



MCCI

The Madras Chamber

Legal Update

September 2024

MADRAS CHAMBER OF COMMERCE & INDUSTRY

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Legal Insights

Recent Developments



1

"Supreme Court Empowers Courts to Extend Arbitral Mandates Even After Expiry: Overrules Calcutta HC in Landmark Ruling"

In the case of Rohan Builders (India) Private Limited v. Berger Paints India Limited, the Supreme Court overruled the Calcutta High Court's ruling, which had determined that applications for extending the time under Sections 29A(4) and 29A(5) of the Arbitration & Conciliation Act, 1996, must be submitted prior to the expiration of the arbitral tribunal's mandate. The Supreme Court, interpreting the term "terminate" in Section 29A(4), highlighted the legislative intent to uphold party autonomy. It ruled that the authority to extend the time for rendering the arbitral award lies solely with the court, not the arbitral tribunal. Accordingly, the Court held that an application for extension of time under Sections 29A(4) and 29A(5) is valid even after the expiry of the initial twelve-month period or extended six-month period. When adjudicating on such extension requests, the court will be guided by the principle of sufficient cause.

Rohan Builders (India) Private Limited v. Berger Paints India Limited (2024 INSC 686)

3

"Supreme Court Upholds Strict Timelines and Stakeholder Advisory Roles in IBC Liquidation"

In V.S. Palanivel v. P. Sriram, CS, Liquidator, the Supreme Court examined several critical elements of the liquidation process under the IBC, 2016. A significant finding was that Clause 12 of Schedule I under Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016, which requires the highest bidder to deposit the full sale amount within 90 days, establishes a binding timeline; failure to do so may result in the cancellation of the sale. Additionally, the Court acknowledged that the Stakeholders' Consultation Committee (SCC) serves an advisory role, emphasizing that the liquidator must document the reasons for any deviations from the committee's recommendations. V.S. Palanivel v. P. Sriram, CS, Liquidator (2024 INSC 659)

2

"Supreme Court Resolves Ambiguity: Establishes Date of Enforceability for Foreign Award Conversion Rates"

The Supreme Court's division bench in DLF Ltd and Anr v. Koncar Generators and Motors Ltd held that the conversion rate for a foreign award is to be determined on the date the award becomes enforceable. If the award debtor deposits funds with the court during the pendency of objections and the award holder is allowed to withdraw them, the conversion to foreign currency should occur at the exchange rate prevailing on the date of the deposit. The converted amount is then applied towards the principal and interest, with any remaining balance converted when the award is fully enforced after resolving objections.

DLF Ltd and Anr v. Koncar Generators and Motors Ltd (2024 SCC Online SC 1907)

4

"Misuse of IBC Condemned: NCLAT Rejects Supplier's Tactics"

In M/s Agarwal Foundries Private Limited v. POSCO E&C India Private Limited, the case involved a supplier of TMT bars seeking payment from a guarantor company for unpaid invoices linked to a construction project. Despite sending multiple demand notices and filing several applications under Section 9, the supplier failed to recover the outstanding dues. The NCLAT ruled that the supplier's actions were not driven by a genuine effort to resolve the financial issue but rather by a strategy to extract funds from the guarantor. The court underscored the necessity of utilizing the Insolvency and Bankruptcy Code (IBC) for its intended purpose of insolvency resolution, rather than exploiting it for personal gain.

M/s Agarwal Foundries Private Limited v. POSCO E&C India Private Limited (2024 Supreme (Online) NCLAT 702)

Highlights of Tamil Nadu

TN Government sets Stamp Duty on Amalgamations at 2% of Immovable Property Market Value, Removes Upper Limit

The Tamil Nadu government via Circular No. 40405/P2/2021-dated 09.09.2024 issued an Order on Stamp Duty on amalgamations for the state. The stamp duty for the transfer of immovable property during company amalgamations will be levied as per a judgment by the Madras High Court for W.A.No. 758 of 2022 on 19.02.2024, fixing it at 2% of the market value of the property.

Various government orders were examined and, G.O.Ms.No.29 dated 01.03.2019 was partially quashed by the court. However, orders such as G.O.Ms.No.47 - dated 19.02.2020 were upheld, and it was clarified that stamp duty would be calculated based on the property's market value. Any excess stamp duty already collected will be refunded to the concerned parties, and the balance, if any, will be recalculated.

The High Court, National Company Law Tribunal (NCLT), or Board for Industrial and Financial Reconstruction (BIFR) sanctioned amalgamation schemes will attract a reduced stamp duty of 2% on the market value of immovable property. The Registration officers are instructed not to apply the previous rate of 0.6% on the aggregate market value of shares and must adhere to the new 2% stamp duty rule for such transfers.

Madras High Court says corruption has turned Chennai into concrete jungle

The Madras High Court has criticized government agencies, including the Greater Chennai Corporation (GCC), for widespread corruption leading to environmental damage and illegal constructions, turning Chennai into a "concrete jungle." Justices SM Subramaniam and V Sivagnanam condemned the inaction of authorities despite numerous complaints from environmentalists about unauthorized building violations. The court's comments were made while addressing a 2015 contempt petition by R Vadivelu and D Gopalakrishnan, seeking action against illegal constructions by P Devaraji and others in Kapaleeswarar Nagar. Devaraji had built extra unauthorized floors despite prior commitments to demolish them. The petitioners sought accountability from GCC officials for not enforcing court orders.

The court gave a four-week deadline for rectifying violations by demolishing unauthorized portions and directed GCC to apply the 2018 government order to similar cases within two months.

Madras High Court Orders State to Implement Measures for Athlete Protection, Ensure Swift Action Against Sexual Harassment in Sports

The Madras High Court refused to overturn the conviction of a sports teacher found guilty of sexually harassing a 12th-grade student during a state-level competition. Justice KK Ramakrishnan emphasized that every female athlete has a fundamental right to a safe and supportive sports environment. Directions were issued to the Tamil Nadu government to ensure the protection of female athletes from harassment, urging measures within six months. The court also recommended that parents or guardians accompany female participants during competitions to prevent such incidents. The case involved a Physical Education Teacher who, instead of following prior plans, took the victim to a lodge during a Kabaddi tournament, where he sexually assaulted her. The victim, trapped in the restroom, managed to call her relatives, leading to the teacher's arrest. The teacher's argument that the assault did not occur in an "institution" under Section 9(f) of the POCSO Act was rejected by the court, as it noted the student-teacher relationship extended beyond the physical institution. The court upheld the teacher's conviction and increased the compensation awarded to the victim from Rs. 50,000 to Rs. 5,00,000, recognizing the lasting impact of the trauma, including the victim's discontinuation of her education.

Madras High Court Directs TANUVAS to Accept Transgender Candidate's Application

In the case of A.Nivetha v The Secretary to Government and Others, The Madras High Court directed the Tamil Nadu Veterinary and Animal Sciences University (TANUVAS) to consider the application of transgender candidate A Nivetha for an undergraduate program and place her appropriately based on merit. Justice M Dhandapani ruled that TANUVAS cannot reject Nivetha's application solely on the basis of her transgender identity. The court gave this direction while disposing of Nivetha's petition challenging the university's prospectus for UG admissions 2024-25, which failed to include a special category for transgender applicants. When the matter was heard, Nivetha's counsel submitted that the court directing TANUVAS to consider her application would suffice, without interfering with the admission notification. The university did not object to this request. Accordingly, the High Court ordered TANUVAS to consider Nivetha's June 26, 2024 application, place her on merit, and complete the process within two weeks. The court clarified that the university shall not reject Nivetha's application on grounds of her being transgender.

IN THE SPOTLIGHT



Insights on the New Amendments to the Competition Commission of India

~Goda Raghavan

The recent enactment of the Competition (Amendment Act), 2023 (“Act”) introduces significant reforms for merger and acquisition deals in India, effective from September 10, 2024. Key amendments include new notification criteria, which require that merger transactions exceeding a deal value threshold of INR 2,000 crores globally, where the target company has substantial operations in India, must be notified to the Competition Commission of India (CCI). This requirement applies to transactions commencing from April 11, 2023, as well as those currently in the closing process. Certain transactions are exempt from notification obligations, including share acquisitions by stock brokers or underwriters not exceeding 25% of shares or voting rights in the target company, new acquisitions resulting in less than 10% of shares that do not confer control, procurement of director or observer seats, and sensitive information, and incremental acquisitions where shareholders maintain less than 25% without gaining control. Additionally, the timeline for the CCI to review merger transactions has been reduced from seven months to five months, and the preliminary review timeline has been amended from 30 working days to 30 calendar days. The green channel route has also been amended to allow parties to notify the CCI without a waiting period, provided they have no overlapping or complementary linkages with the target or its affiliates. Lastly, the filing fees for Form I have increased from INR 20,00,000 to INR 30,00,000, and for Form II from INR 65,00,000 to INR

IN THE COURT ROOM



LANDMARK JUDGMENT BY SUPREME COURT OF INDIA

"States Authorized to Sub-Classify Scheduled Castes and Scheduled Tribes" by Subathra Mylsamy

On August 1, 2024, the Supreme Court of India, in *State of Punjab & Ors. vs. Davinder Singh & Ors.*, empowered states to sub-classify Scheduled Castes (SCs) and Scheduled Tribes (STs) for reservations in government educational institutions and jobs, overruling an earlier decision that deemed SCs as a homogenous group. This case dates back to 1975, when the Punjab government acknowledged the underrepresentation of communities like the Balmikis and Mazhabi Sikhs. To address this, the state granted these groups preferential treatment. However, a 2004 ruling by a 5-Judge Bench in *E.V. Chinniah vs. State of Andhra Pradesh* asserted that SC/ST lists are singular and could not be subdivided further. In 2006, the Punjab & Haryana High Court rejected this view, allowing the Punjab Assembly to enact the Punjab Scheduled Castes and Backward Class (Reservations in Services) Act, 2006, reinstating preferential treatment for Balmikis and Mazhabi Sikhs. This Act was challenged by Davinder Singh, who argued against the preferential treatment, prompting the Punjab government to appeal to the Supreme Court. The matter was initially referred to a 5-Judge Bench, which acknowledged significant inequalities among different castes and subsequently referred the case to a 7-Judge Bench for in-depth examination. The core legal questions included the permissibility of sub-classification under Articles 14, 15, and 16 of the Constitution; whether SCs form a homogenous or heterogeneous group; the implications of Article 341 on caste classification; and the limitations on sub-classification. The majority of the Bench concluded that sub-classification is constitutionally valid, emphasizing that Articles 14 to 16 advocate for equality and acknowledge that certain sub-castes within the SC category experience greater disadvantage. The court insisted that empirical evidence must support any claims for sub-classification to ensure adequate representation for groups seeking preferential treatment due to their unique socio-economic challenges.

The Chief Justice noted that the Presidential List of SCs/STs does not create a homogenous class but reflects diverse conditions across states. The court clarified that sub-classification must not violate Article 341(2) by unfairly favoring some castes over others within the reserved category. Furthermore, the judgment reinforced that the 'creamy layer'—families from SCs and STs who have benefitted from reservations or exceed a certain income level—should be excluded from further benefits to ensure support for the most disadvantaged. This landmark ruling establishes the legality of sub-classifying SCs and STs, allowing states to tailor reservation policies to address historical inequalities effectively.

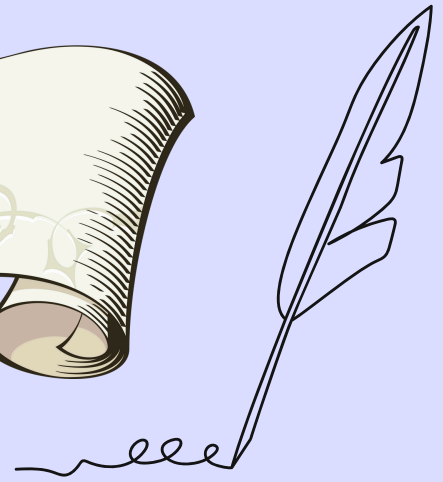
FUN CORNER



**Can a CCPS Holder oppose
the filing of application
under Section 10 of the
Insolvency and Bankruptcy Code, 2016?**



**Comment below your answer with
100 - 150 words, we will chose and
publish the “best comment” in the
next months’ issue**



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