

ACUITY **LAW**

AI INSIGHTS

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ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic professionals led by Souvik Ganguly, Gautam Narayan, Deni Shah and Renjith Nair who have deep and diverse experiences in their chosen areas of practice. We advise Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors, and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into three departments. The Corporate practice is led by Souvik Ganguly, the Global Trade and Tax practice is led by Deni Shah, and the Disputes practice is led by Gautam Narayan with assistance from Renjith Nair.

As part of the corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency law;
- Private Equity and Venture Funding;
- Employment and labour laws;
- Commercial and trading arrangements; and
- Corporate Advisory.

As part of the Global Trade and Tax practice, Acuity Law advises on:

- Cross-border tax planning and jurisdiction analysis;
- Strategies for acquisitions, mergers, divestitures, diversification, or consolidation of businesses;
- Inbound and outbound investment structuring;
- Endowment planning/wealth management strategies;
- Global Trade & Customs laws, including foreign trade policy;
- International supply chain optimization;
- Goods & Services Tax and other Direct and Indirect taxes.

As part of the Disputes practice, Acuity Law advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters.

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website acuitylaw.co.in or write to us at al@acuitylaw.co.in.

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'AL Insights' is a compilation of our thought leadership articles published in the month of December 2023 on key legal and regulatory topics. Please click on the access links to read more.

A. CORPORATE

1. Maharashtra Government Provides Reliefs in Stamp Duty

The Maharashtra government introduced the Maharashtra Stamp Duty Amnesty Scheme 2023 on 07 December 2023, aiming to remit or reduce stamp duty and penalties on specified instruments. The scheme, applicable to instruments executed between 01 January 1980 and 31 December 2020, operates in two phases, offering higher reductions in Phase 1, which runs from 01 December 2023 to 31 January 2024. Applicants must adhere to specific conditions, including submitting online applications with original instruments and supporting documents.

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2. Changes To Alternative Investment Fund Regulations

The Securities and Exchange Board of India (SEBI) has approved crucial amendments to the SEBI (Alternative Investment Funds) Regulations, 2012, aiming to enhance compliance and investor protection in alternative investment funds (AIFs). Key changes include mandatory dematerialization of fresh investments from September 2024, with exemptions for certain cases, and the mandatory appointment of a custodian for all AIFs, irrespective of category or corpus size. These amendments signify SEBI's commitment to fortify the regulatory framework governing AIFs.

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B. DISPUTES

1. MSME Registration During CIRP

The Supreme Court in *Hari Babu Thota* has held that a promoter of corporate debtor can submit a resolution plan under the Insolvency and Bankruptcy Code, 2016, even if the Micro Small Medium Enterprise registration is obtained after entering the corporate insolvency resolution process (CIRP). This decision overturns the NCLAT's earlier order declaring that the promoter ineligible on the ground that the MSME registration was obtained during CIRP.

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2. Treatment of Homebuyers under the Insolvency and Bankruptcy Code, 2016

The Supreme Court in *Vishal Chelani & Ors. v. Debashis Nanda* addressed whether homebuyers obtaining relief under The Real Estate (Regulation and Development) Act of 2016 should be recognized as financial creditors under the insolvency law. The court noted that there is no different treatment for homebuyers who sought RERA remedies under the insolvency law.

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3. Urgent Interim Relief Under Pre-Institution Mediation

In *Patil Automation Case*, the Supreme Court confirmed the mandatory nature of section 12A of the Commercial Courts Act, 2015 requiring pre-institution mediation, except in cases involving urgent interim relief. Recently, in *Yamini Manohar v. T K D Keerthi*, the Supreme Court further clarified that commercial courts must assess the nature, cause of action, and urgency when considering pleas for urgent interim relief.

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4. **Arbitration clause in General Insurance Policies**

IRDAI's recent circular limits arbitration clauses in insurance policies to commercial lines, excluding them from retail policies. For commercial policies, the circular mandates a clause allowing parties to agree on separate arbitration, governed by the Arbitration and Conciliation Act, 1996. Existing policies maintain the validity of arbitration clauses at renewal, offering policyholders the choice to adopt the new clause.

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C. **Tax**

1. **MFN Clause in Double Tax Avoidance Agreements**

The Supreme Court has recently pronounced a landmark ruling on treaty interpretation with a specific reference to Most Favored Nation (MFN) clause contained in various Double Taxation Avoidance Agreements (DTAA) entered by India with Organization for Economic Cooperation and Development (OECD) member countries. The Apex Court ruled that a Notification under section 90(1) of the Income-tax Act, 1961 is a necessary condition to give effect to a DTAA or any Protocol issued under the relevant DTAA (such as the MFN clause), to seek benefit of any beneficial clause extended to a third country DTAA. Also, the MFN clause can be invoked only if the third country was an OECD member country while entering into the DTAA with India.

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2. **GST on secondment of expats**

The GST authorities' intensified scrutiny on GST applicability to employee secondment, triggered by the Supreme Court's *Northern Operating Systems Pvt Ltd* judgment, led to show cause notices for many foreign companies in India. Despite varied arrangements, authorities invoked the extended limitation period indiscriminately. Responding to industry representations, the GST Policy Wing issued Instructions emphasizing nuanced examinations for each case, discouraging mechanical application of the judgment, and restricting the extended limitation period to cases involving fraud or willful misstatement. The instructions provide essential guidance for taxpayers navigating this complex issue.

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3. **Indirect transfer vis-à-vis small investors**

The Indian tax landscape has been marked by the indirect transfer controversy. Recently, in *Augustus Capital Pte Ltd*, the Delhi High Court has clarified aspects like small investor exemptions. While the controversy has eased, global investors must remain vigilant, considering treaty nuances and evolving tax regulations.

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