

ACUITY **LAW**

MONTHLY LEGAL ROUNDUP

FEBRUARY 2023
acuitylaw.co.in

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 Kinjal Katkoria Parihar 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 with assistance from Kinjal Katkoria, 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.

The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

This monthly legal roundup is a compilation of our thought leadership articles and primers published in the month of February 2023 on key legal and regulatory topics. Please click on the access links to read more.

A. INSOLVENCY LAWS

1. New Development: NCLT's power to direct forensic examination of documents

Under the Companies Act 2013, the National Company Law Tribunals have wide powers to pass any order to bring an end to the oppression of the shareholders or the mismanagement of a company. However, conflicting judgments have led to uncertainty regarding the powers of the tribunal to decide on allegations of fraud, forgery, and fabrication of documents in a case of oppression and mismanagement. In the recent case of *Channel Foods Pvt. Ltd. v. A.K. Nowshad*, the National Company Law Appellate Tribunal has tried to resolve this issue. In the present article, we discuss the judgment and share our thoughts on the same.

[Read more](#)

2. No look back period for fraudulent transactions under insolvency laws

The Insolvency and Bankruptcy Code, 2016 (**Code**) empowers the insolvency professional to investigate previous instances of avoidance and fraudulent transactions of a corporate debtor. While the Code provides for a limitation or a look back period in case of avoidance transactions, no such look back period is provided for fraudulent transactions. In view of this, the National Company Law Appellate Tribunal has clarified in *Mr. Thomas George v. K. Easwara Pillai and Others*, that no lookback period is applicable to fraudulent transactions under the Code. In this article, we discuss the significance of the judgment.

[Read more](#)

3. No withdrawal of insolvency after approval of resolution plan

Section 12A of the Insolvency and Bankruptcy Code, 2016 and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 permit the withdrawal of insolvency resolution process. However, there are certain apprehensions of misuse of these provisions by promoters of the corporate debtor to thwart the insolvency process. Recently, the National Company Law Appellate Tribunal (NCLAT) in *Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd.*, has clarified that once a resolution plan has been approved by the committee of creditors, withdrawal of insolvency process is impermissible. In this article, we discuss NCLAT's judgement in brief, and our thoughts on the same.

[Read more](#)

B. DISPUTES

1. Arbitration clause in tax invoice is binding

The issue of whether an arbitration clause in an invoice can be considered as a valid arbitration agreement has troubled contracting parties. Recently, the Bombay High Court in *Bennett Coleman & Co. Ltd. v. MAD (India) Pvt. Ltd.* has attempted to resolve this issue by ruling that an arbitration clause in an invoice, unless specifically denied by the party accepting the invoice, would be binding. In this article, we discuss the judgment of the Bombay High Court and its consequences on commercial parties who regularly exchange invoices as a part of their transaction.

[Read more](#)

2. Arbitrability of disputes: A new face to the composite approach

The determination of arbitrability of disputes is one of the most widely debated issues in arbitration. The judgement of the Singapore Court of Appeals in the case of *Anupam Mittal v. Westbirdge Ventures II Investment Holdings* has come as a landmark judgement in furthering the use of composite approach to determine the arbitrability of disputes. In this article, we discuss the judgement of the Singapore Court of Appeals and share our thoughts on the same.

[Read more](#)

3. **Primer on Prevention and Prohibition of Sexual Harassment of Women at Workplace (POSH) Act**

A safe environment in the workplace is a basic right that should be afforded to each and every member of the workforce. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has gone a long way in protecting women from sexual harassment at workplace and providing modes of redressal in case of a grievance. In this primer, we highlight the important provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

[Read more](#)

C. **TAX UPDATES**

1. **India Union Budget 2023-24: Key tax proposals**

The Honorable Finance Minister of India presented the Union Budget 2023-24 on 01 February 2023. Solidifying the vision of "Make in India" and "Atmanirbhar Bharat", the budget proposals include various measures from a tax perspective to provide necessary impetus to both individuals and corporates. We are pleased to share a summary of the key budget proposals, both from a direct and indirect tax perspective.

[Read more](#)

Our co-ordinates:

Mumbai

506 Marathon Icon
Off Ganpatrao Kadam Marg
Lower Parel, Mumbai – 400013

Email: al@acuitylaw.co.in