

# MONTHLY LITIGATION NEWSLETTER

## FEBRUARY 2025

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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**PART A: COURT RULINGS**

**1. BHUDEV MALLICK ALIAS BHUDEB MALLICK VS RANAJIT GHOSHAL., CIVIL APPEAL NO.2248 OF 2025**

**Issue:** - Whether a decree of perpetual injunction is subject to any limitation period under Article 136 of the Limitation Act for enforcement against successive breaches?

The Supreme Court has reaffirmed that a decree granting perpetual injunction is not subject to any limitation period under Article 136 of the Limitation Act. Dismissing an objection to the execution of a permanent injunction decree after forty years, the Court held that such a decree remains enforceable whenever the judgment debtor attempts to interfere with the decree holder's possession or obstructs the peaceful enjoyment of the property. The bench, comprising Justices JB Pardiwala and R. Mahadevan, further clarified that each breach of an injunction constitutes a distinct and actionable violation, and the principle of res judicata does not apply to successive breaches. The Court underscored the necessity of adopting a stringent approach in such matters to uphold the sanctity of judicial orders.

*Lexport Comment:* - The ruling reinforces the perpetual enforceability of injunction decrees, ensuring continued protection against successive violations.

**2. UNION OF INDIA AND ORS. v. FUTURE GAMING SOLUTIONS P.LTD. AND ANR. ETC ., C.A. No. 4289-4290/2013 & connected matters**

**Issue:** - Whether the sale of government-organized lottery tickets qualifies as a "taxable service" under the Finance Act, 1994, or falls within the domain of "betting and gambling," which is exclusively taxable by the State under Entry 62, List II of the Seventh Schedule?

The Supreme Court upheld the Sikkim High Court's ruling declaring clause (zzzzn) of Section 65(105) of the Finance Act, 1994, as unconstitutional. This provision sought tax lottery distribution as a "taxable service." The petitioners, engaged in selling government-organized lottery tickets, argued that their activity fell under "betting and gambling," exclusively taxable by the State under Entry 62, List II of the Seventh Schedule. Affirming this, the Supreme Court held that the relationship between lottery distributors and the State of Sikkim is principal-to-principal, not agency-based, and thus does not attract service tax. However, state-imposed gambling taxes remain applicable. The judgment aligns with *K. Arumugham v. Union of India* (2024), which clarified that lottery sales generate state revenue and do not constitute a taxable service.

***Lexport Comment:** - The judgment reaffirms the constitutional distinction between service tax and state-exclusive taxation on betting and gambling, offering greater clarity on the fiscal treatment of lottery distribution.*

### **3. MAHARASHTRA PUBLIC SERVICE COMMISSION VS. VAST INDIA PVT. LTD., 2025: BHC-OS:2179**

**Issue:** - Whether the MSME Council's arbitration proceedings complied with statutory timelines under the MSME Act and the Arbitration Act, particularly regarding the validity of delays and the rejection of a counterclaim?

The Hon'ble Bombay High Court examined Section 18 of the MSME Act, noting the MSME Council can act as an arbitrator, with proceedings governed by the Arbitration Act. It clarified that the 90-day timeframe under the MSME Act is directory, not mandatory, and delays do not invalidate proceedings. The court also referenced Section 29A of the Arbitration Act, which mandates a 12-month timeline for arbitration, extendable by 6 months. In this case, a counterclaim reset the 12-month deadline, and the award was rendered within the prescribed period, complying with Section 29A. Regarding the counterclaim, the court noted it was filed one year after the defense, making its rejection due to untimeliness neither a jurisdictional error nor a patent illegality. The court upheld the award's rejection of the counterclaim and dismissed the petition.

***Lexport Comment:** - The judgment reinforces the flexibility of procedural timelines in MSME arbitration while upholding statutory limits on counterclaims.*

### **4. ADITYA BIRLA FINANCE LIMITED VS. MR. PANKAJ SRIVASTAVA, IA NO. 660, 820 OF 2024 IN C.P. (IB) NO. 149/BB/2023**

**Issue:** - Whether the IRP had the authority to reconstitute the CoC after its formation and whether such reconstitution was legally justified?

The NCLT Bengaluru bench held that the IRP's duty is to take control of the Corporate Debtor, invite claims, and constitute the CoC but found that the IRP wrongly reconstituted the CoC without justification. Citing precedents, it ruled that the IRP has no adjudicatory power to alter the CoC once formed. The Tribunal noted that Regulation 14 only allows quantification of claims, not reclassification, and reaffirmed that once a creditor is included in the CoC, they cannot be excluded. It found that the IRP violated statutory timelines, backdated documents, and provided a false affidavit. The Tribunal deemed the IRP's actions prejudicial to the CIRP process and directed IBBI to initiate disciplinary proceedings. It set aside the IRP's reconstitution of the CoC, and resolutions

passed by it. The Tribunal restored Applicant (Aditya Birla Finance) as a Financial Creditor and nullified its wrongful reclassification as an Operational Creditor.

***Lexport Comment:** - The Tribunal's ruling reinforces the IRP's limited powers, emphasizing that CoC reconstitution beyond statutory provisions is unlawful and warrants disciplinary action.*

**5. ISAR ENGINEERS PRIVATE LTD. VS. NTPC-SAIL POWER COMPANY LTD., O.M.P. (COMM) 304/2018**

**Issue:** - Whether the appointment of the arbitrator was valid under the arbitration clause, considering the restrictions imposed by Section 12(5) of the Arbitration and Conciliation Act, 1996 (as amended in 2015)?

The Hon'ble Delhi High Court held that under the arbitration clause, the General Manager/Unit Head was designated as the arbitrator, and in their absence, the Managing Director or Chairman could appoint another arbitrator. It noted that before the 2015 amendment, an employee acting as an arbitrator was not inherently biased, but after the amendment, such appointments were barred under Section 12(5) read with Schedule 7. The court found that the General Manager, who was directly involved in contract execution and termination, could not act impartially. It further held that the successor of the transferred Unit Head could not assume jurisdiction automatically, as the contract required a formal appointment process. Relying on precedent, it ruled that an improperly constituted tribunal is non-est in law. Concluding that the arbitrator was not appointed per the arbitration clause, the court set aside the arbitral award.

***Lexport Comment:** - The judgment reinforces the principle that an arbitrator must be appointed by the arbitration clause while ensuring compliance with statutory impartiality requirements.*

**6. MARVEL LANDMARKS PVT LTD. VS. JAY NIHALANI & ORS., COMPANY APPEAL (AT) (INSOLVENCY) NO. 2227 OF 2024**

**Issue:** - Whether the Adjudicating Authority possesses the inherent power to recall a dismissed Company Petition in cases of fraud or misrepresentation?

The Hon'ble NCLAT held that the Adjudicating Authority cannot revisit a dismissed Company Petition unless there is evidence of fraud. It found that the Corporate Debtor suppressed material facts regarding the eligibility of Homebuyers under Section 7(1) of the IBC. The Tribunal accepted the Respondents' explanation for their absence and upheld the Adjudicating Authority's power to recall orders tainted by fraud or misrepresentation. It emphasized that inherent powers can be invoked to prevent abuse of process. Consequently, the Tribunal affirmed the Adjudicating Authority's decision to recall the dismissal and restore the petition.

***Lexport Comment:** - The ruling reinforces the principle that courts can invoke inherent powers to prevent abuse of process and rectify orders tainted by fraud or misrepresentation.*

**END OF THE NEWSLETTER**

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