

# MONTHLY LITIGATION NEWSLETTER

## NOVEMBER 2024

Dear Readers,

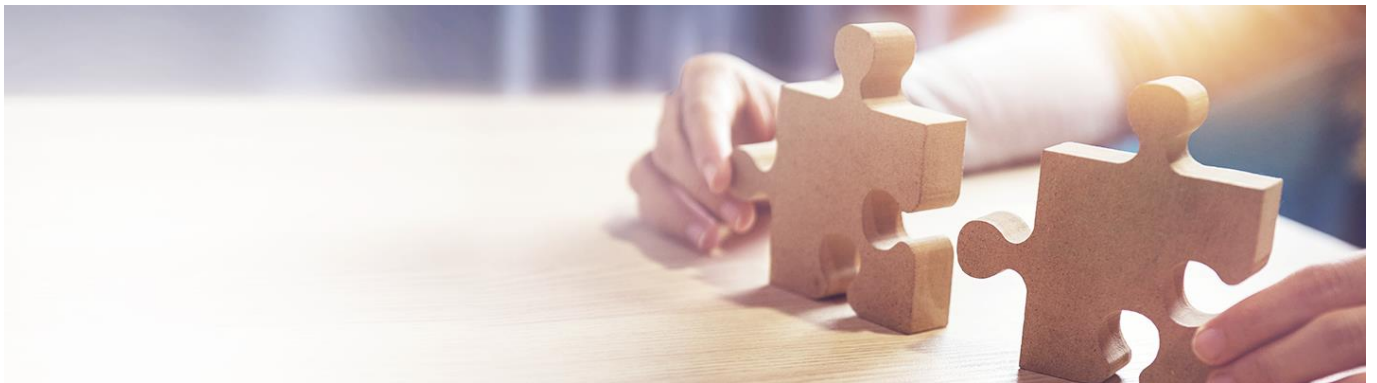
We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

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. 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 exceeded its jurisdiction under Article 226 by deferring the CIRP, violating the IBC's principles and natural justice?

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. By delaying the process, the High Court's order not only potentially harmed the interests of all stakeholders but also violated principle of natural justice by not hearing the CoC. 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.

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*Lexport Comment: The Supreme Court's intervention underscores the need to uphold the IBC's framework and natural justice, ensuring judicial actions do not hinder the timely resolution of insolvency.*

## **2. GETZ CABLES PRIVATE LIMITED VS. STATE BANK OF INDIA AND ANR., COMPANY APPEAL (AT) (INSOLVENCY) NO.1953 OF 2024**

**Issue:** Whether the Appellant's Section 10 application under the IBC was fraudulent or malicious, given that the mere pendency of SARFAESI Act proceedings does not suffice to prove such intent without additional evidence?

The Hon'ble NCLAT (Delhi) examined whether the filing of a Section 10 application by the Appellant could be considered fraudulent or malicious. Referring to its judgments in *Unigreen Global Pvt. Ltd. v. Punjab National Bank* (2017) and *Rakesh Kumar Gupta v. Mahesh Bansal* (2020), it reiterated that pendency of proceedings under the SARFAESI Act or before DRT is not a valid ground for rejecting a Section 10 application if it meets the statutory requirements. Distinguishing the present case from *M/s Agroha Paper Industries Pvt. Ltd. v. Bank of Maharashtra* (2023), where the application was filed with unclean hands, the tribunal found no material to substantiate claims of fraudulent or malicious intent in this instance. It held that the initiation of recovery proceedings under Section 13(2) or (4) of the SARFAESI Act alone cannot prove malice or fraud without additional evidence. Concluding that the Adjudicating Authority erred in allowing SBI's Section 65 application and rejecting the Section 10 application, the tribunal allowed the appeal and revived the Section 10 petition, emphasizing that rejection is justified only when malicious intent is proven.

*Lexport Comment: The NCLAT emphasized that the mere pendency of recovery proceedings under the SARFAESI Act or before the DRT cannot justify rejecting a Section 10 application under the IBC, unless there is substantial evidence demonstrating fraudulent or malicious intent on the part of the applicant.*

## **3. CLARION HEALTH FOOD LLP VS. GOLI VADA PAV PVT. LTD. AND ANR., COMPANY APPEAL (AT) (INS.) NO. 1522 OF 2023**

**Issue:** Whether shareholder disputes under Sections 241 and 242 of the Companies Act, 2013, can stay insolvency proceedings under the Insolvency and Bankruptcy Code (IBC), given that only the corporate debtor and operational creditors have standing in such proceedings?

The NCLAT clarified that disputes under Sections 241 and 242 of the Companies Act, 2013, regarding shareholder oppression or mismanagement, are separate from insolvency proceedings under the IBC. It rejected the argument that CIRP should be stayed due to a pre-existing shareholder dispute, as no such dispute was raised before the CIRP petition. The tribunal emphasized that disputes under the IBC must involve the Corporate Debtor and the Operational Creditor, not shareholders. It also held that equity shareholders cannot initiate CIRP or claim aggrieved status under Section 61 due to the admission of CIRP. The appeal was dismissed for lack of locus standi.

***Lexport Comment:** The NCLAT's decision reinforces the distinct legal frameworks of shareholder disputes and insolvency proceedings, emphasizing the primacy of the IBC in managing corporate distress and limiting shareholder intervention in CIRP.*

#### **4. BANK OF INDIA VS. GF TOLL ROAD PRIVATE LIMITED, CP (IB)/83 (MB)/2024 AND CP (IB)/120 (MB)/2024**

**Issue:** Whether the National Company Law Tribunal (NCLT) should admit a Corporate Insolvency Resolution Process (CIRP) petition when the statutory criteria are satisfied, despite potential grounds for opposing admission, such as an award favoring the Corporate Debtor exceeding the debt amount.?

The NCLT, Mumbai admitted the CIRP application against the Corporate Debtor, finding no dispute regarding the financial debt, default, or the application being within the limitation period. Referring to Vidarbha Industries Power Ltd. v. Axis Bank Ltd., the Tribunal noted that the Adjudicating Authority's discretion under Section 7(5)(a) of the IBC must not be arbitrary and may consider grounds against admission, such as an award favoring the Corporate Debtor exceeding the debt amount. However, in this case, no such grounds were present, as confirmed by M. Suresh Kumar Reddy v. Canara Bank & Ors. The Tribunal held that it must accept the petition if the statutory criteria were satisfied and appointed Mr. Rahul Jindal as Interim Resolution Professional.

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*Lexport Comment: The NCLT, Mumbai's decision to admit the CIRP application was in line with judicial precedents, confirming that the statutory criteria under Section 7 of the IBC were met and the Adjudicating Authority's discretion should not be exercised arbitrarily.*

## **5. SHYAM KUMAR INANI VERSUS VINOD AGRAWAL & ORS., CIVIL APPEAL NO. 2845/2015**

**Issue:** Can a power of attorney holder testify on behalf of a plaintiff in a suit for specific performance regarding the plaintiff's intent and readiness to perform the contract?

The Supreme Court held that a power of attorney holder, who is also a co-plaintiff and vendee, can testify on behalf of another plaintiff in a suit for specific performance if they have personal knowledge of relevant facts. Justices Vikram Nath and Prashant Kumar Mishra reasoned that since the attorney witnessed the agreement's execution and was aware of the transactions, their testimony on the principal's intent and readiness to perform the contract was admissible. However, the court clarified that power of attorney holders cannot generally testify on matters requiring the principal's personal state of mind unless they have direct knowledge of the facts.

*Lexport Comment: The Supreme Court of India underscores the legal principle that a power of attorney holder with direct and personal knowledge of relevant facts can provide admissible testimony, ensuring procedural flexibility while maintaining evidentiary integrity in contractual disputes.*

## **6. K. DHANANJAY VERSUS CABINET SECRETARY & ORS. SPECIAL LEAVE PETITION (CRL.) NO. 5905/2022 (21/10/2024)**

**Issue:** Whether shouting and threatening constitute the offence of assault under Section 353 of the IPC.

The Supreme Court of India, in a bench led by Justices Sudhanshu Dhulia and Ahsanuddin Amanullah, ruled that shouting and threatening do not constitute the offence of assault under Section 353 of the IPC. This decision came while quashing an FIR filed against an Indian Institute

of Astrophysics employee, accused of assaulting CAT staff during an inspection of his dismissal records. The Court highlighted that the complaint lacked any gesture or preparation suggesting imminent use of criminal force, which is necessary to establish an assault under Section 353. Consequently, the FIR was deemed an abuse of legal process and was quashed to serve justice.

***Lexport Comment:** The Supreme Court of India ruling clarifies that verbal threats and shouting alone do not constitute assault under Section 353 IPC, reinforcing the necessity of physical acts or gestures to establish criminal force.*

**END OF THE NEWSLETTER**

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