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NEWSLETTER

January, 2019

Supreme Court of India on Law of Arbitration

Delay in passing award cannot be ground to remove an Arbitrator

The Hon'ble Court reiterated that an employee of the Respondent Company cannot be ipso facto disqualified to act as an arbitrator in a proceeding that commenced prior to the 2015 amendment. It was further held that in the absence of any express application to expedite the award or for termination of the mandate of the Arbitrator, mere neglect or delay in passing the award by itself cannot be the ground to appoint another arbitrator.

Former employee is not disqualified to act as an Arbitrator even after the 2015 amendment

The Hon'ble Court, in a case under the pre-2015 amendment Arbitration and Conciliation Act, 1996, has rendered an opinion that a former employee does not fall within the disqualification of "any other past or present business relationship" as envisaged under Entry 1 of Schedule V to the Act. It has been held that the only disqualification is to present or current employee, consultant or advisor of the party(s).

Supreme Court of India on Insolvency and Bankruptcy Code

Constitutional validity of the Insolvency and Bankruptcy Code, 2016

In a landmark decision, the Hon'ble Court has upheld the constitutional validity of the IBC in its entirety. The primary challenge preferred before the Hon'ble Court was that the IBC discriminates between financial and operational creditors. Negating this submission, it was held that there is an obvious intelligible differentia between the classes of creditors such as, inter alia, the security, general magnitude of the amounts, the purpose of the financial contracts, mode and timeline of recovery, etc. It was further held that Section 53 which prescribes the manner of distribution of assets does not violate Article 14 of the Constitution of India.

On the challenge to the allegedly unnecessarily high threshold to prefer an application to withdraw a case under Section 12A, it was held that the threshold of 90% is to ensure that nearly all members of the Committee of Creditors agree with the settlement or withdrawal of the proceedings. It was further held that the NCLT and NCLAT have supervisory powers over this decision and therefore can set it aside, if necessary.

On the issue that a resolution professional being given adjudicatory powers is contrary to law, it was observed that a resolution professional is not like a liquidator and has no adjudicatory powers under the IBC. The Hon'ble Court held that a resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority.

With regard to the challenge to the eligibility criteria of resolution applicants, it was held that the issue is no longer res integra and that Section 29A has been enacted in the larger public interest and to facilitate effective corporate governance. It was clarified that 'related persons' must be connected to the business of the resolution applicant in order to attract the disqualification under Section 29A.



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Public Health and Welfare

Supreme Court approves Compensation Scheme for faulty hip-implants

In October 2018, US-based pharma major Johnson and Johnson was found guilty of medical negligence for implanting faulty hip implants. The Hon'ble Supreme Court had sought the response of the Ministry of Health and Family Welfare for the follow-up action and has been monitoring the case since then. The Ministry submitted an affidavit before the Hon'ble Court detailing the compensation scheme for those who have suffered from these implants. The Hon'ble Court accepted the compensation scheme and directed maximum publicity of the same.

No compulsory vaccination without informed consent

The Hon'ble High Court of Delhi has stayed the operation of the 'Measles Rubella Vaccination Campaign' of the Government of National Capital Territory of Delhi, which prescribed compulsory vaccination on children regardless of consent of their parents or guardians. The Hon'ble Court observed that consent is essential and that the Government must share full information with the parents.

Mergers and Acquisitions

Government approves merger of Bank of Baroda, Dena Bank and Vijaya Bank

The merger to create India's second largest public sector Bank, which was announced last year in light of the Government's drive to strengthen the banking sector, has received approval from the Union Cabinet on January 2, 2019 and is expected to be effective from April 1, 2019. However, the All India Bank Officer's Confederation has preferred a challenge to the same before the Hon'ble High Court of Delhi. Vide a subsequent order, the Hon'ble Court has passed directions to increase advertisements and ensure that the vaccination is administered to students only after receiving consent forms from their respective parents.

Bandhan Bank to enter into share swap-merger with Gruh Finance

Bandhan Bank, which is India's 8th largest Bank by market capital is in talks with HDFC-controlled Gruh Finance, an affordable home loans subsidiary for a USD 12 million share-swap merger.

Competition Commission of India approves GlaxoSmithKilne Consumer Healthcare India's acquisition by Hindustan Unilever

The CCI has approved the all-stock buy-out amounting to USD 3.8 billion. The deal is still subject to approvals from other regulatory bodies and if successful will further strengthen Hindustan Unilever which is the country's largest consumer goods firm.



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SPECIAL SECTION

January, 2019

NEWS BULLETIN THE ENERGY LAW PRACTICE GROUP

Amendment to Bidding Guidelines for Solar Projects

MNRE Amends Bidding Guidelines for Solar Projects; Reduces Commissioning Timeframe

The Ministry of New and Renewable Energy has issued the Second Amendment to the competitive bidding guidelines for procurement of power from grid-connected solar photovoltaic (PV) projects. Through these amendments, the government is trying to expedite the entire process of solar project development, right from tendering and auctioning to commissioning.

The amendment will further accelerate the Government's plans to install 100GW of solar generation in India by reducing the required timeframe for project commissioning of a solar park situated inside (21 months) as well as outside (24 months) the solar park to 15 and 18 months respectively.

The ministry has also reduced the time required to attain financial closure for solar PV projects inside a solar park from 12 to 09 months. Whereas, the solar projects outside a solar park still have a 12-month timeframe.

A brief list of amendments is as follows:

- A minimum period of 22 days will be allowed between the issuance of request for selection (RfS) and the last date of bid submission.
- Under normal circumstances, the bidding process should be completed in a period of 110 days.
- For solar PV projects outside a solar park, the time-period for attaining the financial closure will be 12 months from the date of execution of the power purchase agreement (PPA).

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CONTACT US

Delhi Office:

Address:
Flat Nos. 10 & 12,
Golf Apartments,
Sujan Singh Park,
Maharishi Raman
Marg, New Delhi - 110
003

E-mail:
deloffice@surico.in

Bhubaneswar Office:

Address:
4th Floor, IDCO
Towers, Janpath,
Bhubaneswar

E-mail:
bhboffice@surico.in

Chandigarh Office:

Address:
#16-17, 2nd Floor,
SCO No.487/488,
Sector 35C,
Chandigarh-160022

E-mail:
chdoffice@surico.in

SPECIAL FEATURE

January, 2019

Specific Relief (Amendment) Act, 2018: Its Effect on Contract Enforcement

- By Mr. Anjan Chakraborty, Partner
(Dispute Resolution Practice)

Background of events that led to this change

World Bank Doing Business 2018 and Economic Survey 2018 Report

World Bank in its Doing Business 2018 report ranked India at 100 (out of 190 countries). This was an improvement from earlier rank of 130 in 2017. India was lagging behind in Enforcement of Contracts and associated Legal systems, time lines and procedures. Such issues are of vital importance for international investors in order to obtain comfort in our dispute resolution process resulting in speedy justice.

Subsequently our Economic Survey 2018 report highlighted in its chapter "Ease of Doing Business' Next Frontier: Timely Justice" that India has only marginally improved its position on Enforcing Contracts (from 172 in 2017 to 164 in 2018 as per World Bank Doing Business indicators) which is still behind Pakistan, Congo and Sudan. That in itself speaks volumes.

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