

# MONTHLY LITIGATION NEWSLETTER

## OCTOBER 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 Consultation, 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).

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**1. SBI Life Insurance Company Ltd. Vs. Hemangi & 2 Ors., F.A. No. 593/2022**

**Issue:** - Whether the deceased was eligible for life cover under the insurer's policy despite the claim repudiation, given that the proposal was returned and the premium refunded before the death?

The Hon'ble NCDRC addressed whether the deceased was eligible for life cover and if the insurer's claim repudiation was justified. The insurer provided evidence that no life cover policies were issued for the complainant's late husband. Although the complainant argued that policies were guaranteed with the home loans and premiums paid, the Commission referred to the Supreme Court ruling in LIC of India vs. Raja Vasireddy, which held that a contract is binding only when acceptance is clearly communicated. Since the proposal was returned and the premium refunded before the death, no contract was formed. The State Commission's order was set aside, and the appeal was allowed without costs.

***Lexport Comment:*** *The NCDRC's judgment reinforces that an insurance contract is valid only upon clear communication of acceptance and refunding the premium prior to the insured's death nullifies any claim.*

## **2. Su-Kam Power System Ltd. and Anr. Vs. State of Himachal Pradesh and Ors., CWP No.422 of 2024**

**Issue:** -Whether the tax authorities can create a charge on the corporate debtor's property during the moratorium and liquidation process under the IBC?

The Hon'ble High Court of Himachal Pradesh ruled that creating a charge on the corporate debtor's property during the moratorium under section 14 of the IBC was illegal and violated the IBC. Since section 238 gives the IBC overriding effect, any such charge is void. Additionally, under section 33(5) of the IBC, once the company entered liquidation, no proceedings could be initiated by or against the corporate debtor. The court declared the tax authorities' red entries and claims void, as they failed to raise them during the approval of the acquisition plan, which was upheld by the NCLT, NCLAT, and the Supreme Court. The High Court concluded that the tax authorities had no right to create a charge on the corporate debtor's properties, as their claims were extinguished under the IBC. They were ordered to remove the red entries on the properties.

***Lexport Comment:** The Himachal Pradesh High Court ruled that any charge on a corporate debtor's property created during the moratorium under Section 14 of the IBC is illegal and void under Section 238, with Section 33(5) extinguishing unraised claims, thus invalidating the tax authorities' red entries.*

## **3. SHIVKUMAR RAMSUNDAR SAKET V. STATE OF MAHARASHTRA [CRL.A. NO. 806-807/2023]**

**Issue:** - Whether the Bombay High Court was justified in enhancing Shiv Kumar Saket's sentence to death based on the aggravating factor of betrayal of trust?

The Hon'ble Supreme Court of India has set aside the death sentence of Shiv Kumar Saket, a watchman convicted for the 2007 dacoity and murder of businessman Ramesh Munot and his wife, Chitra, reducing his sentence to life imprisonment. The Bombay High Court had previously enhanced Saket's punishment from life imprisonment to death, citing his betrayal of trust as an aggravating factor. However, the Supreme Court disagreed, reinstating the trial court's original sentence of life imprisonment, noting that the case did not fall under the "rarest of rare" category. The Court emphasized that unless the trial court's findings were shown to be perverse, the High Court should not have interfered with its judgment. It further observed that Saket's role in the crime was comparable to that

of his co-accused, who had all received life sentences, and there was no justification for singling him out for a harsher punishment. While the Supreme Court upheld the conviction for the crime, it found the High Court's reasoning for imposing the death penalty to be insufficient and unwarranted.

***Lexport Comment:** The Supreme Court's decision underscores the principle that the death penalty should be reserved for the "rarest of rare" cases, emphasizing the need for consistent sentencing standards in criminal justice.*

#### **4. CoC of KSK Mahanadi Power Company Ltd. Vs. Uttar Pradesh Power Corporation Ltd. and Ors., Civil Appeal No. 11086 of 2024 (Arising out of SLP (C) No. 23339 of 2024)**

**Issue:** -Whether the High Court overstepped its jurisdiction by deferring the Corporate Insolvency Resolution Process (CIRP) without justifiable grounds?

The Hon'ble Supreme Court of India held that the High Court overstepped its jurisdiction by deferring the CIRP after denying the main relief sought in the petition. It breached the legal principles of the Insolvency and Bankruptcy Code (IBC), which aims for timely resolution of corporate insolvency. The High Court's order potentially harmed the interests of all stakeholders by delaying the process and was passed without giving the CoC an opportunity to be heard, infracting natural justice. The Supreme Court noted that the High Court had no grounds to intervene under Article 226 and set aside the order directing the deferment of the CIRP.

***Lexport Comment:** The Supreme Court's decision underscores the importance of adhering to the principles of the Insolvency and Bankruptcy Code (IBC) and ensuring natural justice in insolvency proceedings.*

#### **5. THE TAMIL NADU AGRICULTURAL UNIVERSITY & ANR.ETC. VERSUS R. AGILA ETC, SLP (C) No(s).13070- 13075/2022**

**Issue:** -Whether government employees who fail to comply with transfer orders and remain absent without a stay order are entitled to salary during their unauthorized absence?

The Supreme Court has expressed concern over government employees who fail to join their new posts after being transferred, while simultaneously challenging their transfer orders in court and continuing

to claim full salary. The Court emphasized that transfer is an inherent part of government service, and employees are obligated to comply with transfer orders unless there is a stay in place. It highlighted that such absenteeism undermines administrative efficiency and creates a financial burden on the public exchequer, as the government is forced to pay two individuals for the same role. In a case involving Tamil Nadu Agricultural University, certain employees remained absent without any stay orders, leading to disputes over regularization and arrears. The Court ruled that these employees were not entitled to salary for the period of unauthorized absence, though their service continuity would be recognized for other benefits. Ultimately, the Supreme Court allowed the university's appeal but denied salary payments for the period of absence in relation to two respondents.

***Lexport Comment:** The Supreme Court's decision reinforces the principle that compliance with transfer orders is essential for maintaining administrative efficiency and accountability within government service.*

## **6. STATE BANK OF INDIA V. INDIA POWER CORPORATION LTD [27.09.2024]**

**Issue:** -Whether a 3 days- delay in filing an appeal can be condoned when the appellant submitted a free certified copy of the impugned order?

The Hon'ble Supreme Court of India set aside an NCLAT order refusing to condone a 3-day delay in filing an appeal due to the submission of a 'free copy' of the impugned order. The bench, led by CJI DY Chandrachud and Justice Manoj Misra, held that both free certified copies and those obtained on payment of fees under Rule 50 of the NCLT Rules are treated equally as "certified copies." The case concerned an appeal by the State Bank of India against India Power Corporation under the Insolvency and Bankruptcy Code. A free copy of the order was supplied on November 14, 2023, and the appeal was filed on December 2, 2023, with only a 3-day delay beyond the 30-day period. The NCLAT had split opinions on whether to condone the delay, with the technical member supporting condonation and the judicial member opposing it. The Supreme Court clarified that Rule 50 allows for both free and paid certified copies to be treated equally and that the appeal was filed within the condonable period. The Court set aside the NCLAT order and restored the appeal for fresh adjudication. It emphasized that litigants must apply for certified copies to avoid limitation issues.

*Lexport Comment: The Hon'ble Supreme Court of India signifies the importance of treating free certified copies equally with paid copies, thus promoting access to justice and ensuring that minor delays do not hinder the adjudication of legitimate appeals but emphasises the litigant must apply for certified copies to avoid limitation issues.*

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