6) of the Arbitration Act to substitute one or all of the arbitrators only when there has been undue delay by the arbitrator. [Click here](#) for more.

### BOMBAY HIGH COURT RULES ON THE ARBITRATOR'S POWER TO CHANGE THE VENUE WITHOUT THE PARTIES' CONSENT

15 October 2024 | In *Dhule Municipal Commissioner v. M/s Borse Brothers Engineers and Contractors Pvt Ltd* (Writ Petition No. 7735 of 2024), the High Court of Bombay has held that the arbitrator has the power to change the venue of arbitration in the absence of parties' consent, if the specified venue is detrimental to the arbitration proceedings. [Click here](#) for more.

### BOMBAY HIGH COURT CLARIFIES THE TREATMENT OF SECURITY DEPOSITED TO THE COURT, PRIOR TO COMMENCEMENT OF CIRP

13 November 2024 | A division bench of the Bombay High Court, in *Siti Networks Ltd v. Rajiv Suri* (Appeal No. 597 of 2016 in Suit No. 2295 of 2002), has held that the monies deposited as security to the court before the commencement of CIRP, would remain the assets of the Corporate Debtor and fall under the purview of the IBC. [Click here](#) for more.

### WRIT PETITION MAINTAINABLE AGAINST A COMMERCIAL COURT'S ORDER HOLDING THE

### SECTION 34 PETITION TO BE NON-MAINTAINABLE, RULES DELHI HIGH COURT

22 October 2024 | A division bench of the Delhi High Court, in *C.P. Rama Rao Sole Proprietor v. National Highways Authority of India* (W.P. (C) 11484 of 2023), has held that a writ petition under Article 227 of the Constitution can be filed against an order dismissing a petition challenging an arbitral award u/s 34 of the Arbitration Act on the grounds of maintainability. [Click here](#) for more.

### NCLAT & NCLT

### OPERATIONAL CREDITOR UNDER SECTION 53 OF THE IBC, CANNOT HAVE PRIORITY OVER UNSECURED FINANCIAL CREDITORS THAT ARE RELATED PARTIES

19 September 2024 | In *Times Innovative Media Limited v. Pawan Aggarwal (Liquidator)*, (Comp. App. (AT) (Ins) No. 1139 of 2024), the NCLAT has clarified that a financial creditor which is a related party to the corporate debtor, shall be given priority over an operational creditor, in terms of the waterfall mechanism under Section 53 of the IBC. [Click here](#) for more.

### THE ISSUE OF THE EXTENT OF LIMITED GUARANTEE NOT TO BE DECIDED AT THE STAGE OF ADMISSION OF SECTION 95 APPLICATION – NCLAT

29 October 2024 | The NCLAT, in *Nilay Shah v. State Bank of India*, (Comp. App. (AT) (Ins) No. 1997 of 2024), has held that the issue of the extent of limited guarantee is to be decided at the time of finalization of payment plan and not at the stage of admission of the Section 95 application.

The Appellant had challenged the order admitting an application for initiation of Insolvency Resolution Process u/s 95 of the IBC, on the ground that the guarantee given by the Appellant was only limited guarantee and thus, the amount claimed u/s 95 was not payable.

The NCLAT ruled that the application u/s 95 had only been admitted and the payments plan was yet to be finalised. The said question would be looked into by the Adjudicating Authority at the time of finalisation of the payment plan.

### NCLAT UPHOLDS DIFFERENTIAL TREATMENT WITHIN SAME CLASS OF CREDITORS, RECOMMENDS REPLACEMENT OF A STRAIGHT WATERFALL MECHANISM BY CALIBRATED WATERFALL MECHANISM

11 December 2024 | In the case of *NCC Ltd. v. M/s Golden Jubilee Hotels Pvt. Ltd.* (Comp. App. (AT) (Ins.) No. 426 of 2020), the NCLAT has upheld the

creation of a separate category of operational creditors, i.e., special operational creditors, based on earlier decisions by the Supreme Court and the NCLAT. Further, highlighting the legislative gap in the current waterfall mechanism under Section 53 of the IBC, the NCLAT also called upon the Insolvency and Bankruptcy Board of India (“IBBI”) to consider bringing a reform in the current mechanism. [Click here](#) for more.

### **NCLT RULES THAT A PETITION UNDER SECTION 95 FOR INITIATION OF INSOLVENCY RESOLUTION PROCESS CANNOT BE MAINTAINED AGAINST A PARTNERSHIP FIRM ACTING AS A PERSONAL GUARANTOR**

11 September 2024 | The NCLT, Hyderabad Bench has held, in *Union Bank of India v. M/s KMR Enterprises* (IA (IBC) 1234 of 2024), that a petition to initiate insolvency resolution process u/s 95 of the IBC is not maintainable against a partnership firm. [Click here](#) for more.

## **REGULATORY UPDATES**

### **GOVERNMENT OF INDIA RELEASES DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024**

The Department of Legal Affairs, Government of India released the draft Arbitration and Conciliation (Amendment) Bill, 2024 (“**Draft Bill**”), with a view to providing further boost to institutional arbitration, reducing court intervention in arbitrations and ensuring timely conclusion of arbitration proceedings.

The Draft Bill proposes some significant changes to the Arbitration Act including renaming the Arbitration Act, introduction of ‘seat’ and ‘venue’ of arbitration, providing a framework for emergency arbitration, introduction of “appellate arbitral tribunals”, changes to the regime for challenging an arbitral award, strengthening the institutional arbitration framework, etc.

[Click here](#) to read our detailed critical analysis of the amendments proposed in the Draft Bill.

### **SIAC ANNOUNCES ITS NEW SIAC RULES, 2025**

The Singapore International Arbitration Centre (“**SIAC**”) has announced the release of the 7th edition of its Arbitration Rules (“**SIAC Rules 2025**”), effective 1 January 2025.

Key highlights of the rules include new procedures such as Streamlined Procedure, Preliminary Determination and Coordinated Proceedings; expansion of cases eligible for Expedited Procedure; enhancements to the Emergency Arbitrator procedure; updated appointment provisions; incorporation of the SIAC Gateway online case

management system; encouragement of mediation; and mechanisms to enhance the integrity and efficiency of proceedings.

In addition, SIAC has also revised its Schedule of Fees with effect from 1 January 2025, considering SIAC's expanded administration services and the increasing quantum and complexity of SIAC's caseload. The revised fee schedule also features a 50% discount on the administration fees and arbitrator fees for low value disputes conducted in accordance with the new Streamlined Procedure.

[Click here](#) to access a more detailed summary of the key features of the SIAC Rules 2025.

[Click here](#) to access the SIAC Rules 2025.

[Click here](#) to access the Revised Schedule of Fees.

### **GOVERNMENT OF INDIA RELEASES DRAFT COMMERCIAL COURTS (AMENDMENT) BILL, 2024**

The Department of Legal Affairs, Government of India released the draft Commercial Courts (Amendment) Bill, 2024 (“**Draft CC Bill**”), with a view to providing further impetus to quicker and specialized adjudication of commercial disputes and simplification of the applicable procedure related to commercial dispute resolution in courts.

The Draft CC Bill proposes significant changes including:

- establishment of dedicated commercial courts at the district level;
- exclusive commercial courts for arbitration;
- in case of a party seeking urgent interim relief, reference to mediation after the disposal of such application;
- mandatory requirement to give prior notice to the opposing party before filing an appeal;
- disposal of injunction applications within 90 days of filing and within 30 days, if granted *ex-parte*;
- power of courts to grant additional 30 days for filing an appeal;
- use of electronic mode in the proceedings and use of electronic means in the communication;
- no adjournments at the behest of a party in whose favour any injunction has been granted, unless deemed appropriate;
- pronouncement of judgment within 60 days of the conclusion of arguments; and
- disposal of execution applications within 12 months.

[Click here](#) to access the Draft CC Bill.

## **IBBI PROPOSES PRE-INSTITUTIONAL MEDIATION BETWEEN OPERATIONAL CREDITORS AND CORPORATE DEBTORS BEFORE APPROACHING THE NCLT FOR INITIATION OF CIRP**

The IBBI has released a discussion paper, proposing to introduce an option of mediation in terms of the Mediation Act, 2023, which can be exercised by the operational creditors before filing insolvency applications under Section 9 of the IBC. The IBBI has proposed to do so by inserting a new Regulation 2BA in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The discussion paper was issued pursuant to a suggestion of the Expert Committee on the 'Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016' in its report. This

suggestion was further complemented by the Indian Institute of Insolvency Professionals of ICAI (IIPI) in its report "Key Recommendations for the Amendments in Insolvency and Bankruptcy Code, 2016".

IBBI noted that in most OC-initiated insolvency cases, OCs are more interested in repayment of money claims rather than admission or resolution of the corporate debtor. According to the NCLT's data up to 30 April 2024, 21,466 cases under section 9 were disposed of before admission and only 3818 cases were admitted. This proposal aims to reduce the burden on the NCLT and thereby expediting admissions.

**Click here** to access the discussion paper released by IBBI.

### **For further information, please contact:**



**Arunav Guha Roy**  
*Partner*

**Tel:** +91 99719 98499  
**Email:** [arunav.roy@tta.in](mailto:arunav.roy@tta.in)



**Priyanshu Jain**  
*Associate*

**Tel:** +91 95895 88696  
**Email:** [priyanshu.jain@tta.in](mailto:priyanshu.jain@tta.in)

[tta.in](http://tta.in)

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