

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 May 2023 on key legal and regulatory topics. Please click on the access links to read more.

A. INSOLVENCY LAWS

1. Fraudulent initiation of CIRP can be challenged before 'admission'

Section 65 of the Insolvency and Bankruptcy Code, 2016 (**Code**), provides a shield against misuse of the Code to initiate insolvency / liquidation of corporates fraudulently or with malicious intent. However, use of the term 'initiates' in Section 65 seems to have created uncertainty with respect to the stage at which the said section will be applicable. Recently, the National Company Law Appellate Tribunal (**NCLAT**) in *Ashmeet Singh Bhatia v. Sundrm Consultants Pvt. Ltd. and Anr.*, has clarified that an application under Section 65 is maintainable even where an application seeking initiation of insolvency / liquidation process has been filed before the National Company Law Tribunal, but is still pending admission. In this article, we discuss NCLAT's judgement in brief, and our thoughts on the same.

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B. DISPUTES

1. Justice, equity, and lifting of the corporate veil

Traditionally, Indian courts have limited the piercing of the corporate veil to cases involving fraud or where the company is established to evade the law. However, in a recent case, *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited*, the Delhi High Court has expanded the application of the doctrine by recognising that the corporate veil may also be pierced for reasons of equity and to achieve justice. The court emphasised that meeting the ends of justice includes the enforcement and execution of decrees. In this article, we analyse the judgment of the Delhi High Court and provide our insights on the matter.

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2. 'Reasoning' the award

Indian courts have repeatedly highlighted the importance of reasoning in orders, as it brings clarity. Similarly, in arbitration, reasoned awards are expected to prevent unfairness and arbitrariness, offering parties a comprehensive explanation for the tribunal's decision. While the Indian Arbitration Act requires an arbitral tribunal to pass a reasoned award, it also permits the parties to mutually waive off this requirement. In the present article, we examine the scope of reasoned awards under the Indian Arbitration Act.

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3. Writ jurisdiction not bound by 'seat' of arbitration

The scope of seat / venue clauses in an arbitration agreement have been under controversy more often than not. In the recent decision of the Delhi High Court in *Durgapur Freight Terminal Pvt. Ltd. & Anr. v. Union of India Ministry of Railways & Ors.*, the Court dealt with the question whether seat / venue mentioned in a contract will be determinative of the location of the Writ Court as well. In this article, we have shared our thoughts on the effect of seat / venue clauses on statutorily conferred jurisdiction of a court in light of the above-mentioned decision of the Delhi High Court.

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4. Insufficiently stamped agreement and the defeat of arbitration!

Recently, a five-judge bench of the Supreme Court of India in *NN Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. & Ors.* addressed the interplay between requirements under stamping laws vis-à-vis validity of arbitration agreements. The much-awaited decision has opened the doors for increased judicial intervention at the pre-referral stage of arbitrations. In this article, we have attempted to present a critique of the above-mentioned decision while discussing the aftermath and way forward.

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