

ACUITY **LAW**

# **MONTHLY LEGAL ROUNDUP**

AUGUST 2022  
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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, Renjith Nair and Dhaval Jariwala 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 with assistance from Dhaval Jariwala, 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](http://acuitylaw.co.in) or write to us at [al@acuitylaw.co.in](mailto:al@acuitylaw.co.in).

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This monthly legal roundup is a compilation of our thought leadership articles and primers published in the month of August 2022 on key legal and regulatory topics. Please click on the access links to read more.

## A. CORPORATE LAWS

### 1. Temporary relaxations for external commercial borrowings (ECB)

Reserve Bank of India (RBI) vide a recent notification has introduced a few temporary liberalisation measures for external commercial borrowings to be raised by eligible Indian borrowers till 31 December 2022. In this short write-up, we have summarized the relaxations introduced by RBI for raising ECBs.

[Read more](#)

### 2. Duomatic principle and its application under the Indian company law

Originating from the United Kingdom, the “Duomatic principle” has been applied by courts to uphold unanimous decisions taken by shareholders of companies despite failure to pass formal resolutions in duly convened shareholders’ meetings. This article discusses the origins of the Duomatic principle and analyses its application by the Supreme Court of India (SC) in the recent case of *Mahima Datla v. Dr. Renuka Datla*.

[Read more](#)

### 3. RBI’s press release on recommendations of the working group on digital lending – implementation

Recently vide a press release, the RBI has set the ball rolling on how the digital lending space will be regulated in India. The RBI has accepted several recommendations made by a working group on digital lending while earmarking a number of other recommendations for further examination and discussion. In this update, we throw light on several key aspects of RBI’s press release.

[Read more](#)

### 4. Regulatory headwinds for buy-now pay-later (BNPL) fintechs

India’s digital lending story, which is currently led by active participation from a number of fintech firms recently received a regulatory shock arising out a notification issued by the RBI. In this short update, we discuss the potential impact of the notification on the sector.

[Read more](#)

### 5. Rebooting the Indian fintech story

A recent report of the NITI Aayog on gig and platform economy discusses the important issue of financial inclusion of platform workers by providing them access to formal systems of credit, and the role to be played by startups offering innovative fintech solutions in such financial inclusion. In this short write-up, we have analysed the above issue against the current regulatory framework impacting the participation of fintechs in digital lending in India.

[Read more](#)

### 6. Revised guidelines for the production linked incentive scheme for promoting domestic manufacturing of medical devices

The Department of Pharmaceuticals on 18 August 2022 issued the revised Guidelines for the Production Linked Incentive Scheme for Promoting Domestic Manufacturing of Medical Devices. In this short update, we have highlighted the key changes introduced by the ministry in the revised guidelines.

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### 7. CCPA guidelines – an effort to regulate misleading advertisements

The Central Consumer Protection Authority (CCPA) issued a notification dated 09 June 2022 titled “Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022” (Guidelines). The Guidelines have been issued with an intention to curb misleading advertisements and protect consumer interest. However, our understanding is that the Guidelines are not free of ambiguities. In this article, we have analyzed the key provisions of the Guidelines and attempted to highlight the gaps, especially in light of the self-regulatory regime under the ASCI Code.

[Read more](#)

8. **Social media influencer – new age participants in digital advertising**

Social media influencers are the new phenomenon in this constantly evolving world of digital media and marketing by endorsing in a personalized manner various goods and services offered by different entities. However, with the increase in popularity of advertising through influencers, the line between what is, and what is not, a misleading advertisement, has become increasingly blurred. In this short article, we have discussed the laws regulating the social media influencers in India, nature of compliances, and key takeaways for social media influencers as well as the advertisers.

[Read more](#)

9. **Accountability of social media platforms for misleading advertisements**

Marketing on social media platforms has emerged as one of the fastest and efficient modes of promoting any activity whether linked to business, social activity, or governance. With an explosive increase in online advertisements, concerns over transparency, accountability, and unethical marketing practices have increased remarkably regarding such advertisements. In this article, we have discussed in brief the laws regulating the social media platforms in India and the liability of such social media platforms in cases of misleading advertisement.

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**B. INSOLVENCY LAWS**

1. **Vidarbha industries: Extending the power of National Company Law Tribunal (NCLT) under insolvency law**

Recently, the SC in *Vidarbha Industries Power Limited v. Axis Bank Limited* held that the NCLT may look into the solvency of the corporate debtor while admitting an application to initiate the insolvency resolution process under the insolvency law. The decision modifies the well-established 'debt and default' test as previously stipulated by the insolvency courts. In this article, we analyse, in brief, the said case based on the established principles of insolvency law in India.

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2. **Licensing of premises is a 'service' under insolvency law**

The insolvency courts have provided divergent views on the issue of whether rental dues or license fees for use of premises would qualify as an 'operational debt' under the insolvency law. A larger bench of the National Company Law Appellate Tribunal (NCLAT) in *Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.* has clarified this issue. In the article, we discuss the judgment in the backdrop of previous decisions of the insolvency courts.

[Read more](#)

3. **Affixing liability: Lifting the corporate veil under insolvency law in India**

In the recent unprecedented judgment of *Yaduvir Singh Sajwan & Ors. v. Som Resorts Pvt Ltd*, the NCLT initiated insolvency of the real estate developer, although default occurred in the Special Purpose Vehicle (SPV). The NCLT lifted the corporate veil of the SPV to note that the real estate developer was controlling the SPV and had used the money paid by the homebuyers to the SPV for booking residential and commercial units. In this article, we have discussed the NCLT's judgment and the fundamental principles of the law relating to 'lifting of the corporate veil' in India.

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4. **Withdrawal & settlement under liquidation**

Insolvency courts have permitted withdrawal of the corporate insolvency process even during liquidation with the consent of the stakeholders despite the lack of explicit provisions for withdrawal under the liquidation regulations. In this article, we share our thoughts on the conditions for 'withdrawal' under insolvency law following the decision of the NCLT in *VS Varun v. South India Bank*.

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## 5. **Is accumulated interest a part of operational debt in Indian insolvency laws?**

In *Mr. Prashant Agarwal v. Vikash Parasrampur*, the NCLAT attempted to resolve the conundrum of whether interest on delayed payments can be clubbed with the principal operational debt under the Insolvency and Bankruptcy Code, 2016 to meet the pecuniary threshold. In this article, we discuss the contrary decisions from various insolvency courts on this issue and the need for clarity on the provisions of the code.

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## C. **DISPUTES**

### 1. **Delhi High Court on ‘close relationship’ between arbitrators and parties**

The Delhi High Court (DHC) has, in the recent case of *Himanshu Shekhar v. Prabhat Shekhar*, clarified the scope of the term “close family relationship” in the context of the relationship between arbitrators and parties. In this article, we discuss the facts of said case, the DHC’s observations as well as our thoughts on the same.

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### 2. **Arbitration law and interim reliefs against third parties**

Generally, interim measures are granted against a party to the arbitration under Indian arbitration law. But sometimes, it becomes necessary for a party to approach the court and seek interim reliefs against a non-signatory to the arbitration agreement. This article looks into various Indian judgments which deal with the premise of whether interim reliefs can be granted against a third party under Indian arbitration law.

[Read more](#)

### 3. **Let’s talk mediation**

Mediation in the recent years has gained great popularity as a preferred means of alternate dispute settlement mechanism. Recently, some significant steps have been taken by the Indian Government for the promotion of mediation. In this article, we discuss the process of mediation, its present framework in India, and the proposed legislation on mediation.

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## D. **GLOBAL TRADE AND TAXATION LAWS**

### 1. **GST circular on taxability of liquidated damages – is it really clarificatory?**

Taxability of payments in the nature of liquidated damages, late payment charges, termination charges, forfeiture of earnest money have been a matter of dispute, both under Goods and Service Tax as well as under the erstwhile service tax regime. The recently issued circular by the Ministry of Finance seeks to clarify various such payments. In this article, we have explained the circular as well as highlighted certain areas which may continue to be disputed.

[Read more](#)

### 2. **GST transitional credit – end of a five year protracted litigation**

The SC has recently directed the Goods and Services Tax Network to open the common portal for filing Form Tran-1 and Tran-2 for availing transitional credit. In this article, we have discussed the court ruling and related issues on the way forward.

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