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Monthly Newsletter

INDIALAW

March 2025

From the desk of our Managing Partner

We are delighted to present the March 2025 edition of our newsletter, where we showcase critical legal developments and success stories that have shaped this month.

Our dedicated team has worked diligently to navigate complex legal landscapes, providing strategic counsel and achieving impactful outcomes that reinforce our unwavering commitment to excellence.

This month has been particularly dynamic, with noteworthy cases spanning diverse practice areas. From precedent-setting decisions in corporate law to pivotal breakthroughs in intellectual property disputes,

We are proud to share successes that showcase our pursuit of justice and innovation, reflecting our mission to safeguard your interests with tailored solutions.

In addition to case highlights, we bring you valuable insights into recent legal reforms, regulatory updates, and emerging trends that could significantly influence your business and personal affairs.

Understanding the ever-changing legal environment is crucial, and we are here to ensure that you remain informed, prepared, and proactive in your approach.

Enjoy this month's newsletter!

K. P. Sreejith

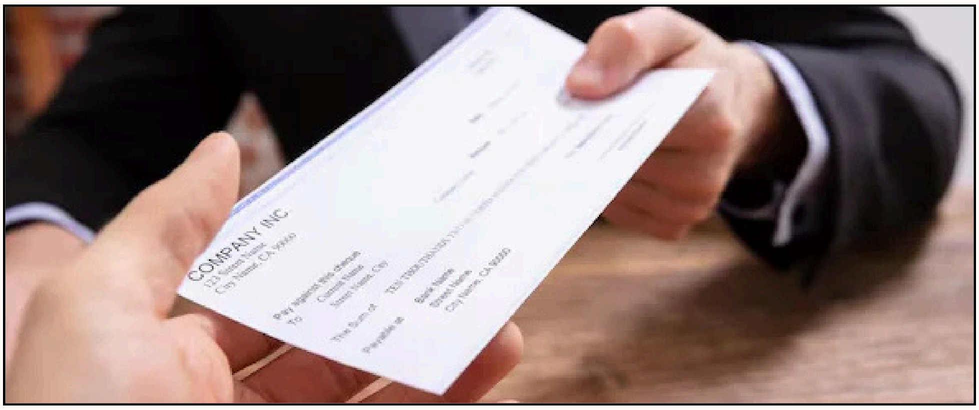
In this newsletter you can expect:

Recent Judgements, Press Quotes and Articles

This update covers:

INDIALAW

JUDGEMENTS



Supreme Court Rules Non-Executive Directors Not Liable for Company's Dishonoured Cheques

Introduction

The Supreme Court of India has delivered a landmark judgment in the case of K.S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd., clarifying the extent of liability for non-executive directors under the Negotiable Instruments Act, 1881 (NI Act). This ruling has significant implications for corporate governance in India, particularly for directors who serve in non-executive capacities and do not directly participate in a company's financial decision-making processes. The judgment highlights the importance of specific allegations when prosecuting directors for financial offences and reinforces the principle that mere designation as a director does not automatically attract liability.

Case Background

The appellants, K.S. Mehta and Basant Kumar Goswami, served as non-executive directors of Blue Coast Hotels & Resorts Ltd. at different times. Their roles were confined to governance oversight in compliance with SEBI regulations, with no executive authority or financial decision-making power. The dispute arose from an Inter-Corporate Deposit (ICD) agreement executed between the company and the respondent in 2002, which culminated in the issuance of two post-dated cheques that were later dishonoured due to insufficient funds. Despite neither appellant being present at the board meeting approving the transaction nor being signatories to the agreement, criminal proceedings were initiated against them under Section 138 read with Section 141 of the NI Act.

Key Legal Issues

The central issue before the Court was whether non-executive directors could be held vicariously liable under Section 141 of the NI Act for financial transactions they did not authorize or participate in. The appellants argued that their non-executive status, confirmed by Corporate Governance Reports and Registrar of Companies records, negated any basis for liability.

They contended that the proceedings against them were legally untenable in the absence of specific allegations linking them to the cheque issuance or dishonour. The respondent, however, argued that the appellants' status as directors at the relevant time presumed their involvement in the company's affairs and that their liability should be determined during trial rather than at the quashing stage.

Court's Analysis

The Supreme Court examined the facts and legal precedents to determine the appellants' liability. It reaffirmed that vicarious liability under Section 141 requires specific allegations demonstrating direct involvement in the company's business at the time of the offence. The Court cited several key precedents:

1. National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal: This case established that complaints under Section 141 must contain unambiguous allegations about the director's role in the company's affairs, rather than making bald assertions about their responsibility.

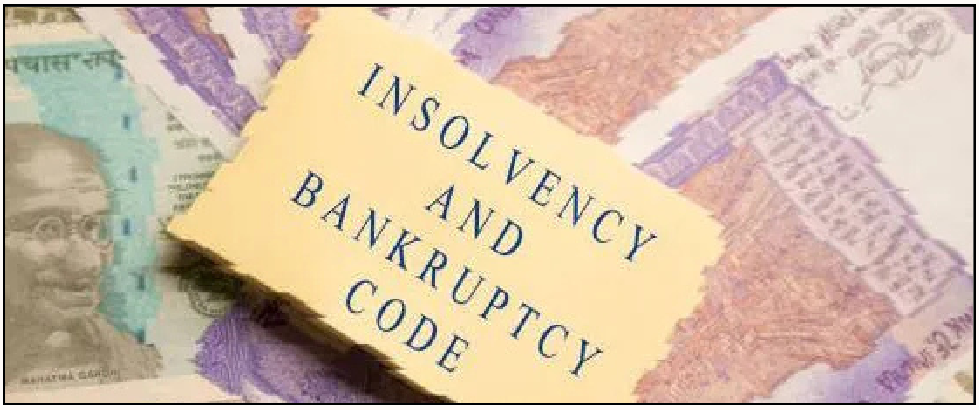
2. S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla: This judgment emphasized that mere designation as a director is insufficient to establish liability; the complaint must specify the director's active participation in the relevant transactions.

3. Pooja Ravinder Devidasani v. State of Maharashtra: This case clarified that non-executive directors, who typically play a governance role without involvement in daily operations, cannot be held liable under Section 141 unless they were actively in charge of the company's business at the relevant time.

The Court found that the appellants' roles were purely non-executive, with no evidence suggesting their involvement in the financial transactions in question. The complaints against them lacked the specific averments required to establish a direct nexus between the appellants and the dishonoured cheques. Additionally, the Court noted that attendance at board meetings does not automatically translate to control over financial operations.

Conclusion

The Supreme Court's judgment in K.S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd. represents a significant clarification of the liability standards for non-executive directors under the NI Act. By quashing the criminal proceedings against the appellants, the Court has reinforced the principle that vicarious liability requires active participation in the company's financial affairs and cannot be presumed solely based on directorship status. This ruling provides important protections for non-executive directors who serve in governance roles without direct involvement in operational or financial decision-making. It also serves as a reminder to prosecutors and complainants that specific allegations are essential when seeking to hold directors accountable for financial offences. The judgment strikes a balance between holding companies accountable for their financial obligations and protecting directors who serve in oversight capacities without direct financial authority.



IBC Moratorium Does Not Shield Penalties Under Consumer Protection Act, Supreme Court Asserts

The Supreme Court of India has delivered a landmark judgment in the matter of Saranga Anilkumar Aggarwal vs Bhavesh Dhirajlal Sheth & Ors.[1] clarifying that the interim moratorium under the Insolvency and Bankruptcy Code (IBC) does not shield individuals or companies from regulatory penalties imposed under consumer protection laws. This ruling has significant implications for both insolvency proceedings and consumer rights.

Background of the Case

The case involved Saranga Anilkumar Aggarwal, the proprietor of East and West Builders, who faced insolvency proceedings before the National Company Law Tribunal (NCLT) under the IBC. Aggarwal had been penalized by the National Consumer Disputes Redressal Commission (NCDRC) for failing to deliver possession of residential units to homebuyers within the stipulated timeframe. The NCDRC imposed multiple penalties (27 in total) for non-compliance of his agreed terms with the homebuyers. Aggarwal argued for stay over the execution of these penalty orders under the interim moratorium provisions of Section 96 of the IBC as he had filed for insolvency resolution.

Legal Provisions Involved

Section 96 of the IBC – This section imposes an interim moratorium, temporarily suspending all legal actions against an individual (personal guarantor to a corporate debtor), including the execution of any judgments. The purpose of this moratorium is to provide a breathing space to the debtor during the insolvency resolution process.

Section 72 of the Consumer Protection Act, 2019: This section provides for penalties and even imprisonment for non-compliance with consumer protection laws. The penalties imposed under this section are regulatory in nature, aimed at ensuring compliance with consumer protection laws.

Supreme Court's Rationale and Judgment

The Supreme Court held that the interim moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws. The court's reasoning was based on the following key points:

- Distinction Between Penalties and Debt: The court emphasized that penalties imposed by the NCDRC are regulatory in nature and do not constitute 'debt' under the IBC. The moratorium under Section 96 applies only to debts and not to penalties for statutory violations.
- Exclusion of Certain Liabilities: The court referred to Section 79(15) of the IBC, which explicitly excludes certain categories of liabilities, including fines and penalties imposed by courts and tribunals, from the insolvency resolution process. Since the penalties imposed by the NCDRC fall within this category, they are not protected by the moratorium under Section 96.
- Public Interest and Consumer Protection: The court reaffirmed that consumer laws serve an essential public function, ensuring accountability and protecting consumer rights. Allowing developers to evade penalties through insolvency proceedings would set a dangerous precedent and render consumer protection laws ineffective.
- Preventing Misuse of Insolvency Framework: The court observed that homebuyers, who often invest their life savings in real estate projects, should not be deprived of their legal remedies due to the insolvency status of a developer. Allowing a moratorium on penalties would encourage defaulting developers to misuse the insolvency framework as a shield against regulatory sanctions.

Implications of the Judgment

- For Personal Guarantors and Developers: This ruling makes it clear that personal guarantors to a corporate debtor cannot invoke insolvency proceedings to escape penalties for non-compliance with consumer protection laws. It reinforces that insolvency laws cannot be used as a tool to frustrate statutory obligations and evade liabilities imposed by regulatory bodies.
- For Homebuyers and Consumer Protection Laws: The judgment strengthens homebuyer rights by ensuring that penalties imposed for developer misconduct remain enforceable despite insolvency proceedings. It upholds the principle that consumer protection laws serve a broader public interest, distinct from insolvency resolution mechanisms under the IBC.

- For Insolvency Proceedings and Moratoriums under IBC: The Supreme Court has reaffirmed that the scope of the interim moratorium under Section 96 is limited to legal proceedings concerning debts and does not extend to penalties arising from regulatory non-compliance. This distinction will guide future cases where entities seek to misuse insolvency proceedings to evade statutory obligations.

Conclusion

This landmark judgment by the Supreme Court strikes a crucial balance between insolvency law and consumer protection, reinforcing the principle that regulatory obligations cannot be evaded under the guise of insolvency proceedings. The verdict clarifies that while insolvency law provides financial relief to distressed entities, it does not absolve them of statutory penalties imposed for non-compliance with consumer protection laws. This decision prevents the misuse of the IBC framework by delinquent individuals and ensures that homebuyers retain their rights to enforce regulatory penalties. By upholding the sanctity of consumer protection laws, the Supreme Court has reaffirmed that insolvency proceedings are not a tool to circumvent public interest legislation.

Acquiring Property Through A Compromise Decree In Divorce Case- Understanding Stamp Duty Implication

Introduction

In a recent landmark judgment of Arun Rameshchand Arya vs. Parul Singh[1], the Supreme Court of India exempted a wife from paying stamp duty for a flat she acquired as part of a compromise in a divorce case. This decision has significant implications for property transfers during divorce settlements and provides clarity on the application of stamp duty in such cases.

Background of the Case

The case involved a matrimonial dispute where the wife received a flat as part of a compromise agreement with her husband. The title in respect of the flat got transferred in the name of wife. The question before the court was whether the transfer of the flat required the payment of stamp duty under the Indian Stamp Act, 1899. The Supreme Court ruled that no stamp duty was payable in this scenario, setting a precedent for similar cases in the future.

Stamp Duty in Property Transfer- Legal background and Precedents

Section 17 of the Registration Act, 1908 mandates that certain documents, particularly those involving the transfer of immovable property, must be registered to be legally valid. A transfer of property through a compromise decree, i.e. a court order reflecting a compromise agreement between the parties of the suit, falls under the exception under Section 17(2) that exempts certain documents from compulsory registration. As per Section 17(2)(vi) “any decree or order of a Court (except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding)[2]” is exempted from compulsory registration.

A compromise decree involving an immoveable property, other than a property for which the decree is prayed for, would fall under the purview of mandatory registration. However, the wife did not obtain new rights over the flat, but was also asserted with her pre-existing right over the said flat.

The Supreme Court in the case of Mukesh vs. the State of Madhya Pradesh & Anr[3] ruled that a compromise decree recognizing pre-existing rights over a property does not require registration under the Registration Act, 1908, nor does it attract stamp duty under the Indian Stamp Act, 1899, as it does not create new rights or transfer property and only formalize such right.

The Supreme Court in the case of Ripudaman Singh vs. Tikka Maheshwar Chand[4] ruled that a compromise decree involving immovable property, which is not the subject of the suit but part of a family settlement, does not require compulsory registration under Section 17(2)(vi) of the Registration Act, which provides for exemption, as it merely acknowledges or settles pre-existing rights without creating new ones.

Exemption in Registration

In summary of the precedents referred, a compromise decree does not require registration or stamp duty if it satisfies the following conditions:

- The compromise decree must be genuine and not collusive.
- The decree must pertain to the subject property in the suit.
- There must be a pre-existing right over the subject property, and the decree should not create a new right.

In the case at hand, the court found that the compromise decree merely asserted the wife's pre-existing right to the flat and did not create any new rights. Therefore, the transfer did not fall under the instruments which require stamp duty and falls under the ambit of exemption from compulsory registration. Hence, the Court exempted the wife from paying stamp duty for the property acquired through a compromise decree.

Implications of the Judgment

This judgment has several important implications:

- Financial relief: It provides financial relief to individuals going through a divorce, as the payment of stamp duty can be a significant expense where there is a pre-existing right of an individual over the immoveable property.

- Legal clarity: It offers clear guidance on the application of stamp duty in property transfers resulting from compromise decrees in divorce cases. This case upholds the precedents set by the Judiciary wherein compromise decree relating to family property was exempted from payment of stamp duty.
- Reduction in procedural burden: The decision reduces the procedural burdens on litigants by streamlining the process of property transfers in divorce settlements in case of pre-existing right. By exempting these transfers from registration and stamp duty, the court has simplified the legal process, making it easier and less cumbersome for individuals to assert their pre-existing property rights.

Conclusion

It can be concluded that a compromise decree that does not transfer any right but only acknowledges a pre-existing right does not incur stamp duty. The Supreme Court's ruling in this case underscores the importance of considering the specific circumstances of property transfers during divorce settlements. This decision will likely influence future cases and provide a basis for similar exemptions in property transfers under compromise decrees. This ruling clarifies and provides direction on such legal matters by addressing possible ambiguities in property transactions carried out via compromise decrees and reaffirming the fundamentals of registration and stamp duty compliance.

Supreme Court Upholds Natural Guardian’s Rights in Child Custody Over Grandparents’ Claims

Introduction

The role of grandparents in the upbringing of children has been a cornerstone of traditional Indian family structures. However, in modern times, legal disputes over child custody have often placed grandparents in a precarious position. The recent Supreme Court ruling in the case of Vivek Kumar Chaturvedi & Anr. Versus State of U.P. & Ors.[1] has clarified the legal standing of grandparents in custody disputes, reaffirming that their claim is not stronger than that of the natural guardian, typically the father.

Background of the Case

The case involved a father who sought custody of his child after the mother’s death. The child had lived with the father for nearly 10 years until the mother’s demise, after which the child was placed with the maternal grandparents. The High Court had initially denied the father custody, citing the child’s comfort with the grandparents and the father’s remarriage. The father then appealed to the Supreme Court, seeking the custody of the child.

Supreme Court’s Ruling

The Supreme Court, in a landmark judgment, overturned the High Court’s decision. The bench of Justices BR Gavai and K Vinod Chandran observed that the maternal grandparents could not have a better claim than the father, who is the natural guardian. The court emphasized the father’s right as the natural guardian and highlighted that there were no allegations of abuse or neglect against him. The father was well-employed and educated, and there was no evidence to suggest that he was unfit to care for his child.

The Supreme Court stated “We cannot but observe that the learned Single Judge has not endeavoured to elicit the child’s attitude towards his father. Admittedly, the child, after his birth, was with his parents for about 10 years till the death of his mother. He was separated from the father in 2021 and has been living with his grandparents, who cannot have a better claim than the father, who is the natural guardian”.

There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse perpetrated against the wife or son. The father, the natural guardian is well employed and educated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child. The Supreme Court pointed that the welfare of the child, in the facts and circumstances of this case, would be best served if custody is given to the father. The Supreme Court upheld that the welfare of child is of the utmost importance.

In the judgement passed in Gautam Kumar Das vs NCT of Delhi[2] and another, the court emphasized the need of the minor to be with the natural guardian, especially when the mother is no more. However, as the child did not have father's company for over 3 years and it is important for the child to complete his academic year of 7th standard in a school near the residence of grandparent. Hence, the custody of the child shall remain with the grandfather till 30.04.2025 and during the continuation of custody with grand-parent, the father shall have visiting rights. Post handing over the custody to the father, grandparents shall also have visiting rights. Re-marriage of father cannot be a bar on the rightful custody of the child.

The Supreme Court's ruling emphasizes on the priority given to the rights of a natural guardian, as long as it is in the best interest of the child. The Court carefully weighed the father's rights against the child's immediate stability and emotional well-being, facilitating a seamless transfer of custody.

Legal Framework Governing Custody and Guardianship

In India, child custody disputes are primarily governed by personal laws and the Guardians and Wards Act, 1890. The primary consideration in all custody disputes is the welfare of the child. The Supreme Court's ruling aligns with this principle, emphasizing that while grandparents can play a significant role in a child's life, their claim to custody cannot supersede that of the natural guardian.

Implications of the Ruling

This ruling has significant implications for future custody disputes involving grandparents. It reaffirms the legal precedence given to natural guardians in custody matters. However, it also acknowledges the importance of maintaining the grandparent-grandchild relationship by allowing visitation rights to the grandparents.

Conclusion

The Supreme Court's decision in Vivek Kumar Chaturvedi & Anr. Versus State of U.P. & Ors. provides clarity on the legal standing of grandparents in custody disputes. While it upholds the rights of natural guardians, it also recognizes the importance of grandparents in a child's life. This balance ensures that the welfare of the child remains the paramount consideration in all custody matters.

Finality in Insolvency Resolution: Supreme Court's Stance on Belated Claims in CIRP Cases

Background of the Case

The Supreme Court of India recently delivered a significant judgment in the case of Vaibhav Goel & Anr. versus Deputy Commissioner of Income Tax & Anr. (Civil Appeal No. 49 of 2022), addressing critical issues related to the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). This case revolves around the corporate debtor M/s. Tehri Iron and Steel Casting Ltd. (the CD) and the validity of tax demands raised after the approval of a resolution plan.

The CIRP was initiated for the CD, and the appellants, Vaibhav Goel & Anr., submitted a Resolution Plan on January 21, 2019. This plan was subsequently approved by the National Company Law Tribunal (NCLT) on May 21, 2019. The Resolution Plan included a contingent liability of Rs. 16,85,79,469/- for the Income Tax Department for the assessment year 2014-15, based on a demand dated December 18, 2017, which was rectified under section 154 of the Income Tax Act, 1961.

However, post-approval, the Income Tax Department issued demand notices dated December 26, 2019, and December 28, 2019, under the IT Act for assessment years 2012-13 and 2013-14, respectively. Notably, no claims regarding these demands were submitted before the Resolution Professional until the Resolution Plan was approved.

The Monitoring Professional (second respondent) challenged these demands before the NCLT, seeking a declaration that they were invalid. The NCLT dismissed the application as frivolous and imposed costs of Rs. 1 lakh on the appellants and the second respondent. Dissatisfied with this outcome, an appeal was filed before the National Company Law Appellate Tribunal (NCLAT), which was also dismissed on November 25, 2021. This led to the current appeal in the Supreme Court under Section 62 of the IBC.

Supreme Court’s Consideration

The Supreme Court examined the submissions made by both parties. The appellants’ counsel argued that the NCLT had dismissed the application without assigning any reasons and that the demands for the assessment years 2012-13 and 2013-14 were unsustainable in law since no claims were made before the Resolution Professional until the Resolution Plan was approved.

The Court reviewed the relevant provisions of the IBC, particularly Section 31(1), which outlines the legal effect of the approval of a Resolution Plan. The Court referenced its previous decision in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd., which clarified that once a Resolution Plan is approved, all claims not part of the plan stand extinguished.

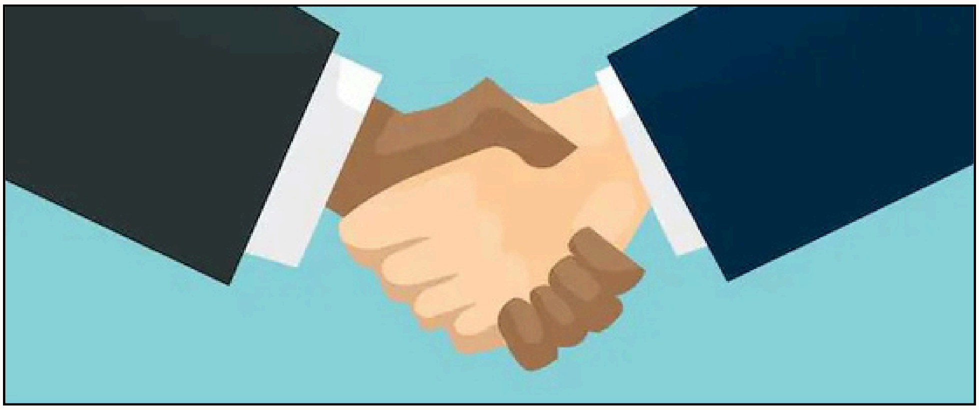
The Court emphasized that the Resolution Plan approved on May 21, 2019, was binding on all stakeholders, including the Income Tax Department. It held that no belated claims could be included after the plan’s approval, as this would undermine the principle of allowing resolution applicants to restart operations on a clean slate.

Conclusion

The Supreme Court’s judgment in this case reaffirms the sanctity of approved Resolution Plans under the IBC. By setting aside the impugned orders of the NCLT and NCLAT, the Court has ensured that the appellants can proceed with the CD’s operations without being hindered by additional tax demands not included in the approved plan.

This decision is significant as it clarifies the legal framework governing insolvency proceedings and protects the interests of resolution applicants. It hiughlights the importance of finality in the resolution process, preventing stakeholders from raising new claims after the plan’s approval. The Court’s emphasis on allowing businesses to restart on a clean slate is crucial for fostering a conducive environment for resolution and revival of financially distressed companies.

The judgment not only resolves the immediate dispute but also provides broader guidance on the implementation and legal implications of an approved Resolution Plans under the IBC. It serves as a precedent for future cases, ensuring that the principles of fairness, efficiency, and finality are maintained in India’s insolvency framework.



Delhi High Court Clarifies Jurisdiction in Arbitration Cases Where Agreement is Silent on Seat/ Venue

The Delhi High Court recently dismissed an arbitration petition filed by Faith Constructions against N.W.G.E.L Church in a construction dispute. The case cantered around a construction agreement dated July 6, 2022, for building a Bishop's Residence in Odisha. Faith Constructions alleged that N.W.G.E.L Church breached the agreement by failing to complete the work on time and defaulting on payments. After invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, Faith Constructions filed this petition under Section 11(5) and (6) seeking the appointment of an Arbitral Tribunal.

N.W.G.E.L Church contested the jurisdiction of the Delhi High Court, arguing that since the arbitration clause in the agreement did not specify a seat or venue for arbitration, the matter should be heard in Odisha where the construction work took place, where the agreement was executed, and where the church is based. The respondent also pointed out that they had already appointed a Sole Arbitrator in Odisha.

Faith Constructions countered that part of the cause of action arose in Delhi since payments were received in a Delhi bank account and bills were raised from their Delhi office. They also argued that the respondent's unilateral appointment of an arbitrator in Odisha was not binding, citing Supreme Court precedents.

The court conducted a detailed analysis of jurisdictional issues under Section 11 of the Arbitration and Conciliation Act when the arbitration agreement is silent on the seat or venue. It determined that jurisdiction depends on where the cause of action arises and where the respondent resides or conducts business. The court examined the concept of "cause of action" and its materiality, concluding that the substantial cause of action was in Odisha where the agreement was executed, the construction work was performed, and the respondent is based. The court found that payments received in Delhi did not constitute a substantial part of the cause of action.

In reaching its decision, the court relied on several legal provisions including Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, and Section 2(1)(e) of the same act read with Sections 16-20 of the Civil Procedure Code, 1908. The court also considered several Supreme Court precedents including TRF Limited v. Energo Engineering Projects Ltd., Perkins Eastman Architects DPC v. HSCC (India) Limited, BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, and Alchemist Ltd. & Anr. v. State Bank of Sikkim & Ors.

The Delhi High Court ultimately dismissed the petition, holding that substantial part of the cause of action arose in Odisha and concluding that the jurisdiction for arbitration should be in Odisha where the respondent is based and the substantial cause of action arose.

The Bombay High Court's Landmark Ruling: Natural Guardians, Joint Family Property Management and the protection of minors' interests

In a landmark judgment, the Bombay High Court has provided clarity on the rights of natural guardians to manage and sell joint family property on behalf of minor children. The case, Pooja W/o Ganesh Popalghat vs. The State of Maharashtra (First Appeal No. 2760 of 2024), highlights the legal complexities surrounding the management of property by guardians and the protection of minors' interests.

Background of the Case

Pooja Popalghat, a 28-year-old widow, sought permission to sell agricultural land that she and her three minor children jointly owned. The land, located in Salegaon, District Beed, Maharashtra, was originally owned by her husband, who committed suicide. After his death, the property was mutated in the names of Pooja and her children. Pooja, who works in Pune, found it difficult to manage the land and wanted to sell it to fund her children's education and maintenance. However, her application under Section 8 of the Hindu Minority and Guardianship Act, 1956 was denied by the Additional District Judge, Kaij, District Beed, due to discrepancies in the evidence regarding the children's school fees.

Rival Contentions

Pooja argued that as the natural guardian of her minor children, she should not need court permission to sell the property. She contended that the sale proceeds would be used for her children's education and maintenance. On the other hand, the State of Maharashtra, represented by the Additional District Judge, pointed out inconsistencies in the evidence provided by Pooja regarding the schools her children attended. The judge also noted that Pooja had already paid the school fees, questioning the necessity of selling the land.

Legal Provisions and Case Laws

The case hinged on the interpretation of the Hindu Minority and Guardianship Act, 1956. Specifically, Section 8 of the Act outlines the powers of a natural guardian to deal with a minor's immovable property, requiring court permission for certain transactions.

However, Sections 6 and 12 of the Act clarify that the undivided interest of a minor in joint family property is excluded from the purview of Section 8. This means that the natural guardian can manage such property without court permission.

The court relied on several landmark judgments to support its decision. In Sri Narayan Bal and Others vs. Shridhar Sutar and Others (1996), the Supreme Court had held that Section 8 does not apply to the undivided interest of a minor in joint family property. The court reiterated this view in Sandhya Rajan Antapurkar and Others vs. State of Maharashtra (2000) and Shripati s/o Santu Mane vs. Goroba s/o Nivarti Ghutukade (2008). These judgments confirmed that the natural guardian's customary powers to deal with joint family property are not restricted by the Act, provided the actions are for legal necessity and the minor's benefit.

Final Decision and Significance

The Bombay High Court allowed Pooja's appeal, setting aside the judgment of the Additional District Judge. The court held that Pooja, as the natural guardian, could manage and sell the joint family property in the interest of the minors and the joint family without needing court permission under Section 8 of the Act. This decision highlights the principle that the natural guardian's customary powers to manage joint family property, including the minor's undivided interest, are not restricted by the Hindu Minority and Guardianship Act, 1956, provided the actions are for legal necessity and the minor's benefit.

Conclusion

The Bombay High Court's ruling in Pooja W/o Ganesh Popalghat vs. The State of Maharashtra provides clarity on the rights of natural guardians to manage and sell joint family property on behalf of minor children. It reaffirms the importance of balancing the guardian's powers with the protection of minors' interests. This judgment serves as a significant precedent, guiding future cases involving similar issues and ensuring that the rights of minors are safeguarded while allowing guardians to act in their best interests.

Buyer Beware: Court Holds New Management Liable for Unpaid Gratuity in Insolvency Cases

The High Court of Calcutta recently delivered a significant judgment in the case of M/s. Stesalit Limited vs. Union of India & Ors., addressing disputes over gratuity payments under the Payment of Gratuity Act, 1972, and its interplay with the Insolvency and Bankruptcy Code, 2016 (IBC). The case involved a writ petition filed by M/s. Stesalit Limited challenging an order from the Assistant Labour Commissioner (Central) & Controlling Authority under Payment of Gratuity Act, 1972, which directed the company to pay gratuity dues to its former employee, Shri Arun Roy.

Background of the Case

M/s. Stesalit Limited, a company undergoing Corporate Insolvency Resolution Process (CIRP) under the IBC, had been taken over by a new management. During the CIRP, Shri Arun Roy, a former employee who worked as Manager, Technical Operations, filed a claim for gratuity. This claim was partially admitted under the approved Resolution Plan, awarding him Rs. 38,808.43. However, the Assistant Labour Commissioner Central and Controlling Authority under Payment of Gratuity Act, 1972 (Controlling Authority) passed an order directing the company to pay a significantly higher gratuity amount of Rs. 2,11,154, along with 10% annual interest, citing the extant provisions of the Payment of Gratuity Act.

Key Legal Issues

The petitioner company argued that the Controlling Authority lacked jurisdiction to entertain the gratuity claim since the matter fell under the IBC's regulatory framework. They contended that the IBC, as special legislation, overrides the Payment of Gratuity Act. Additionally, they claimed that Shri Arun Roy, as a supervisory employee, could not raise an industrial dispute and that the IBC's liquidation estate provisions should apply.

On the other hand, Shri Arun Roy argued that the company had not exhausted appellate remedies before approaching the High Court. They also emphasized that gratuity payments are statutory entitlements under labour law and do not form part of the liquidation estate under Section 36(4)(a)(iii) of the IBC.

Court's Analysis

The court meticulously examined precedents from the National Company Law Tribunal (NCLT) and Appellate Tribunal (NCLAT), including cases like Dnyanaba Namdeo Karande vs. Calyx Chemicals and Savan Godiwala vs. Lanco Infratech Limited. These rulings consistently upheld that gratuity dues are excluded from a company's liquidation estate and must be paid in full to employees, regardless of whether separate funds were maintained.

The court clarified that while the IBC governs insolvency proceedings, the Payment of Gratuity Act specifically protects employees' rights. Section 14 of the Gratuity Act grants it overriding authority over conflicting laws, ensuring employees receive their dues. The court also highlighted the principle of Caveat Emptor (buyer beware), stressing that the new management assuming control of the company was obligated to conduct due diligence, including addressing outstanding employee liabilities like gratuity.

Judgment and Outcome

The High Court dismissed the writ petition, ruling in favour of Shri Arun Roy. It affirmed that the Controlling Authority had lawful jurisdiction to adjudicate the gratuity claim since the company remained operational under CIRP and post approval of the resolution plan and had not been liquidated. The court emphasized that gratuity payments are distinct from liquidation assets and must be honoured in full, prioritizing employees' welfare over other creditors' claims.

The court directed M/s. Stesalit Limited to pay the gratuity amount of Rs. 2,11,154 to Shri Arun Roy within 30 days of the order, along with 10% annual interest from the date of his resignation (December 3, 2014). It also noted that the company's failure to account for gratuity obligations during the insolvency process reflected negligence, but this did not absolve it of its legal duty under the Gratuity Act.

Implications of the Judgment

This ruling reinforces the protection of employees' statutory rights during corporate insolvency proceedings. It clarifies that even under the IBC, gratuity payments remain a priority and are excluded from liquidation assets. The judgment also highlights the importance of due diligence for entities acquiring companies under insolvency, ensuring they address all employee liabilities proactively.

In conclusion, the court's decision balances the objectives of the IBC with the imperative to safeguard workers' entitlements, setting a precedent for similar cases involving gratuity disputes in insolvency contexts.

Kerala High Court Upholds Biological Parent's Consent Requirement in Step-Parent Adoption

Introduction

The formation of blended families is increasingly common, with step-parents playing crucial roles in children's lives. However, the legal process of adoption, particularly when a biological parent is still alive and involved, is a complex and sensitive matter. A fundamental principle enshrined in law is that a step-parent cannot adopt a child without the consent of the existing biological parent, barring exceptional circumstances.

The Primacy of Biological Parent Rights

The cornerstone of family law is the recognition of the inherent rights of biological parents. These rights stem from the natural bond between parent and child and are protected by both statutory and constitutional provisions. The right to parent, to raise, and to make decisions for one's child is considered a fundamental liberty.

Ammu Ajit vs. Central Adoption Resource Agency: Kerala High Court

Background: After the mutual divorce of the child's biological parent, the mother was granted permanent custody of the child, while the father was granted interim custody. The stepfather applied for the child's adoption following the mother's second marriage. However, the Child Welfare Committee (CWC) rejected the proposal because of the biological father's concerns. In order to overturn the CWC judgment and order CARA to relax the adoption process so the stepfather may adopt without the biological father's approval, the mother and stepfather went to the High Court.

Ruling: The Kerala High Court has ruled that adoption by step-parent cannot be permitted unless the biological parent of the child gives consent for adoption in the light of Section 56 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Regulation 55 of the Adoption Regulations, 2022. The child has to be surrendered by the biological parent by jointly executing a consent letter with step-parent.

The Court further clarified that Central Adoption Resource Agency (CARA) cannot relax the requirement of obtaining biological parent's consent for adoption under the Regulation 63 of the Adoption Regulations, 2022 due to the legal implications of an adoption.

The Court thus observed that the substantive and statutory right of the biological parent over the custody of his child cannot be waived or relaxed by CARA, but such rights could only be determined by a competent Civil Court. The Court ruled that the Adoption Regulations of 2022, formulated under Section 58 of the Juvenile Justice Act, are applicable to children from earlier marriages surrendered by biological parents for adoption by step-parents. The child must be surrendered by the biological parent through a consent letter, attested by witnesses and certified by the CWC. The court also noted that a joint application for adoption can only be filed after obtaining the pre-approval letter. The biological father had not given consent for adoption, but the court interpreted the regulations as requiring the biological parent to surrender the child. The court also ruled that the child's ties with their biological parent are irrevocably and permanently severed, affecting their inheritance and succession rights

Present Scenario

Indian courts have consistently upheld the principle that a step-parent cannot adopt a child without the consent of the biological parent, except in rare and compelling circumstances.

- Courts have emphasized that adoption severs the legal ties between the child and the biological parent. Therefore, it is a serious step that requires careful consideration and the consent of all parties involved.
- Judgments have highlighted the importance of the child's welfare, but this does not automatically override the rights of the biological parent. Courts have held that the child's best interests are generally served by maintaining the relationship with their biological parents.
- Cases where a biological parent has abandoned the child, is deemed unfit, or has demonstrably failed to fulfill their parental responsibilities are the limited exceptions where a court may consider adoption without consent. Even in these cases, stringent evidence is required.
- The courts are very reluctant to terminate parental rights, unless it is proven that the parent has forfeited those rights.

The Importance of Consent

The requirement of biological parent consent is not merely a legal formality. It reflects the deep-seated recognition of the parent-child bond and the importance of preserving family ties. It also aims to prevent arbitrary or unilateral decisions that could have profound consequences for the child.

Conclusion:

The legal landscape in India firmly protects the rights of biological parents. A step-parent's desire to adopt a child, however well-intentioned, cannot override these rights without the biological parent's consent. While the welfare of the child remains the paramount consideration, courts recognize that this welfare is generally best served by respecting and preserving the natural family relationships. Therefore, adoption without biological parent consent is permitted only in the most exceptional and compelling circumstances, where the courts must be convinced that the biological parent has forfeited his or her parental rights.

When Nominees and Heirs Collide: Madras High Court Resolves Insurance Dispute

In a judgment that clarifies the rights of legal heirs versus nominated beneficiaries in insurance policy disputes, the Madras High Court has delivered a decision that balances statutory obligations with familial equity. The case, W.P.No.29882 of 2023, highlights the complex interplay between insurance law and succession rights, offering guidance for similar disputes across India.

The dispute originated from the death of Dr. Maheswar in 2016, who held LIC policy No.707456621. His mother, A. Devika, challenged LIC's decision to release the entire policy amount to the nominated beneficiary, Dr. M.V. Nandhinee (the deceased's wife). The petitioner asserted her right as a Class-I legal heir to one-third of the policy proceeds, alongside the beneficiary and the beneficiary's daughter.

The petitioner's counsel argued that nomination under an insurance policy does not automatically divest other legal heirs of their rightful shares under succession laws. They contended that the Insurance Company should recognize the petitioner's statutory entitlement as a legal heir, despite the nomination in favour of the second respondent.

The respondents' counsel countered that under Section 39 of the Insurance Act, 1938, particularly subsection 7, the nominated beneficiary is entitled to the entire policy amount as her absolute property. They relied on precedents including K.R. Sakthi Murugeswari v. Divisional Manager, LIC and Mallela Manimala v. Mallela Lakshmi Padmavathi, which distinguish between "beneficiary nominees" and "collector nominees."

The court carefully considered these arguments alongside the statutory framework. Justice D. Bharatha Chakravarthy recognized that while Section 39 generally treats certain nominees as beneficiaries entitled to the policy amount as their own property, the court could facilitate a consensual distribution among legal heirs when the beneficiary nominee agrees to such an arrangement before court.

The Ratio

The court established that when there is a validly nominated beneficiary under Section 39(7) of the Insurance Act, that beneficiary is entitled to claim the entire policy amount and hold the money in trust subject to the claims made by the legal heirs who are entitled to a share in the sum assured. The judgment reaffirmed that the Insurance Company's primary legal obligation is to disburse the policy proceeds to the nominated beneficiary or collector nominee, as applicable under the law.

Importantly, the court recognized that insurance companies are not required to resolve disputes between legal heirs and nominees, as their responsibility ends once they transfer the policy amount to the nominated beneficiary. This principle ensures that insurance companies remain neutral in familial disputes while upholding their statutory duties.

However, in the peculiar fact of the case, when the beneficiary nominee herself acknowledges the claims of other legal heirs and agrees to a distribution of the policy proceeds the court found no necessity to invoke the general legal principles governing nominee beneficiaries under Section 39 of the Insurance Act, 1938. In its decision, the court directed LIC to disburse the policy amount as follows:

– One-third to the petitioner, A. Devika

– Two-thirds to the second respondent, Dr. M.V. Nandhinee, including the share of the minor daughter

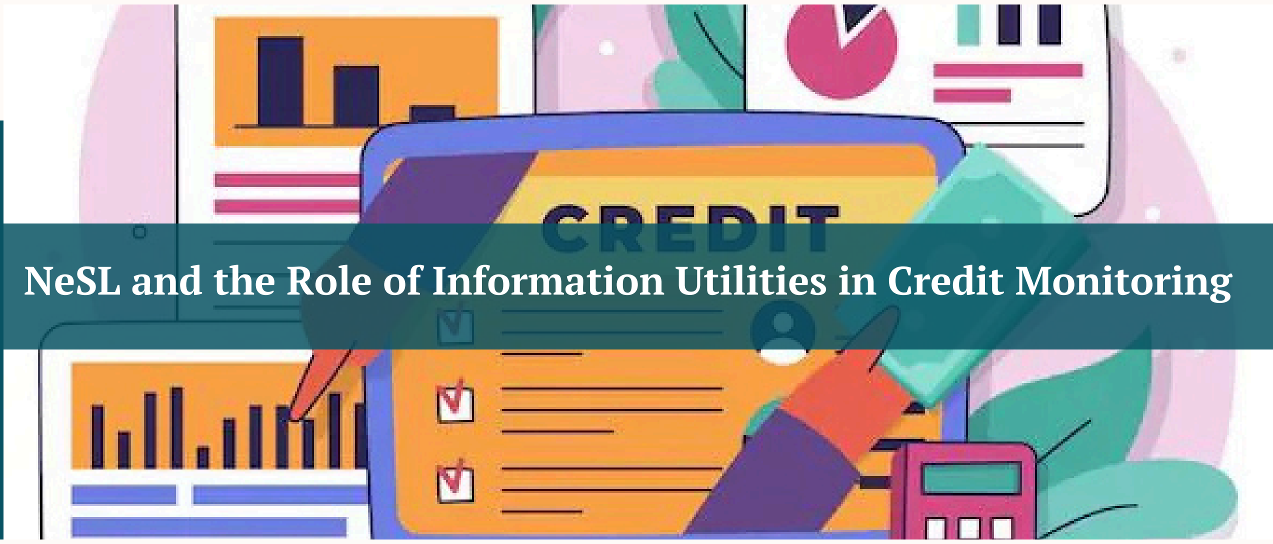
The court ordered both parties to submit required documents within two weeks, with LIC required to process the claim and release funds within eight weeks thereafter.

Conclusion

This judgment reinforces important principles under the Insurance Act, 1938, particularly regarding the rights of nominated beneficiaries and the obligations of insurance companies. By clarifying that a validly nominated beneficiary under Section 39(7) holds the policy amount as their absolute property, the court has provided clear guidance on the statutory framework governing insurance policy disbursements.

The decision confirms that insurance companies fulfil their legal obligations by disbursing funds to the nominated beneficiary, regardless of familial disputes over inheritance. This precedent will guide future cases involving conflicts between nominated beneficiaries and legal heirs, ensuring consistent application of Section 39 while respecting the legislative intent behind the distinction between beneficiary and collector nominees. The ruling establishes that while courts may facilitate consensual resolutions between parties, the primary legal obligation of insurance companies remains to follow the nomination as recorded under the policy.

ARTICLES



NeSL and the Role of Information Utilities in Credit Monitoring

National E-Governance Services Limited (NeSL) is India's first Information Utility and is registered with the Insolvency and Bankruptcy Board of India (IBBI) under the aegis of the Insolvency and Bankruptcy Code, 2016 (IBC). The company has been set up by leading banks and public institutions. The primary role of NeSL is to serve as a repository of legal evidence holding the information pertaining to any debt/claim, as submitted by the financial or operational creditor and verified and authenticated by the parties to the debt. In the complex landscape of corporate finance and insolvency, timely information is crucial for creditors to protect their interests.

NeSL also plays a pivotal role in providing early warning signals to creditors, particularly banks, non-banking financial companies (NBFCs), and other financial institutions. This article delves into the functioning of NeSL and the significance of its alerts for credit monitoring.

The Recent Circular and Its Importance

On 25th March 2025, NeSL issued a circular (Circular No.: NeSL/FC/2025/0184) inviting the attention of creditors, especially banks and financial institutions, to take note of the NeSL IU alerts—early warning signals that assist in credit monitoring. These alerts are designed to help creditors stay informed about the financial health of corporate debtors and take proactive measures to protect their interests. The circular emphasizes the importance of these alerts in managing credit risk and navigating the complexities of corporate insolvency.

The Three Types of NeSL IU Alerts

Default Alert

One of the key services provided by NeSL is the Default Alert. This alert is triggered when any creditor reports a default by a corporate debtor (CD) to the IU under the IBC. Once the default information is authenticated, NeSL communicates this to all other registered creditors of the CD. This early warning signal is crucial as it may affect the interests of other creditors. By being informed promptly, creditors can take proactive measures to protect their financial interests.

CIRP Application Filing Alert

Another important alert is the CIRP Application Filing Alert. This is activated when any creditor files an application for the initiation of the Corporate Insolvency Resolution Process (CIRP) with the National Company Law Tribunal (NCLT). Upon receiving details from the Insolvency and Bankruptcy Board of India (IBBI), NeSL sends alerts via email to all registered creditors who have exposure to the debtor. This allows creditors to take steps to safeguard their interests during the insolvency resolution process.

Public Announcement Alert

The Public Announcement Alert is issued when an application for CIRP is admitted and a public announcement is made by the Insolvency Professional. NeSL alerts all creditors with exposure to the debtor, enabling them to submit their claims within the stipulated timelines to the insolvency professional. Similar alerts are sent for public announcements during liquidation processes, voluntary liquidation, and pre-packaged insolvency. This ensures that creditors are informed and can participate effectively in the insolvency process.

Ensuring Effective Communication

NeSL sends these alerts to the email IDs provided by creditors in columns 11 and 12 of Form C. However, it has been observed that some email IDs have become inactive due to employee transfers or retirements. To address this, NeSL has by way of the said circular requested creditors, especially banks and financial institutions, to periodically review and update the email IDs in the IU Portal. This ensures that alert emails reach the relevant departments handling credit monitoring or insolvency resolution matters.

Benefits for Creditors

The alerts provided by NeSL are instrumental in helping banks, NBFCs, and financial institutions stay informed about the financial health and insolvency status of corporate debtors. By receiving timely information, creditors can take proactive measures to protect their interests and manage credit risk effectively. These alerts enable creditors to participate in insolvency processes and safeguard their claims.

Conclusion

The National e-Governance Services Limited (NeSL)'s role as an Information Utility under the IBC, 2016, is vital in ensuring that creditors have access to timely and accurate information. The Default Alert, CIRP Application Filing Alert, and Public Announcement Alert are essential tools that help creditors monitor the financial health of corporate debtors and take necessary actions to protect their interests. By staying informed and proactive, creditors can navigate the complexities of corporate insolvency with greater confidence and security. NeSL's commitment to providing these alerts highlights its importance in the financial ecosystem and its dedication to supporting the insolvency resolution process.

CCI Orders Investigation into TASMAC's Beer Procurement Practices

The Competition Commission of India (CCI) has directed an investigation into the procurement and sales practices of the Tamil Nadu State Marketing Corporation Limited (TASMAC) regarding beer distribution in the state. The order, issued under Section 26(1) of the Competition Act, 2002, follows a complaint filed by Chakra R Prabakaran alleging abuse of dominant position by TASMAC.

Background of the Complaint

Chakra R Prabakaran, a resident of Cuddalore in Tamil Nadu, filed the complaint against TASMAC, the state-owned marketing corporation with exclusive rights to sell liquor through its extensive network of retail outlets across Tamil Nadu. The complainant alleged that TASMAC's beer procurement and sales practices violate Section 4 of the Competition Act by limiting market access to certain beer brands.

Allegations Against TASMAC

The complaint centres on TASMAC's alleged exclusive dealings with specific breweries, particularly SNJ Breweries, to procure and sell only a limited selection of beer brands. Despite 46 beer brands being available in Tamil Nadu, consumers reportedly have access to only 4-5 brands through TASMAC outlets. The complainant provided a white paper titled "TASMAC – Free Tamil Nadu" published by Tamil Nadu BJP president K. Annamalai as evidence, which highlights the limited consumer choice and potential monopolistic control by certain manufacturers in collusion with TASMAC.

Relief Sought by the Complainant

The complainant requested several remedies, including the phased closure of all TASMAC liquor shops within a year, immediate closure of 50% of TASMAC shops as interim relief, and imposition of penalties on TASMAC and its supplier breweries for causing an appreciable adverse effect on competition in the beer market.

CCI's Process and TASMAC's Response

The Commission sought responses from TASMAC on multiple occasions regarding their beer procurement policies and practices. After several extensions and opportunities provided to TASMAC to submit their comments and data, the corporation eventually responded in January 2025. TASMAC defended its procurement process as impartial and system-based, utilizing a weighted average sales calculation method to generate monthly orders for beer manufacturers.

CCI's Analysis of TASMAC as an Enterprise

The Commission confirmed that TASMAC qualifies as an enterprise under Section 2(h) of the Competition Act, as it engages in economic activities related to the distribution and sale of alcoholic beverages in Tamil Nadu. This determination was crucial for assessing potential competition law violations.

Relevant Market Assessment

The CCI delineated the relevant market as "procurement, marketing, distribution and sale of beer in the state of Tamil Nadu." This assessment considered both product characteristics (beer being distinct from other liquors) and geographic factors (state-level regulation of liquor sales under the Constitution of India).

Dominant Position Determination

The Commission found that TASMAC holds a dominant position in the relevant market due to its exclusive monopoly on liquor distribution in Tamil Nadu since 1983. With no competitive forces operating in the market, TASMAC's position enables it to act independently of market pressures, fulfilling the criteria for dominance under Section 4 of the Act.

Observations from Previous Judgments

The CCI referenced a 2014 Madras High Court judgment in the case of M/s Golden Vats Pvt. Ltd. versus TASMAC, where the court emphasized that consumer choice should prevail in monopolistic sales environments. The judgment stressed that all IMFL brands should be made available to consumers, a principle the Commission considered relevant to the current beer procurement practices.

Basis for Prima Facie View

The Commission's prima facie view that TASMAC may be abusing its dominant position stems from several factors:

– TASMAC's procurement data shows significant market share concentration among specific brands

– Well-known international beer brands have minimal procurement shares

– The weighted average sales calculation method may perpetuate existing market positions

– News reports and public information support allegations of limited brand availability

– The complainant's allegations align with evidence of consumer choice restrictions

CCI's Direction

The Commission has directed the Director General to conduct a thorough investigation into TASMAC's beer procurement practices. The investigation must be completed within 60 days of the order, with a comprehensive report submitted to the CCI. The Commission emphasized that this order does not constitute a final determination of the case merits but is based on the prima facie evidence presented.

SEBI Cracks Down on Social Media Fraud: New Advertising Rules for Market Intermediaries

In today's digital age, social media platforms have become powerful tools for reaching potential investors. However, this digital transformation has also created new opportunities for fraudsters to exploit unsuspecting individuals. The Securities and Exchange Board of India (SEBI), recognizing the growing threat of securities market frauds on platforms like YouTube, Facebook, Instagram, and Telegram, has taken decisive action to protect investors and maintain market integrity.

The regulatory body has observed a disturbing trend of fraudulent activities where perpetrators lure victims with promises of risk-free returns, online trading courses, and misleading testimonials. These scams have become increasingly sophisticated, often targeting inexperienced investors who may not recognize the red flags of fraudulent schemes.

To address this growing concern, SEBI has issued a comprehensive circular (PR No.14/2025) that introduces stringent verification requirements for all registered intermediaries seeking to advertise on social media platforms. The new regulations mandate that intermediaries must register on these platforms using their SEBI-registered email addresses and mobile numbers. This verification process, which will initially apply to Google and Meta platforms, ensures that only legitimate entities can advertise financial services to the public.

The circular outlines a clear timeline for compliance, requiring all SEBI Registered Intermediaries to update their contact details in the intermediary database on the SEBI SI Portal by April 30, 2025. Following this registration, social media platforms will conduct advertiser verification before permitting any advertisements to go live.

These measures represent a significant step forward in SEBI's ongoing efforts to combat financial fraud in the digital space. By implementing these verification protocols, the regulator aims to create a more transparent environment where investors can distinguish between legitimate financial services and fraudulent schemes.

The implications of these regulations extend beyond mere compliance for intermediaries. They represent a proactive approach to investor protection in an era where digital communication has become the primary channel for financial education and investment opportunities. By ensuring that only verified entities can advertise on major social media platforms, SEBI is helping to build a more trustworthy digital marketplace for securities.

As the securities market continues to evolve in tandem with technological advancements, SEBI's adaptive regulatory framework demonstrates its commitment to balancing innovation with investor protection. These new advertising rules serve as a reminder to both intermediaries and investors alike of the importance of vigilance in the digital investment landscape.

Guidelines for Protection of Good Samaritans in Road Accidents

Introduction

India has witnessed a disturbing rise in fatal road accidents in recent years, with thousands of lives lost annually on its roads. Tragically, many of these accidents involve hit-and-run drivers, leaving victims in critical condition without immediate assistance. Witnesses to these accidents often hesitate to rush victims to hospitals due to fears of harassment by police, unnecessary legal entanglements, or financial liabilities. This reluctance to help has created a moral crisis alongside the public safety concern. Recognizing this growing problem, the Indian government issued comprehensive guidelines in 2015 to protect good Samaritans who come forward to assist accident victims. These guidelines aim to create a safer legal environment for citizens who choose to act compassionately in emergency situations, ensuring they can help without fear of unwarranted consequences.

Background

The Guidelines for Protection of Good Samaritans were issued by the Ministry of Road Transport and Highways on 12th May 2015, following a Supreme Court directive in the case of SaveLife Foundation vs. Union of India (Writ Petition No. 235 of 2012). The court ordered the Central Government to establish protections for good Samaritans until appropriate legislation could be enacted.

The guidelines were developed in response to the growing number of road accidents in India and the reluctance of bystanders to assist victims due to fear of legal harassment or financial liability. The Supreme Court recognized the need to create a safe environment for citizens who wish to help accident victims without facing unnecessary consequences.

Protections for Good Samaritans

Any bystander or good Samaritan, including eyewitnesses, may take an injured person to the nearest hospital. These individuals shall be allowed to leave immediately after providing their address if they are eyewitnesses. Importantly, good Samaritans shall not be liable for any civil or criminal liability resulting from their actions to help accident victims. They shall be suitably rewarded or compensated as may be decided by the state governments in this regard.

Those who call emergency services to report an accident shall not be compelled to reveal their name or personal details either on the phone or in person. This anonymity protection extends to medical legal case (MLC) forms, where disclosure of personal information shall be voluntary and optional.

Hospital Responsibilities

All hospitals, both public and private, shall not detain good Samaritans or demand payment for registration and admission costs unless the good Samaritan is a family member or relative of the injured person. Doctors who fail to respond appropriately in emergency situations related to road accidents may face professional misconduct proceedings under the Indian Medical Council regulations.

Hospitals are required to publish a charter in Hindi, English, and the local language of the state or union territory at their entrance. This charter must clearly state that the hospital will not detain good Samaritans or demand deposits for treating accident victims. Hospitals shall also provide acknowledgment to good Samaritans confirming that an injured person was brought to the hospital, including the time and place of the incident.

Legal Process Protections

Good Samaritans who are required to give statements as eyewitnesses shall be examined only once to minimize inconvenience. Standard operating procedures shall be developed by state governments to ensure these individuals are not harassed or intimidated during the legal process.

Video conferencing may be used extensively during the examination of good Samaritans to further reduce inconvenience and potential harassment. Personal information disclosure remains voluntary throughout all interactions with authorities.

Implementation and Compliance

All hospitals shall implement these guidelines immediately. Appropriate action shall be taken against hospitals or authorities that do not comply with these requirements. The Central and State Governments shall issue letters to all hospitals and medical institutions under their jurisdiction, enclosing a copy of the official gazette notification.

To ensure public awareness, the Ministry of Health and Family Welfare and Ministry of Road Transport and Highways shall publish advertisements in national and regional newspapers, as well as through electronic media, to inform citizens of their rights and protections under these guidelines.

Liability Clarification

These guidelines specifically note that they do not affect the liability of motor vehicle drivers involved in road accidents as specified under Section 134 of the Motor Vehicles Act, 1988. The protections afforded to good Samaritans under these guidelines are separate from and do not impact the legal responsibilities of those who may have caused the accident.

The guidelines aim to encourage citizens to assist road accident victims without fear of harassment or legal consequences, while ensuring proper medical care and legal procedures are followed. By creating a supportive environment for bystanders who wish to help, the government hopes to improve the outcomes for road accident victims across India.

Delhi Witness Protection Scheme, 2025: Safeguarding Vulnerable Witnesses in Legal Proceedings

The Delhi Witness Protection Scheme, 2025, notified under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, marks a significant step toward ensuring the safety of witnesses in the National Capital Territory of Delhi. This scheme addresses the critical need to protect individuals and their families from threats, intimidation, or harm during investigations, trials, and post-trial proceedings. By creating a structured framework for witness protection, the Delhi government aims to uphold the integrity of the judicial process and encourage public cooperation with law enforcement.

Witness protection schemes are legal frameworks designed to safeguard individuals who provide testimony in criminal proceedings, particularly when they face threats, intimidation, or potential harm due to their involvement in a case. These programs typically offer a range of protective measures, including identity concealment, physical security, relocation assistance, and financial support, to ensure witnesses can participate in legal processes without fear of retaliation. By maintaining strict confidentiality about witnesses' personal details and often providing new identities when necessary, these schemes protect both the physical safety and psychological well-being of participants. Witness protection programs strengthen the justice system by encouraging citizens to come forward with crucial information, knowing their safety will be prioritized. They typically involve collaboration between law enforcement, judicial authorities, and social services to implement comprehensive protection strategies that may include secure housing, escorted transportation, and ongoing support throughout legal proceedings and beyond.

Understanding Key Definitions

The scheme introduces several key terms to guide its implementation. The "Concealment of Identity" refers to measures that prevent the disclosure of a witness's personal details, such as their name, address, or other identifiers, during legal proceedings. A "Competent Authority" is established as a district-level committee, chaired by the Principal District and Sessions Judge, with representatives from the police and prosecution. This authority oversees all decisions related to witness protection. A "Witness Protection Application" can be filed by the witness, their family, legal counsel, or police officials to seek safeguard measures.

Categorizing Threats to Witnesses based on perception

The scheme classifies witnesses into three categories based on the severity of threats they face:

-Category 'A' applies to cases where the witness or their family's life is at risk.

-Category 'B' covers threats to the safety, reputation, or property of the witness or their family.

– Category 'C' addresses moderate risks, such as harassment or intimidation.

This categorization ensures tailored protection measures aligned with the level of danger.

State Witness Protection Fund

A dedicated Witness Protection Fund has been established to finance all protection measures. Funded through budgetary allocations, court-ordered deposits, donations, and corporate social responsibility (CSR) contributions, it is managed by the Home Department. This fund ensures that financial constraints do not hinder the implementation of critical safeguards.

Filing an Application for Protection

Witnesses or their representatives can file an application with the Competent Authority in the district where the offence occurred. The application must include supporting documents, such as evidence of threats, and is submitted through the authority's Member Secretary.

Processing Applications: A Streamlined Procedure

Upon receiving an application, the Competent Authority directs the police to submit a Threat Analysis Report within five working days. This report evaluates the credibility and severity of threats and suggests appropriate measures. In urgent cases, interim protection can be granted immediately. The authority then conducts a private, confidential hearing and resolves the application within five days of receiving the report. The Delhi Police's Witness Protection Cell or the trial court shall implements the final order, with oversight by the Police Commissioner. However, the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Home Department, Government of National Capital Territory of Delhi.

Protection Measures: Tailored to Threat Levels

Protection measures are proportional to the threat level and may include:

– Physical security enhancements, such as installing security devices or providing close patrolling.

– Identity concealment, including pseudonyms and unlisted phone numbers.

– Relocation assistance to safer locations within India.

– Financial aid from the fund for relocation, livelihood support, or emergency needs.

– Special court arrangements, such as live video links and separate passages for witnesses.

These measures are reviewed quarterly to ensure ongoing relevance and effectiveness.

Identity Protection and Relocation

The scheme allows witnesses to apply for identity protection, enabling the use of aliases and restricting the disclosure of personal details. In extreme cases, the Competent Authority may grant a new identity, including revised names, professions, and supporting documents, without compromising existing rights. Relocationto a safer location, funded by the scheme, is also permissible when necessary for safety.

Confidentiality and Record Preservation

All stakeholders, including police, courts, and lawyers, must maintain strict confidentiality to prevent leaks. Records related to protection orders are preserved until legal proceedings conclude, with scanned copies retained afterward.

Awareness and Accountability

The Delhi Police is tasked with publicizing the scheme to ensure witnesses are aware of their options. However, false complaints can lead to recovery of expenses from the witness. A review mechanism allows aggrieved parties to challenge decisions within 15 days.

Conclusion

The Delhi Witness Protection Scheme, 2025, reflects a comprehensive approach to safeguarding justice participants. By balancing immediate protection with long-term confidentiality, it aims to foster trust in the legal system while deterring criminal influence. This initiative underscores Delhi's commitment to upholding the rule of law and protecting the rights of all citizens engaged in judicial processes.

NeSL Tightens Record of Default Issuance Process Under Amended IBBI Regulations

In a significant development for creditors operating within India's financial ecosystem, National e-Servicing Limited (NeSL), a designated Information Utility (IU) under the Insolvency and Bankruptcy Board of India (IBBI) framework, has issued a detailed circular outlining enhanced procedures for the issuance of Records of Default (RoD). The notification, Circular No.: NeSL/FC/2025/0182 dated March 7, 2025, implements amended regulations from the IBBI (Information Utilities) Regulations, 2017, specifically Regulations 21 and 21A, which came into effect on October 1, 2024, and December 1, 2024, respectively. These amendments establish a more rigorous authentication and verification process designed to ensure accuracy and fairness in default reporting while protecting the rights of both creditors and debtors.

The circular emphasizes that NeSL will only issue RoDs in Form D after completing a multi-step authentication process. This process begins with notifying debtors of their default status via email and seeking their confirmation. If debtors fail to respond, NeSL must send at least three reminders, each allowing seven days for acknowledgment. Following this notification period, NeSL records the authentication status of the default information before proceeding.

Creditors, particularly banks and financial institutions, are required to submit comprehensive documentation to support their default claims. This includes proof of debt, the latest acknowledgment of debt by the debtor, and concrete evidence of default. NeSL will verify these documents meticulously before issuing any RoD.

The notification also addresses dispute resolution mechanisms. Debtors who dispute either the entire or a portion of the claimed default amount must provide detailed reasons for their dispute and upload supporting evidence. NeSL will then verify this information before making a final determination on the RoD issuance.

In practice, this means creditors must now follow a more structured approach when seeking RoDs. They must first submit Form C with default information to NeSL and ensure all required documentation is in order before requesting the RoD. This additional layer of verification aims to reduce errors in default reporting and prevent potential abuses of the system.

The implementation of these amended regulations represents a balanced approach to default reporting in India's financial sector. While creditors now face additional procedural requirements, these measures ultimately strengthen the integrity of the default reporting system. By ensuring that default information is thoroughly verified and authenticated, NeSL helps maintain fair practices in lending relationships while protecting debtors from potentially erroneous or fraudulent claims.

For debtors, these enhanced procedures provide an opportunity to address discrepancies before formal default records are created, potentially preventing unnecessary damage to their credit profiles. The structured process ensures that debtors have a clear pathway to challenge inaccurate claims, promoting a more equitable financial environment.

As India's financial landscape continues to evolve, these regulatory enhancements demonstrate the commitment of authorities to creating a transparent and fair lending ecosystem. Regulation 21 on "Authentication of default" and Regulation 21A on "Verification of information before issuance of record of default" of IBBI (Information Utilities) Regulations, 2017, as amended with effect from 1st Oct 2024 and 1st Dec 2024 plays a crucial role in balancing the interests of all stakeholders while upholding the principles of accuracy and fairness in financial reporting.

New Income Tax Bill: A Conundrum Between Right To Privacy And Authorized Officers' Access To Virtual Digital Space

Introduction

The Income-Tax Bill, 2025, introduced in the Lok Sabha on February 13, 2025, aims to modernize India's direct tax framework by replacing the six-decade-old Income Tax Act, 1961. While the bill simplifies tax laws and includes provisions for virtual digital asset taxation and presumptive tax schemes, it has sparked controversy due to a clause that grants tax authorities access to taxpayers' emails and social media during investigations.

Key Provisions of the New Income Tax Bill

The new Income Tax Bill consolidates the existing law's 52 chapters into 23 chapters and reduces its word count by nearly half, making it easier to understand for taxpayers. It introduces a unified "tax year" aligned with the financial year and simplifies compliance by removing redundant provisions.

Previously, the Income tax Authority under Section 132 of the Income Tax Act, 1961, allowed the authorized officer to conduct search and seize assets and books of accounts of individuals upon having reason to believe that the said individual has any undisclosed income or documents in order to evade paying tax. This allowed the authority to break the lock on any door, box, or locker if they couldn't find their keys or had cause to believe that any books of accounts or undeclared valuables were being stored there.

Presently, as per clause 261 of the Bill, "virtual digital space" means an environment, area or realm, that is constructed and experienced through computer technology and not the physical, tangible world which encompasses any digital realm that allows users to interact, communicate and perform activities using computer systems, computer networks, computer resources, communication devices, cyberspace, internet, worldwide web and emerging technologies, using data and information in the electronic form for creation or storage or exchange and includes

–– (i) email servers; (ii) social media account; (iii) online investment account, trading account, banking account, etc.; (iv) any website used for storing details of ownership of any asset; (v) remote server or cloud servers; (vi) digital application platforms; and (vii) any other space of similar nature[1]. Virtual digital assets like cryptocurrencies are also included in undisclosed income definitions.

Controversial Clause 247

Clause 247 of the bill allows tax officers to bypass passwords and access digital platforms like emails and social media during searches if taxpayers refuse cooperation. The clause stipulates that an authorized officer, in consequence of information in his possession, has reason to believe, can "break open the lock of any door, box, locker, safe, almirah, or other receptacle for exercising the powers conferred by clause to enter and search any building, place, etc., where the keys thereof or the access to such building, place, etc., is not available, or gain access by overriding the access code to any said computer system, or virtual digital space, where the access code thereof is not available[2]".

The provision granting access to digital platforms has sparked significant debate. Concerns about potential misuse of these powers has become a conundrum between the regulatory compliance and broad interpretation of this provision and safeguard of fundamental right to privacy. This provision could lead to overreach and infringe on citizens' privacy rights. Due to lack of safeguard, such extensive power in the hands of tax authorities will lead to needless monitoring of personal data of taxpayers. The Bill is also silent on as to what extent "reason to believe" may overlap a mere suspicion of tax version.

Implications for Taxpayers

Starting April 1, 2026, when the new income tax law comes into force, income tax officials could get the authority to access individuals' digital accounts if they suspect tax evasion. This includes emails, social media, bank accounts, trading platforms, and online investments. Taxpayers must ensure full disclosure of assets and maintain proper records to avoid legal scrutiny.

Constitutional Validity

The Supreme Court has previously observed that the Right to Privacy under Article 21 is sacrosanct, and any intrusion by the state must pass the tests of legality, necessity, and proportionality. In the landmark judgement pronounced by the Supreme Court of India in K.S. Puttaswamy vs Union of India[3], the scope of Right to Privacy was redefined and was held to be sacrosanct. It balances the protection of individual privacy with the state's responsibility to ensure public welfare and security.

The broad and vague definition of "virtual digital space" allows unrestricted surveillance over an individual's financial and private digital presence. This raises concerns about potential state overreach and arbitrary scrutiny. Such a search and seize challenges constitutional validity of the provision as there are no reasonable ground imposed by the provision and is interpreted to be exercised as a rule and not an exception. Before accessing private property and personal data of an individual, the objective of the search and seizure must be properly given, and there must be reasonable and probable grounds for search and seize.

Conclusion

While simplifying India's tax laws is a welcome step toward reducing litigation and improving compliance, granting unchecked access to personal digital platforms raises serious privacy concerns. The Legislative must strike a balance between effective enforcement and safeguarding citizens' fundamental rights. Without court intervention or particular procedural protections, such an arbitrary and unclear provision runs the risk of turning into an instrument for capricious examination rather than a methodical approach to tax enforcement. The absence of explicit procedural safeguards in the new Income Tax Bill might result in unfettered data collection and fishing expeditions against individuals, companies, and professionals.

FSSAI Clarifies Testing Standards for In-Shell Nuts: Regulatory Guidance for Industry Compliance

Background and Confusion

The Food Safety and Standards Authority of India (FSSAI) issued an office order in March 2025 to address confusion among stakeholders regarding the testing standards applicable to in-shell nuts like almonds. The confusion arose because FSSAI-notified laboratories were using various standards for testing these products, leading to inconsistent results and interpretations.

Need for the Office Order

The inconsistent application of standards created uncertainty in the food industry, particularly for importers, exporters, and manufacturers of in-shell nuts. This lack of uniformity potentially compromised food safety regulations and made it difficult for businesses to comply with regulatory requirements. The FSSAI recognized the need to identify the correct standard testing process to ensure consistency, accuracy, and compliance with food safety standards.

Clarity Offered by FSSAI

The FSSAI clarified that sub-regulation 2.3.47 (5) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 prescribe the standards for dry fruits and nuts, which explicitly covers unshelled (in-shell) nuts as well. The order directs all FSSAI-notified food testing laboratories to test in-shell nuts exclusively against these specified standards.

It is important to note that Section 43(1) and 43(2) of the Food Safety and Standards Act, 2006: empower the FSSAI to notify food testing laboratories and specify the standards they must follow. The FSSAI uses these provisions to designate qualified laboratories and establish uniform testing protocols.

Further 2.3.47 (5) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 outlines the standards for dry fruits and nuts, including in-shell varieties.

Under the sub-regulations dry fruits and nuts are defined as products obtained through the drying process of sound, clean fruits and nuts that have reached proper maturity. These products may be presented with or without stalks, in both shelled and unshelled forms, pitted or unpitted, or even pressed into blocks.

The regulations specify stringent quality standards to ensure consumer safety and product integrity:

Products must be completely free from mould, insects (both living and dead), insect fragments, and rodent contamination

They should exhibit uniform colour and possess the natural pleasant taste and flavour characteristic of the specific fruit or nut

Off-Flavors, mustiness, rancidity, and any evidence of fermentation are strictly prohibited

No artificial collaring agents are permitted

Specific quantitative requirements include:

1. Extraneous vegetable matter (such as stalks, shell pieces, pits, fibre, and peel) must not exceed 1.0 percent

2. Damaged or discoloured units (affected by sunburn, scars, mechanical injury, discoloration, or insect damage) must not exceed 2.0 percent

3. Acidity of extracted fat, when expressed as oleic acid, must not exceed 1.25 percent

These standards ensure that dry fruits and nuts sold in the market maintain high quality, safety, and consistency for consumers.

Conclusion

The FSSAI's March 2025 office order represents a significant step forward in clarifying testing protocols for in-shell nuts, addressing previously identified inconsistencies that threatened both industry operations and consumer protection. By explicitly directing all notified laboratories to adhere to sub-regulation 2.3.47 (5) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, the authority has established a uniform benchmark that eliminates ambiguity and ensures all stakeholders operate under the same expectations.

This standardization not only strengthens compliance but also enhances consumer confidence in the quality and safety of nut products available in the Indian market. For the food industry, particularly businesses involved in the import, export, and manufacturing of in-shell nuts, this clarification provides essential guidance that facilitates smoother operations and reduces regulatory uncertainty. The FSSAI's proactive approach demonstrates its commitment to maintaining high food safety standards while supporting the growth of India's food sector through clear, consistent regulatory framework.

INDIALAW IN NEWS

Apex court protects consumers from IBC misuse by realtors

SC ORDER ON INSOLVENCY MORATORIUM

Apex court protects consumers from IBC misuse by realtors

RUCHIKA CHITRAVANSHI
New Delhi, 11 March

The recent Supreme Court order saying interim moratorium in the Insolvency and Bankruptcy Code (IBC) does not shield a company or an individual from paying regulatory dues has come as a blow to unscrupulous real estate developers, businesses, and personal guarantors using the Code to evade such payments, according to experts.

The top court's order was in connection with the penalties and execution imposed on the proprietor of East and West Builders, which is undergoing insolvency proceedings by the National Consumer Disputes Redressal Commission (NCDRC).

"The ruling sets a strong precedent, ensuring that consumer rights and regulatory penalties remain enforceable, even during financial distress," said Deepika Kumari, partner, King Stubb & Kasiva, Advocates and Attorneys.

Legal experts said that many builders facing consumer complaints for delayed possession, substandard construction, or non-compliance with NCDRC or Real Estate Regulatory Authority (Rera) orders have attempted to seek protection under the IBC moratorium.

The apex court order makes it clear that regulatory penalties are not "debts" under IBC and, therefore, insolvency proceedings do not provide immunity from fines imposed for violations of consumer protection laws. Builders and businesses, IBC lawyers said, can no longer use financial distress as an excuse to escape their legal obligations toward consumers, investors, and regulatory bodies. "The implications would extend beyond the real estate sector as this judgment makes it clear that other regulatory bodies such as the Securities and Exchange Board of India (Sebi), the Reserve Bank of India (RBI), Rera, goods and services tax (GST) authorities, Enforcement Directorate (ED), and Competition Commission of India (CCI) can continue imposing penalties on violators despite insolvency proceedings," said Sonam Chandwani, managing partner, KS Legal and Associates.

According to Section 96(1) of the IBC, interim moratorium commences on the date of the application in relation to all the debts, and ceases to have effect on the date of admission of such application.

Any legal action or proceeding pending in respect of any debt is stayed and creditors cannot initiate any legal action or proceedings in respect of any debt upon the commencement of interim moratorium.

"What is contemplated to be stayed under Section 96 of the IBC is the legal action or proceeding relating to a "debt", which has been defined under the Code as 'liability or obligation in respect of a claim which is due from any person'," said Piyush Agrawal, partner, AQUILAW.

Various legal experts said that the IBC does not clearly include regulatory penalties in the definition of "debt".

"Clearly, there is distinction between regulatory penalties and statutory dues, and going forward, before taking the plea of moratorium, the said distinction shall be required to be kept in mind," said Daizy Chawla, managing partner, S&A Law Offices.

Notably, statutory dues are considered as debt and authorities whose statutory dues are due are considered as "Operational Creditors" under the IBC. "The treatment of regulatory dues during interim moratorium of the personal guarantor will remain unchanged as long as it does not fall under excluded debts as defined under Section 79(15) of the IBC," said Yash Vardhan, associate partner, IndiaLaw LLP.

The excluded debts include liability to pay fine imposed by a court or tribunal, damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation, maintenance to any person under any law for the time being in force, and dues in relation to a student loan.

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- The SC had ruled that the interim moratorium under IBC does not protect companies or individuals from paying regulatory dues
- Decision impacts realty developers, businesses, personal guarantors who misuse IBC provisions to evade penalties
- Court clarified that regulatory penalties are not considered debts under the IBC and, therefore, cannot be shielded by the moratorium

In a recent article published by Business Standard titled "Apex court protects consumers from IBC misuse by realtors", Our Associate Partner G.P. Yash Vardhan shares his expert insights.

Yash Opined "The treatment of regulatory dues during interim moratorium of the personal guarantor will remain unchanged as long as it does not fall under excluded debts as defined under Section 79(15) of the IBC,"

INDIALAW IN NEWS

HC says service charges or tips are voluntary, restaurants can't levy it

In a recent article published by Business Standard titled "HC says service charges or tips are voluntary, restaurants can't levy it", Our Partner Rahul Sundaram shared his expert insights.

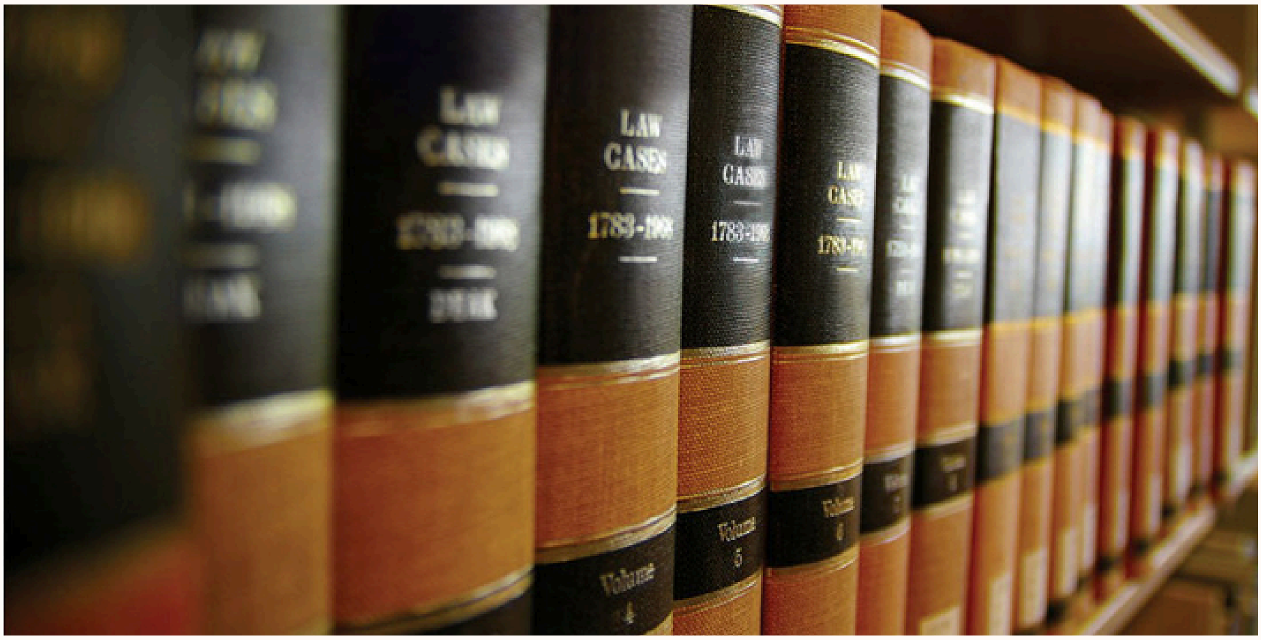
Rahul explained the case.
The Central Consumer Protection Authority (CCPA), established under the Consumer Protection Act (CPA) 2019, received complaints from consumers about restaurants and hotels charging a mandatory service charge of 5-20 per cent over and above the cost of food items.

The CCPA had issued guidelines prohibiting restaurants and hotels from adding service charges to consumer bills automatically or by default. Payment of service charges must remain optional and cannot be forced upon consumers. Restaurants cannot restrict entry or service based on payment of service charges. Additionally, GST cannot be levied on service charges, and such charges cannot be collected under any other name.

The National Restaurants Association of India and the Federation of Hotels and Restaurants Association of India challenged the guidelines before the Delhi High Court.

The court upheld the CCPA's authority to issue guidelines under the CPA, 2019, deeming them valid and in the interest of consumers. The ruling was delivered on March 28, 2025.

Real full Article here : https://lnkd.in/gP45YXmf



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