

# MONTHLY LITIGATION NEWSLETTER

## JUNE 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates on latest verdicts from the Supreme Court of India and various High Courts.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at [mail@lexport.in](mailto:mail@lexport.in).

Regards,  
Team Lexport



### ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation, and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website [www.lexport.in](http://www.lexport.in).

### OUR LITIGATION TEAM

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## PART A: COURT RULINGS

### **Issue 1: Is the compensation awarded to the appellant by the Hon'ble State Commission appropriate, given that the Hon'ble High Court has settled the issue of unfair trade practice?**

**Ruling:** Contradictory to the Hon'ble State Commission's verdict, the Hon'ble High Court confirmed that the promotional scheme by Honda City was not fraudulent or misleading. The appellant herein legitimately pursued his claim, believing he had won a car, despite not producing a purchase receipt for a Coca-Cola bottle. The Hon'ble State Commission's compensation for unfair trade practice is not valid, but in view of the Hon'ble High Court the Appellant should be awarded costs for his genuine belief and effort as the Consumer Protection Act, 2019 aims to support bona fide consumers like the appellant.

*Z. Ahmed C/o National Enterprises Vs. M/s Coco Cola India, Appeal No. 731 of 2007*

**Lexport Comment:** In this ruling the High Court validated legitimate promotional schemes, upheld consumer rights despite minor proof issues, and rewarded perseverance against corporate giants with litigation cost compensation.

### **Issue 2: Whether the judgment and/or order passed by the Learned District Commission without diligently considering the merits and evidence on record, is liable to be set aside?**

**Ruling:** The impugned judgment passed by the Hon'ble District Commission is devoid of due diligence of the provisions and general accepted practices followed in the court of law. The present impugned judgement is non-speaking as the consumer (respondent in the present appeal) *prima-facie* failed to physically establish or produce any substantive proof with respect to the manufacturing defect in the handset. The Hon'ble District Commission without applying its mind judiciously passed an order in favour of the respondent. However, during the present appeal, the Hon'ble State Commission observed that due to lack of substantive evidence to the effect of the relief sought by the respondent, the impugned judgement is flawed and lacked legal basis on account of being unsupported by evidence. Thus, pursuant to the above findings, the Hon'ble State Commission held that the impugned judgment is flawed and must be set aside, allowing the appeal.

***Oppo Mobile India Private Limited V. Sh. Vikas Sharma, FIRST APPEAL NO. 153 / 2021***

**Lexport Comment:** *In this ruling the Hon'ble State Commission highlights the importance of considering substantive evidence while pronouncing a judgement and it also underscores the need for Appellate authorities to scrutinize lower court order and rectify any errors in the application of law or appreciation of facts.*

**Issue 3: Whether the appellant, had a financial debt that was due and payable by corporate debtor, and whether there was an incidence of default justifying the initiation of CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016?**

**Ruling:** The Hon'ble Tribunal held that the financial creditor relied on a 2014 confirmation letter and 2017 financial statements, which showed a different amount than claimed. There was no evidence of a financial contract or transaction terms. The debt was written off in 2017, and no amount was payable in 2018. The Hon'ble Tribunal found no proof of debt or default, and thus, the Corporate Insolvency Resolution Process could not be initiated against the appellant.

*Metamorphosis Trading LLP v. Sankalp Engineering and Services (P.) Ltd, [2024] 162 taxmann.com 504 (NCLAT- New Delhi) [08-05-2024]*

**Lexport Comment:** *The judgment reaffirms the principle that the proof of debt or default is mandatory condition to initiate CIRP.*

**ISSUE 4: Should the National Company Law Appellate Tribunal (NCLAT) condone the 3-day delay in filing the Appeal?**

**Ruling:** The NCLAT emphasizes that “sufficient cause” for condonation of delay implies no negligence or inaction, rejecting reasons like seeking legal advice during festivals as insufficient. It clarifies that obtaining free-of-cost copies of orders is the stakeholder's responsibility. Consequently, the Hon'ble Tribunal concludes that the appellant hasn't demonstrated sufficient cause to condone the 3-day delay.

*State Bank of India v. India Power Corporation Ltd., [2024] 162 taxmann.com 611 (NCLAT - Chennai) [01-05-2024].*

**Lexport Comment:** *The Tribunal's observation establishes that condoning delay is a discretionary power of the Tribunal however, it shall be subject to “sufficient cause”.*

**Issue 5: Whether the High Court in exercise of its power under Article 227, can set aside the impugned order passed by the Commercial Court or not?**

**Ruling:** The Court affirms Article 227 empowers High Courts to oversee courts and tribunals, ensuring justice and upholding the rule of law. This inherent jurisdiction grants High Courts authority over all subordinate courts, independent of specific statutory provisions. Consequently, the Court sets aside the Commercial Court's order and directs expeditious adjudication of the petitioners' application under Section 34 of the Arbitration and Conciliation Act, 1996 within six months.

*M/S Devi Dayal Trust and Others V. M/S Rajhans Towers Pvt. Ltd.*

**Lexport Comment:** *This Court's invocation of Article 227 underscores High Court's pivotal role in maintain judicial integrity and expeditious resolution, ensuring justice prevails over all subordinate courts.*

**Issue 6: Is mere inaction post-filing the claim a valid ground for termination of the arbitral proceedings under clause (c) of sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996?**

**Ruling:** The Hon'ble Court ruled that if the claimant does not request a hearing date alone, it does not automatically mean that they have terminated or abandoned their claim unnecessarily. For abandonment to be implied, there must be strong and conclusive evidence where the admitted or proven facts lead inevitably to the conclusion of abandonment. Simply put, if the claimant does not take any action after filing the claim, it does not automatically imply that they have abandoned their claim. There must be convincing circumstances that clearly suggest abandonment for it to be inferred or assumed.

*Dani Wooltex Corporation and Others V. Sheil Properties Pvt. Ltd. and Another, Civil Appeal No. 6462 of 2024*

*Lexport Comment: The Hon'ble court clarifies that mere inaction by the claimant in not requesting a hearing date does not automatically imply abandonment; compelling evidence is required to draw such a conclusion.*

**PART B: Article**

**1. Trade Secret Bill, 2024: An Overview**

In this article, **Mr. Shyam Kishor Maurya** and **Riteek Raj**, provides an in-depth analysis on The Trade Secret Bill, 2024, which advances India's intellectual property protection by defining trade secrets, establishing legal safeguards and aligning with international standards to boost innovation, economic growth and foreign investment

Click on the below link to read the article:

<https://rb.gy/2etxog>

**END OF THE NEWSLETTER**

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