

ACUITY **LAW**

MONTHLY LEGAL ROUNDUP

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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 Kinjal Katkoria 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.

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

A. CORPORATE LAWS

1. Finfluencers to be regulated soon!

With a growing investor base in the country, there has been a rise in a new breed of social media influencers advising on finance called "Finfluencers". Given their significant social reach, there is much discussion on whether Finfluencers should be regulated by SEBI. In this article, we analyse various existing laws and regulations on 'investment advisors' and some of the regulatory issues related to Finfluencers.

[Read more](#)

2. India: Rules governing the Gig Economy

The gig economy is booming across the globe, however, challenges regarding the status of gig workers keep emerging. In India, lawmakers recently proposed a labour law framework, the Social Security Code, 2020, that recognizes 'gig workers' and 'platform workers' for the extension of social security benefits. In this article, we have discussed, in short, the emergence of the gig economy in India, the opportunities and problems encountered by gig workers, the proposed regulatory framework and our thoughts in the context of India's gig economy landscape.

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B. INSOLVENCY LAWS

1. NCLT clarifies: Interim moratorium not applicable to future liabilities

Under the Insolvency and Bankruptcy Code, 2016, (**Code**) an interim moratorium kicks in as soon as an application is filed against a personal guarantor for initiating insolvency. This puts a stay on all pending legal proceedings with respect to any 'debt'. As the provisions for the interim moratorium are worded to apply in relation to all the 'debts' and not just in respect of the 'debtor', the scope of interim moratorium remains a grey area. The National Company Law Appellate Tribunal (**NCLAT**) in *Ashok Mahindru & Anr. v. Vivek Parti* has thrown light on the concept of interim moratorium to clarify that it is not applicable to a future liability. In this article, we discuss the NCLAT's judgement in brief, and share our thoughts on the same.

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2. Avoidance application survives insolvency process

For quite some time, a gray area under the Code was the fate of applications filed for reversal of preferential / undervalued / defrauding creditors / extortionate transactions after conclusion of the insolvency process. Earlier, a single judge of the Delhi High Court had held that on completion of the insolvency process, these applications become infructuous. In an interesting turn of events, the Division Bench of the Delhi High Court has now stipulated that these applications are independent of the insolvency process, and therefore can be adjudicated by the insolvency tribunals even post approval of the resolution plan. In the present article, we discuss the far-reaching consequences of this landmark judgment.

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C. DISPUTES

1. 'Seat' of arbitration can be determined from the purpose of the contract

The concept of 'seat' is of immense importance in an arbitration agreement as it provides exclusive jurisdiction to the courts of the seat to regulate the arbitral proceedings. Although 'seat' has not been defined in the Arbitration and Conciliation Act, 1996, it has been discussed and developed significantly by Indian courts. In the recent case of *M.A. Hakkim v. Patanjali Agro India Pvt. Ltd. & Anr.*, the Kerala High Court was faced with an issue of determination of 'seat' where complementary agreements between the same parties provided for a different 'seat' in their respective arbitration clauses. In the present article, we discuss the findings of the court.

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2. Disclosure of 'exclusion clause' in insurance contracts mandatory

Exclusion clauses in insurance policies operate to carve out certain situations from the insurance coverage. Such clauses are relied on by the insurer to plead repudiation of claims under the policy. Recently, the Supreme Court in *Texco Marketing Pvt. Ltd v. TATA AIG General Insurance Co. Ltd.* has cautioned insurance companies to mandatorily disclose such clauses to the insured in good faith. In this article, we discuss the judgement and share our thoughts on the same.

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