



Luthra *and* Luthra
LAW OFFICES INDIA

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It gives us immense pleasure to circulate the October 2024 edition of the Luthra and Luthra Law Offices India's Dispute Resolution Newsletter. In this edition, we have primarily focused on the recent legal developments in the fields of Arbitration, Insolvency, Criminal and Civil Laws. Accordingly, we have covered key judgments passed by the Hon'ble Supreme Court, High Court(s) and National Company Law Appellate Tribunal during August-September 2024. We hope you enjoy reading our newsletter.

SUPREME COURT

Procedure for summoning persons under PMLA will prevail over the procedure prescribed under CrPC¹

The Supreme Court has clarified that Section 50 of the Prevention of Money Laundering Act, 2002 ("**PMLA**"), which deals with the Enforcement Directorate's/Director's ("**ED**") power to issue summons will take precedence over the provisions of Section 160 of the Code of Criminal Procedure, 1973 ("**CrPC**") which entails police's power to require attendance of witnesses.

The decision came in an appeal before the Supreme Court, wherein the Appellants contended that Section 50 of PMLA only lays down the substantive power of ED to issue summons and in the absence of a clear procedure for summoning persons under PMLA, Section 160 of CrPC should apply. The Supreme Court noted that Section 71 of the PMLA provides that PMLA will have an overriding effect over other laws and Section 65 of the PMLA provides that the provisions of the CrPC shall apply insofar as they are not inconsistent with the provisions of the PMLA in matters *inter alia* relating to arrest, search and seizure, investigation etc. The Court also noted glaring inconsistencies between Section 50 of PMLA and Section 160 of CrPC and observed that the procedure to exercise power under Section 50 of PMLA is laid down under PMLA Rules of 2005, which will prevail over the procedure prescribed under CrPC. Thus, the Apex Court ruled that the procedure prescribed under PMLA would prevail over the procedure prescribed under CrPC qua summoning of persons.

Application for extension of time for passing arbitral award can be allowed even after expiry of prescribed period²

The Supreme Court of India has held that an application for extension of time for passing arbitral award under Section 29A(4) r/w 29A(5) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") can be allowed, even after expiry of twelve-month period or eighteen-month period (which includes a six-month extension), provided that there is sufficient cause for allowing such extension.

¹ *Abhishek Banerjee and Anr. v. Directorate of Enforcement*, CrI. A. No. 2221-2222/2023.

² *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, 2024 SCC OnLine SC 2494.



Previously, various High Courts had divergent views on whether the extension of time for passing arbitral award could be sought after the expiry of the twelve months or the eighteen-month period (which includes a six-month extension). The Supreme Court accepted the broader view adopted by the High Court(s) of Delhi, Bombay, Jammu and Kashmir and Ladakh, Kerela, ruling that a strict interpretation would hinder arbitration processes and create unnecessary litigation. This decision aims to promote efficiency in arbitral proceedings.

Invoking debarment/blacklisting for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible³

The Supreme Court has held that where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to.

In the case at hand, a Government Body had blacklisted/debarred a Company, for alleged breach of contract, from participating in tender processes for 5 years. This was despite the Company flagging various issues to the Government Body and making pleas to refer the disputes to arbitration. The Supreme Court set aside the debarment order and observed debarment/blacklisting as a measure is only to be resorted to when there is a threat to the public interest, particularly if the conduct of the blacklisted entity poses enough risk that debarment is necessary to safeguard public welfare and serve as a deterrent. The Supreme Court also emphasised on the importance of proportionality in penalties. It held that with statutory bodies, there should be proper justification for imposing penalties for ordinary contractual breaches and where the explanation offered raises a bona fide dispute, blacklisting is not permissible.

HIGH COURT

Bombay High Court holds that Infringement Suits can be ordinarily instituted without exhausting mediation u/s 12A of the Commercial Courts Act⁴

The Bombay High Court has held that IPR suits involving infringement claims can be ordinarily instituted without exhausting the recourse of pre-litigation mediation stipulated under Section 12-A of the Commercial Courts Act, 2015 (“**CC Act**”) and a plea of urgent interim relief for bypassing pre-litigation mediation can only be rejected on grounds of falsity or deception apparent from the plaint itself.

³ *Blue Dreamz Advertising Pvt. Ltd. and Ors. v. Kolkata Municipal Corporation and Ors.*, Civil Appeal No. 8516 of 2024.

⁴ *Y-Not Films LLP and Anr. vs. Ultra Media and Entertainment Pvt. Ltd.*, Interim Application (L) No. 26065 of 2024 in Com IPR Suit (L) No.10862 of 2024)



The Order came in an Interim Application filed by the original Defendants who sought rejection of the plaint on the ground that the Plaintiffs are attempting to bypass Section 12-A of the CC Act in the absence of an urgency. Dismissing the Application, the Court analysed Supreme Court precedents and concluded that there exists only a small window to reject the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 and refer the parties to pre-litigation mediation under Section 12-A of the CC Act, and this would be only in the case of deception and falsity which can be established from the Plaint itself and in doing so, the Court is required to take into consideration the nature and subject matter of the Suit, cause of action involved in the Suit and nature of interim relief sought by the Plaintiff.

NCLAT

Benefit of Section 32A of IBC to Successful Resolution Applicant: ED's attachment is to be lifted from Corporate Debtor's assets⁵

The National Company Law Appellate Tribunal ("NCLAT") has recently held that the Successful Resolution Applicant ("SRA") is entitled to the relief of extension of the benefit of protection under Section 32A of the Insolvency and Bankruptcy Code, 2016 ("IBC") to lift the attachment under PMLA by ED over the assets of the Corporate Debtor.

The decision came in an appeal from the Order of the National Company Law Tribunal, New Delhi ("NCLT"), wherein the NCLT had observed that advancing the SRA with the benefit of properties attached under the PMLA may lead to attempts at parking the properties under IBC and then to initiate CIRP only for the purpose of changing hands of the property. The NCLAT, however, was of the opinion that the NCLT erred in its interpretation of precedents and the scope of Section 32A of IBC. The NCLAT held that Section 32A of IBC is a legislative scheme and if the legislature thought that immunity should be granted to the Corporate Debtor or its property, it hardly furnishes any ground for the Court to interfere. The NCLAT concluded that through Section 32A of IBC, the legislature has stipulated a terminal point whereafter the powers under the PMLA would not be exercisable. Further, the moment Section 32A of IBC becomes applicable, it leads to the erection of an impregnable wall, which cannot be breached by the invocation of PMLA.

⁵ *Vantage Point Asset Pte. Ltd. v. Gaurav Misra (RP)*, Company Appeal (AT) (Insolvency) No. 1495 of 2024.



This newsletter is only for general informational purposes, and nothing in this newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or Dispute Resolution in general), please feel free to contact the Dispute Resolution team at any of the contacts listed below. © Luthra & Luthra Law Offices India 2024. All rights reserved.

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