

MONTHLY LITIGATION NEWSLETTER

DECEMBER 2024

Dear Readers,

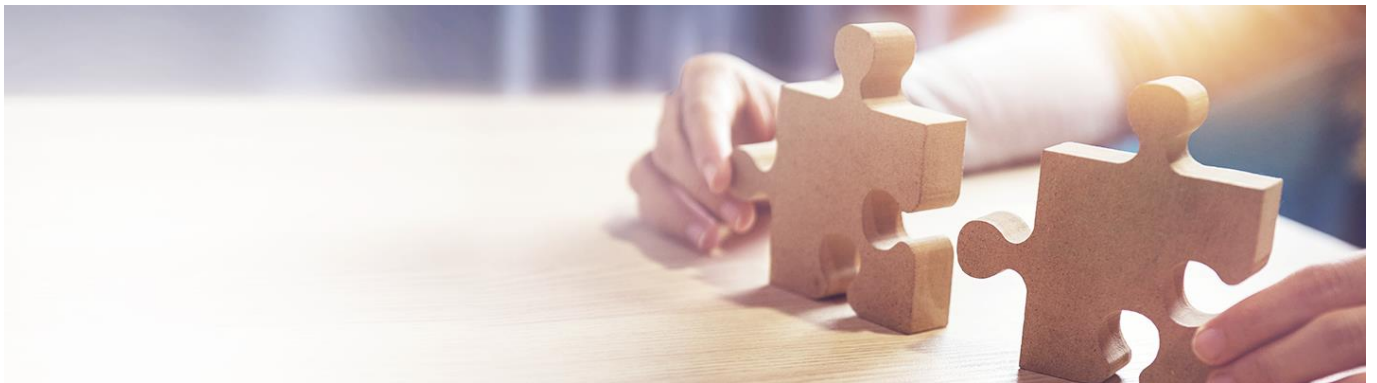
We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

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.

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.

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PART A: COURT RULINGS**1. 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 Insolvency and Bankruptcy Code (IBC) was tainted by fraudulent or malicious intent, thereby justifying its rejection by the Adjudicating Authority?

The Hon'ble NCLAT (Delhi) addressed whether the Appellant's Section 10 application under the IBC was fraudulent or malicious. Citing its rulings in *Unigreen Global Pvt. Ltd. v. Punjab National Bank* (2017) and *Rakesh Kumar Gupta v. Mahesh Bansal* (2020), it reaffirmed that ongoing proceedings under the SARFAESI Act or before the DRT are not grounds to reject a Section 10 application if statutory requirements are met. Differentiating the case from *M/s Agroha Paper Industries Pvt. Ltd. v. Bank of Maharashtra* (2023), where the application was filed dishonestly, the tribunal found no evidence of fraud or malice here. It ruled that recovery proceedings under Section 13(2) or (4) of the SARFAESI Act alone do not establish fraud or malice without further proof. Consequently, the tribunal held that the Adjudicating Authority erred in accepting SBI's Section 65 application and rejecting the Section 10 petition, allowing the appeal and reviving the petition, while stressing that rejection requires proven malicious intent.

Lexport Comment: - The decision of the Hon'ble NCLAT (Delhi) highlights the critical requirement of substantiating allegations of fraud or malice with credible evidence to justify the rejection of a Section 10 application under the IBC.

2. BIJAY AGARWAL VERSUS M/S MEDILINES [SLP(CRL) NO. 2696 OF 2024]

Issue: - Whether an authorized signatory of a company can be considered the "drawer" of a cheque and held liable for compensation or deposit under Sections 143A and 148 of the Negotiable Instruments Act, 1881?

The Supreme Court of India held that an authorized signatory of a company is not the "drawer" of a cheque under Sections 143A and 148 of the Negotiable Instruments Act, 1881, and thus cannot be held liable for compensation or deposit for suspension of sentence pending appeal. Citing *Shri Gurudatta Sugars Marketing Pvt. Ltd. v. Prithviraj Sayajirao Deshmukh*, the Court clarified that the liability under both provisions applies only to the drawer, regardless of the stage of proceedings under Section 138. Criticizing the High Court's direction requiring the appellant to deposit 20% of the compensation, the Court emphasized that appellate courts must exercise discretion judiciously and only in exceptional circumstances.

Lexport Comment: - The judgment affirms that liability under Sections 143A and 148 of the Negotiable Instruments Act, 1881, is strictly limited to the drawer of the cheque, providing clear guidance on the scope of accountability.

3. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED VS. WAAREE ENERGIES LIMITED AND ANR., COMPANY APPEAL (AT) (INSOLVENCY) NO.1380 OF 2024

Issue: - Whether a Debenture Subscription Agreement (DSA) involving Convertible Cumulative Debentures (CCDs), with provisions for conversion or redemption, qualifies as "financial debt" under Section 5(8)(c) of the Insolvency and Bankruptcy Code (IBC)?

The Hon'ble NCLAT held that debentures fall under the definition of "financial debt" as per Section 5(8)(c) of the IBC, given that they represent a transaction with a clear time value of money. The Debenture Subscription Agreement (DSA) provided the investor an option to convert CCDs into equity within 65 months, but default occurred when neither payment nor conversion was effected despite demands, entitling the respondent to 24% annual interest under Clause 8.1. Referring to precedents like *IFCI Ltd. vs. Sutanu Sinha (2023)*, the Hon'ble NCLAT emphasized that transaction documents best determine the nature of a debt. It concluded that the DSA evidenced a financial debt due to its time value of money and redemption provisions. Finding no merit in the appeal, the Hon'ble NCLAT upheld the Adjudicating Authority's decision and dismissed the appeal.

Lexport Comment: - The Hon'ble NCLAT appropriately upheld that the Debenture Subscription Agreement, characterized by a clear time value of money and provisions for repayment or conversion, qualifies as "financial debt" under Section 5(8)(c) of the IBC, in line with established judicial precedents.

4. NALIN CHOKSEY VERSUS THE COMMISSIONER OF CUSTOMS, KOCHI (Arising out of SLP No. 16123 of 2018)

Issue: - Whether a subsequent purchaser of an imported motor vehicle could be regarded as an "importer" under the Customs Act, 1962, and thus be liable for the payment of customs duties associated with its importation?

The Supreme Court, in *Nalin Choksey v. Commissioner of Customs, Kochi* [2024 LiveLaw (SC) 954], ruled that a subsequent purchaser of an imported motor car cannot be considered an "importer" under the Customs Act, 1962, and is not liable to pay customs duty for the car's import. The appellant challenged a High Court decision upholding a customs duty demand of ₹17,92,847, alleging misdeclaration, chassis tampering, and undervaluation by the original importer. The Court held that liability under Section 28 of the Customs Act is limited to the importer or the person for whose benefit the car was imported, which did not include the appellant. It rejected the customs department's contention that the appellant, as the car's possessor, could redeem the confiscated vehicle under Section 125, as the original importer, Jalaludheen Kunhi Thayil, was known and remained the vehicle's legal owner per the registration certificate. Consequently, the Court declared the proceedings against the appellant unlawful and allowed the appeal.

Lexport Comment: - *The Supreme Court's decision clarifies that liability for customs duties under the Customs Act, 1962, is confined to the original importer, protecting subsequent purchasers from unjust financial responsibility for prior misdeclarations or violations.*

5. SHRI KR. ANAND VS. NEW DELHI MUNICIPAL COUNCIL, ARB.P. 1776/2024

Issue: - Whether the petitioner's request for the appointment of a sole arbitrator, despite a delay of over 10 years in invoking the arbitration clause, could be entertained, with the court deferring objections regarding limitation and jurisdiction to the arbitral tribunal?

The petition, filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, sought the appointment of a sole arbitrator to resolve disputes related to the construction project at Safdarjung Airport. The petitioner invoked the arbitration clause after a delay of over 10 years, leading the respondent to argue that the claims were time-barred. The Hon'ble High Court of Delhi limited its scope to confirming the existence of an arbitration agreement, deferring the respondent's objections to the arbitral tribunal. Relying on precedents, including *SBI General Insurance Co. Ltd. v. Krish Spinning (2024)*, the court found no hindrance to appointing Justice (Retd.) A.K. Pathak as arbitrator. It also clarified that objections regarding limitation and jurisdiction could be raised before the arbitrator.

Lexport Comment: - *The court's decision to appoint an arbitrator while deferring the respondent's objections on limitation and jurisdiction underscores its adherence to the principle of upholding the arbitration process and allowing the arbitral tribunal to address procedural challenges.*

6. ADITYA BIRLA FINANCE LIMITED VS. PAUL PACKAGING PRIVATE LIMITED, COMMERCIAL ARBITRATION APPLICATION (L) NO. 25050 OF 2023

Issue: - Whether the Delhi High Court correctly upheld the arbitration clause in a loan agreement and dismissed the respondent's objections, appointing an arbitrator despite parallel SARFAESI proceedings?

The Hon'ble Delhi High Court noted that the respondent failed to reply to multiple notices, indicating a lack of interest in contesting the proceedings. It found an arbitration clause in the loan agreement dated 13 September 2018, specifying arbitration in Mumbai by a neutral arbitrator. The court dismissed the respondent's objection regarding parallel SARFAESI and arbitration proceedings, relying on *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Limited* (2017), which allows both proceedings to run concurrently. It also referred to *Tata Capital Limited v. Priyanka Communications* (2024) and *Interplay* (2024) to confirm that the court's scope under Section 11(6A) is limited to verifying the existence of an arbitration agreement. Concluding that all requirements under Section 7 of the Act were met, the court held the respondent's objections meritless and appointed an arbitrator.

***Lexport Comment:** - The Delhi High Court's decision reinforces the principle that the court's role under Section 11(6A) is limited to confirming the existence of an arbitration agreement, while upholding the concurrent viability of SARFAESI and arbitration proceedings.*

END OF THE NEWSLETTER
