



**Luthra *and* Luthra**  
LAW OFFICES INDIA

## DISPUTE RESOLUTION NEWSLETTER

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It gives us immense pleasure to circulate the November 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 and Criminal Laws. Accordingly, we have covered key judgments passed by the Hon'ble Supreme Court, High Court(s) and National Company Law Appellate Tribunal during September – October 2024. We hope you enjoy reading our newsletter.

## SUPREME COURT

### Further investigation under Section 173(8) of CrPC cannot be allowed in the absence of fresh material or evidence<sup>1</sup>

The Supreme Court has held that the Court should refrain from ordering further investigation under Section 173(8) of the Code of Criminal Procedure 1973 ("**CrPC**") unless new, evidence or fresh materials is presented, which may lead to the implication of new individuals or absolve existing ones.

The decision came in an appeal from the order of the Madras High Court, wherein the Court had granted permission for further investigation after the conclusion of the final arguments before the Trial Court. The Supreme Court set aside the High Court order and observed that the party requesting further investigation failed to show any fresh materials or evidence for triggering the court's power to order further investigation under Section 173(8) of CrPC as justice demands a valid foundation for ordering additional inquiry. Further, the Court held that the party should have applied for further investigation at the evidence stage of trial if it wanted to seek the Court order for further investigation.

### Post-Award Interest is mandatory for Arbitral Award under S.31(7)(b) of Arbitration Act, 1996<sup>2</sup>

The Supreme Court has held that the sum awarded under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") must carry interest from the date of the Award to its realization.

The decision came in an appeal from the order of the High Court of Punjab and Haryana, wherein the High Court refused to grant post-award interest to the Award-Holder on the ground that the contract between the parties does not permit the grant of post-award interest. The Supreme Court set aside the order of the High Court and observed that Section 31(7)(b) of the Arbitration Act mandates that the sum awarded by the Arbitral Tribunal shall carry post-award interest. The Court also observed that while the Arbitrator may specify the

<sup>1</sup> *K. Vadivel Versus K. Shanthy & Ors*, 2024 SCC OnLine SC 2643.

<sup>2</sup> *R.P. Garg Versus The Chief General Manager, Telecom Department & Ors.*, Civil Appeal No. 10472 Of 2024.



rate of interest, however, in case of absence of any such specification the statutory rate will apply. The Court also noted that unlike Section 31(7)(a) of the Arbitration Act, which allows party autonomy to agree upon pre-award Interest, Section 31(7)(b) of the Arbitration Act does not permit parties to “contract out” interest for the post-award period.

### **Inherent power under Rule 11 of NCLAT Rules cannot override the procedure prescribed for withdrawal of CIRP<sup>3</sup>**

The Supreme Court has held that inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 (“**NCLAT Rules**”) cannot be employed by National Company Law Appellate Tribunal (“**NCLAT**”) to bypass the established legal procedure that provides a comprehensive process for settlement of claim or withdrawal of CIRP after the admission of Corporate Debtor into Corporate Insolvency Resolution Process (CIRP).

The decision came in an appeal arising from the judgement of the NCLAT, wherein it approved a settlement by exercising its inherent power under Rule 11 of the NCLAT Rules, 2016 and set aside the order of the NCLT. The Court noted that Section 12A of Insolvency and Bankruptcy Code, 2016 (“**IBC**”) r/w Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for legal procedure as per which application through IRP or the RP is first placed before CoC and after ascertaining approval with a ninety per cent voting share, the IRP/RP is to submit the application to the NCLT for withdrawal of CIRP. Considering the aforesaid, the Supreme Court observed that NCLAT, cannot use its inherent powers under Rule 11 of the NCLAT Rules to subvert legal provisions where the IBC and Regulations provide for a procedure. The Court also noted that inherent powers may only be exercised in the absence of legal provision or framework.

## **HIGH COURT**

### **Court can refuse enforcement of Foreign Award but cannot set it aside under Section 48 of the Arbitration Act<sup>4</sup>**

The Delhi High Court has held that under Section 48 of the Arbitration Act only the Courts at the seat of arbitration, holding primary or supervisory jurisdiction, have the authority/jurisdiction to set aside a Foreign Award.

The decision came in a petition seeking to enforce a Foreign Arbitral Award, which was passed by a Sole Arbitrator in an arbitration seated in Singapore. The Delhi High Court, relying on various judgements, observed that only the courts at the seat of arbitration, possessing primary or supervisory jurisdiction, can set aside a Foreign Award. Further, it was

<sup>3</sup> *GLAS Trust Company LLC v. BYJU Raveendran & Ors.*, Civil Appeal No. 9986 of 2024.

<sup>4</sup> *International Air Transport Assn. v. Spring Travels (P) Ltd.*, 2024 SCC OnLine Del 7540.



observed that even if grounds prescribed under Section 48 of the Arbitration Act are met, the enforcement court, which has secondary jurisdiction, cannot annul the Award but may refuse its enforcement.

### **Courts under Article 227 can interfere with orders passed by the Arbitrator only in exceptional circumstances<sup>5</sup>**

The High Court of Delhi has held that the Court under Articles 226 and 227 of the Constitution of India can only interfere in the arbitral matter in exceptional circumstances i.e., circumstances wherein non-interference may lead to extreme perversity and illegality.

The decision came in a petition filed against an order passed by the Ld. Sole Arbitrator, whereby the Ld. Arbitrator refused to allow an application for filing additional documents on the ground that the party failed to show sufficient reasons for not filing the concerned documents earlier despite the same being in its possession. The Court relying on various judgements, observed that the non-obstante clause in Section 5 of the Arbitration Act does not restrict the power of the High Court under Article 226/227 of the Constitution and the Arbitral Tribunal is subject to the petition under Article 226/227 of the Constitution. However, the power can only be exercised by the Court in exceptional cases where the order is perverse and clearly outside the Tribunal's jurisdiction.

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<sup>5</sup> *Dr. Rajan Jaiswal V. M/s SRL Limited*, 2024 SCC OnLine Del 7262.



*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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