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# TLA LEGAL DIGEST

## *NAVIGATING THE CORPORATE LEGAL WORLD*

MAY-JUNE 2024

### RECENT AWARDS & RECOGNITION



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## EMPLOYMENT

### **Exemption from standing orders on information technology sector in Karnataka**

The Karnataka government issued a notification on June 10, 2024 ("**Notification**") extending the exemption of the applicability of Industrial Employment (Standing Orders) IESO Act, 1946 ("**Act**") on the establishments operating in information technology sector. The Act provides the compliances related to publishing of standing orders by the employer regarding terms of employment such as working hours, wages, leaves, etc. The notification provides for exemption of the Act for next five years on industrial establishments operating in sectors such as IT, ITeS, startups, animation, gaming, telecom, computer graphics, business process outsourcing, knowledge process outsourcing and other knowledge based industries.

### **Extension on exemptions for IT-ITeS Establishments in Telangana under the Telangana Shops and Establishments Act, 1988**

The Telangana government through the notification dated June 7, 2024 ("**Notification**") extended the exemption of the applicability of some provisions of Telangana Shops and Establishments Act, 1988 ("**Act**") on information technology enabled services and information technology establishments for a further period of 5 years. The exempted provisions include opening and closing hours, working timings for young persons and women, grant of national and festival holidays to employees, daily and weekly hours, among others. While making the exemptions applicable, the notification also provides few additional conditions to be adhered to by the exempted establishments such as compulsory weekly off, weekly working hours to be only for 48 hours, compensatory holidays against national and festival holidays.



## TAXATION

### **Redemption premium received on non-convertible debentures is taxable as interest income**

The Income Tax Appellate Tribunal, Mumbai (“**ITAT**”) in *Khushaal C. Thackersey v. ACIT (I.T.A. No. 3679/Mum/2015 (A.Y. 2010-11))* held that the premium received on non-convertible debentures (“**NCDs**”) at the time of redemption is taxable as interest income and not as capital gains. While referring to the definition of Debenture under the Companies Act, 2013, ITAT held that debentures are essentially instruments evidencing a debt. Further, since NCDs under this case were not listed on stock exchange and were privately placed, such NCDs have not been sold in open market and have only been surrendered for redemption. Therefore, it is only the realization of money by the debenture holder as a creditor.

### **Protocol between India and Mauritius for insertion of principal purpose test in the DTAA**

India and Mauritius have entered into a protocol dated March 7, 2024 (“**Protocol**”) which provides for insertion of principal purpose test (“**PPT**”) in the Double Taxation Avoidance Agreement (“**DTAA**”) between India and Mauritius. Multiple claims have been made by the income tax department against the benefit claimed by Mauritian resident even after holding a valid tax residency certificate (“**TRC**”), however, this Protocol aims to provide remedy for such disputes. This Protocol would allow the denial of benefit under the DTAA in respect of any item of income, if it can be reasonably concluded that obtaining such benefit was one of the principal purposes of the transaction in dispute. Therefore, post the notification of the Protocol, the Department may seek to take shelter of PPT to go behind the TRC.



## ARBITRATION

### **HON'BLE NCLAT (DELHI) HOLDS THAT A CONTRACTUAL DISPUTE RELATING TO PLACE OF DELIVERY AND TRANSPORT AMOUNTS TO A "PRE-EXISTING DISPUTE" UNDER SECTION 9 OF IBC, 2016**

In *Sanam Fashion & Design Exchange Ltd. V. Ktex Nonwovens Pvt. Ltd., Company Appeal (AT) (Ins.) No. 1234 of 2023*, the Hon'ble Principal Bench of the National Company Law Appellate Tribunal, Delhi (NCLAT) upheld the dismissal of the section 9 petition under the Insolvency & Bankruptcy Code by Hon'ble National Company Law Tribunal (NCLT), Ahmedabad on the ground that there was a pre-existing dispute on the place of delivery and transportation.

Based on the precedents of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited and Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) (P) Ltd.*, the Hon'ble NCLAT reiterated the observations of the Hon'ble Supreme Court that the object of the IBC is to ensure that no operational creditor puts the corporate debtor prematurely in CIRP as a recovery mechanism. Consequently, in view of a pre-existing dispute, the appeal failed and was dismissed.

The judgement protects the interests of numerous small and emerging businesses that contribute to the Indian economy and shields them from market predators. The Hon'ble NCLAT was correct in recognizing that both parties had a pre-existing dispute over their contractual obligations. Despite the Corporate Debtor's readiness to supply the items, they were not supplied as there existed a dispute over the site of delivery.



## ARBITRATION

### **HON'BLE TELANGANA HIGH COURT DECLARES THAT A COURT UNDER SECTION 11(6) MUST DETERMINE EXISTENCE AND VALIDITY OF ARBITRATION AGREEMENT**

The Hon'ble High Court bench led by Hon'ble Chief Justice Alok Aradhe dismissed an application for the appointment of an arbitrator filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, noting that the party failed to establish prima facie evidence of the existence of a valid arbitration agreement. The Hon'ble Bench ruled that when exercising jurisdiction under Section 11(6), the court must conclusively evaluate the existence and validity of the arbitration agreement since it goes to the heart of the dispute.

Furthermore, it referred to the Hon'ble Supreme Court's decision in *Vidya Drolia V. Durga Trading Corporation*, which held that for an arbitration agreement to be valid, it must meet the requirements outlined in Section 10 of the Contract Act, which requires contracts to be made with the free consent of competent parties, for lawful consideration, and with a lawful object. The Hon'ble Supreme Court emphasized that these criteria are essential for establishing the legality of arbitration agreements. It went on to explain the elements required for an agreement to qualify as a legitimate arbitration clause, ruling that such agreements must follow the contract law principles outlined in the Contract Act.



## CONSUMER PROTECTION

### **Mandatory self-declaration for the purpose of advertisements**

The Supreme Court of India on May 7, 2024 in the case of *Indian Medical Association & Anr. v. Union of India & Ors. (Writ Petition (C) No. 645/2022)* made mandatory for the establishment to submit a self-declaration certificate before publishing or broadcasting any advertisement on television, radio, print or digital media. The self-declaration shall include the declaration providing compliance with the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 issued as per the Consumer Protection Act, 2019. The advertisement published before June 18, 2024 do not require such declaration.

## REAL ESTATE

### **Specific performance under Agreement to Sell not available to buyer who did not adhere to payment timelines**

The Supreme Court of India, in case of *Alagammal v. Ganesan ((2024) 1 S.C.R. 374)* on January 10, 2024, held that in case the buyer has failed to adhere to the timelines provided in the agreement to sell for making payments, such buyer cannot avail the specific performance of such agreement to sell. Further, where the buyer had made any payment beyond the time limit provided in the Agreement to Sell, the remedy available for the same to the buyer was to seek recovery of such monies along with interest and damages from the seller.



## **Deemed conveyance can't be denied if flat purchase agreement mandates promoter to do so**

In the *Prestige Garden CHSL v. State of Maharashtra & Ors -W.P.(C) 824/2023 & CM APPLs. 3171/2023, 33245/2023 & 38094/2023*, the Hon'ble Bombay High Court ruled that the Competent Authority must grant Deemed Conveyance if the flat purchase agreement requires the promoter to transfer rights to the housing society. The Hon'ble High Court emphasized that the Competent Authority shouldn't consider title disputes between original owners and promoters when reviewing these applications. This decision came in response to petitions challenging previous rejections of a conveyance application and an order to deregister the housing society. Hon'ble Justice Marne clarified that the authority's role is limited to executing the agreement terms, not resolving title disputes.

## **Advance paid by a speculative buyer in Real Estate does not fall within the purview of Section 5(8) of the IBC**

*Naman Infradevelopers Pvt. Ltd. Vs. Metcalfe Properties Pvt. Ltd. - COMPANY APPEAL (AT)(INS) No.74 of 2024* - In the agreement for purchase of residential plots, one of the conditions in the agreement was that if the seller fails to execute the sale deed in favour of the purchaser, then the seller shall be liable to return the entire amount received alongwith interest @ 24% per annum from the date of payment of the amount till the actual payment. The Appellant had made advance payment. The Corporate Debtor failed to effect the Registration and proposed to convert the outstanding amount as loan. On default in repayment, an application was filed under Section 7 of the Insolvency & Bankruptcy Code by the buyer which was rejected by the Hon'ble Adjudicating Authority. The Hon'ble National Company Law Appellate Tribunal (NCLAT) dismissed the appeal and held that the Appellant was never an allottee or a home buyer but was a speculative buyer, hence would not fall within the purview of Section 5(8) of the Code.



## ABOUT THE FIRM

Tempus Law Associates is a full-service law firm.

Our practice areas include Corporate Law, VC, M&A Transactions, Dispute resolution, Intellectual property, and Real estate.

We at Tempus, take pride in the firm's ability to service our clients by rendering prompt legal services of the high quality, reliability and Integrity.

## RECENT WEBINARS/SEMINARS



**Dagar Workshop on IP & Regulatory Strategies** organized by CSIR-CCMB and ATAL INCUBATION CENTRE supported by NITI Aayog

 Tier 1: City Focus: Hyderabad-2024 Leading Individual (Sundari R Pisupati)-2024-23 Leading Firm in Hyderabad 2023	 Band 1 for Corporate & Commercial: Hyderabad-2024-23	 Band 1 for Corporate & Commercial: Hyderabad-2023	 Ranked for Corporate M&A, Private Equity and Dispute Resolution-2022-23	 Firm to Watch 2023 Ranked for M&A-2023-22 Partners recognized as Super 50 Lawyers-2022	 Recognised for Commercial & Transaction and Hyderabad-2024	 Ranked as Top Law Firm (above 10 year exp) 2023, Leading Law Firm 2023, and for Corporate & Commercial, M&A, Private Equity & Venture Capital, and Foreign Investments- 2021-20 Top 100 Leading Individual Lawyers (Sundari R Pisupati)-2020	 Recognized as a 'Rising Star' law firm
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