



Luthra and Luthra
LAW OFFICES INDIA

DISPUTE RESOLUTION NEWSLETTER

MARCH 2025

INSIDE

- **Supreme Court lays down the factors to be considered by the magistrate prior to issuing directions under Section 175(3) of BNSS, 2023**
- **Legal Heirs cannot claim Ownership over the contribution made by Partner in a Partnership Firm**
- **Authority Cannot blacklist Contractor on the mere allegation of Breach of Contractual Terms**
- **Date of disposal of Application under Section 33 of the Arbitration Act would be considered as starting point of Limitation for the purposes of Application under Section 34(3) of the Arbitration Act**
- **Mere Allegation of Fraud would not restrict a Party from submitting its dispute to Arbitration**



It gives us immense pleasure to circulate the March 2025 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 Criminal Laws, Arbitration Law etc. Accordingly, we have covered key judgments passed by the Hon'ble Supreme Court and High Court(s) during February 2025. We hope you enjoy reading our Newsletter.

SUPREME COURT

Supreme Court lays down the factors to be considered by the magistrate prior to issuing directions under Section 175(3) of BNSS, 2023

The Hon'ble Supreme Court in the case of *Om Prakash Ambadkar v. The State of Maharashtra & Ors.*¹ has laid down factors to be considered by Magistrate before passing directions under Section 175(3) of the Bhartiya Nagrik Suraksha Sanhita, 2023 ("**BNSS**") which is the corresponding provision of Section 156(3) of the Criminal Procedure Code, 1973 ("**CrPC**"). The Apex Court, while comparing Section 156(3) of the CrPC and Section 175(3) of BNSS, emphasized on the additional factors to be considered before passing orders under Section 175(3) of BNSS:

- It is mandatory for the complainant making a complaint under Section 175(3) of BNSS to file an application with the office of the Superintendent of Police upon refusal by the officer in charge of the police station to lodge the FIR. The Complainant is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4) of BNSS, supported by an affidavit while making an application before the Magistrate under Section 175(3) of BNSS.
- The Magistrate is empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.
- The Magistrate is required to consider the submissions of the officer in charge of the police station with regard to refusal to register the FIR before issuing any directions under Section 175(3) of BNSS.

The Hon'ble Supreme Court has emphasized on the fact that whenever any application is filed by the complainant before the Court of Judicial Magistrate seeking police investigation under Section 175(3) of the BNSS, it is the duty of the concerned Magistrate to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any Cognizable offence or not. The Apex Court also observed that the Magistrate should pass order only if he is satisfied that the necessity of police investigation for digging out of evidence, which

¹ *Om Prakash Ambadkar v. The State of Maharashtra & Ors.*, Criminal Appeal No. 352 of 2020.



neither in possession of the complainant nor can be procured without the assistance of the police.

Legal Heirs cannot claim Ownership over the contribution made by Partner in a Partnership Firm

In a recent case of *Sachin Jaiswal v. M/s Hotel Alka Raje & Other*², the Hon'ble Supreme Court dealt with a situation where the legal heirs of a deceased partner in a partnership firm have laid claims to a hotel, which is considered a partnership property. The heirs argued that the hotel was originally acquired by their father and should not have been transferred to the partnership firm. This dispute highlights the complexities surrounding ownership and inheritance within partnership agreements.

The Hon'ble Supreme Court held that as per Section 14 of the Partnership Act, contribution made by the Partner in the partnership firm becomes the property of the firm. Any property which is brought on the stock of the firm becomes the firm's perpetual property. Therefore, legal heirs of the Partner cannot claim exclusive right or ownership over that property after the demise of the Partner. The Court further held that Section 14 of the Partnership Act enables a partner to bring a property which belongs to him, by the 'evidence of his intention' to make it a property of the firm and in order to do so, no formal agreement or document would be necessary.

Authority Cannot blacklist Contractor on the mere allegation of Breach of Contractual Terms

In a recent case of *M/s Techno Prints v. Chhattisgarh Textbook Corporation & Anr.*³ The Apex Court was dealing with the case where the Appellant and the Respondent entered into a contract, whereunder the Appellant was responsible for printing books within given time in the contract. The Appellant could not complete the work due to COVID-19 pandemic. The contract provided for completion of work within the prescribed time failing which will result to blacklisting of the Contractor. The Respondent issued a show cause notice to the Appellant suggesting blacklisting for 3 years. The Appellant challenged the show cause notice before the High Court in writ jurisdiction which was rejected. The Appellant again challenged it before the Division Bench which also came to be rejected.

The Hon'ble Supreme Court, after perusing its various decisions, held that the penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors. In case there exists a genuine dispute between the parties

² *Sachin Jaiswal v. M/s Hotel Alka Raje & Other*, SLP (C) No. 18717 of 2022.

³ *M/s Techno Prints v. Chhattisgarh Textbook Corporation & Anr*, SLP (C) No.10042 of 2023.



based on the terms of the contract, blacklisting as a penalty cannot be imposed. The Court

further held that an Authority possesses the inherent power to blacklist a contractor, but this power must be exercised on reasonable grounds. Moreover, it has been observed that even at the stage of issuing a show cause notice, the guiding principles established by the Court should be adhered to.

HIGH COURT

Date of disposal of Application under Section 33 of the Arbitration Act would be considered as starting point of Limitation for the purposes of Application under Section 34(3) of the Arbitration Act

In a recent case of *TEFCIL Breweries Ltd. v. Alfa Laval (India) Ltd.*⁴, wherein dispute between parties led to an Arbitral Award dated 17.10.2017. Thereafter an Application was filed under Section 33 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") seeking correction of the arbitral award, which was disposed on 18.05.2018 in presence of counsel for both parties. Thereafter, certain typographical errors were corrected by the Arbitral Tribunal in the award vide Order dated 23.05.2018 and the signed copy of the additional arbitral award dated 18.05.2018 was received by the parties on 21.08.2018. The Petitioner, claiming receipt of arbitral award on 21.08.2018, filed a Section 34 petition under Arbitration and Conciliation Act, 1996 ("**Act**") on 13.11.2018, which led to the whether the Petition was within time as prescribed under Section 34(3) of the Arbitration Act.

The Hon'ble Delhi High Court dismissed the Section 34 Petition and clarified that if an application under Section 33 of the Act is filed for correction or interpretation of an arbitral award, the limitation period for challenging the award under Section 34 of the Act starts from the date of disposal of the Section 33 application, not from the date of receipt of the corrected award. The Court reiterated that the legislative intent was clear in providing two distinct timelines under Section 34(3): (a) If no application under Section 33 of Arbitration Act is filed, limitation starts from the date of receipt of the award (b) If an application under Section 33 of Arbitration Act is filed, limitation starts from the date of its disposal.

⁴ TEFCIL Breweries Ltd. v. Alfa Laval (India) Ltd., O.M.P. (COMM) 479/2018.



Mere Allegation of Fraud would not restrict a party from submitting its dispute to Arbitration

In a recent ruling by the Madras High Court in the case of *K. Mangayarkarasi v. N.J. Sundaresan*⁵ the Court observed that mere allegation of fraud is not sufficient ground to detract from the obligations of the parties to submit their disputes to arbitration.

The Petitioners filed a suit seeking relief of permanent injunction, restraining the Respondent from interfering or using the Plaintiff's Trademark of "SRI ANGANNAN BIRIYANI HOTEL" or "ABH SRI ANGANNAN HOTEL" or any other name format signifying the term, "ANGANNAN." Pending Suit, the 1st Respondent filed an application seeking reference of dispute to Arbitration. The said Application was allowed. Aggrieved by the same, the Petitioners filed Petition before Madras High Court impugning the reference to arbitration on the ground that the Assignment deed is fraudulent, and the signatures of Petitioner were obtained on a blank paper.

The High Court while considering the dispute noted that the conditions laid down in the case of *Rashid Raza*⁶ that allegation of fraud must have some implication of public domain to oust the jurisdiction of arbitration. Moreover, the Court also relied on *Ayyasamy*⁷, wherein the Apex Court has held that where there are allegations of fraud and such allegations are merely alleged, it may not be necessary to nullify the effect of arbitration agreement between the parties and such issues can be determined by the Arbitral Tribunal. The Court noted that the signatures on the fact that the 1st Petitioner wanted to assign the trademark, the signatures are not disputed, and the documents show that the agreement has been properly executed. Considering the above, the Court was of the opinion that if an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of the serious nature of fraud and such dispute can be a subject matter of arbitration.

⁵ *K. Mangayarkarasi v. N.J. Sundaresan*, C.R.P.No.1272 /2024.

⁶ *Rashid Raza v. Sadaf Akhtar*, (2019) 8 SCC 710.

⁷ *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386.



This bulletin is only for general informational purposes, and nothing in this bulletin 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 bulletin, please feel free to contact the Dispute Resolution team at the contact listed below. © Luthra & Luthra Law Offices India 2024. All rights reserved.

KEY CONTACT

**SANJEEV KUMAR**

Partner

Email - sanjeevk@luthra.com**DIVYANSHU JAIN**

Senior Associate

Email - djain@luthra.com**PIYUSH RAJ**

Associate

Email - p.raj@luthra.com

OFFICES

**NEW DELHI**

1st and 9th Floors, Ashoka Estate,
24 Barakhamba Road, New Delhi - 110 001
T: +91 11 4121 5100 F: +91 11 2372 3909
E: delhi@luthra.com

**MUMBAI**

20th Floor, Indiabulls Finance Center,
Tower 2 Unit A2, Elphinstone Road,
Senapati Bapat Marg, Mumbai - 400 013
T: +91 22 4354 7000
F: +91 22 6630 3700
E: mumbai@luthra.com

**BENGALURU**

3rd Floor, Onyx Centre, No. 5, Museum Road,
Bengaluru - 560 001
T: +91 80 4112 2800 / +91 80 4165 9245
F: +91 80 4112 2332
E: bengaluru@luthra.com

**HYDERABAD**

Serene Towers,
House No. 8-2-623/A,
Road No. 10, Banjara Hills,
Hyderabad, Telangana - 500034
T: +91 40 7969 6162
E: hyderabad@luthra.com

**CHENNAI**

Prestige Palladium Bayan,
8th Floor, Greaves Road, Nungambakkam Division,
Egmore, Chennai - 600 006,
Tamil Nadu
T: +91 95604 88155
E: chennai@luthra.com