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Official Newsletter

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Table of Content

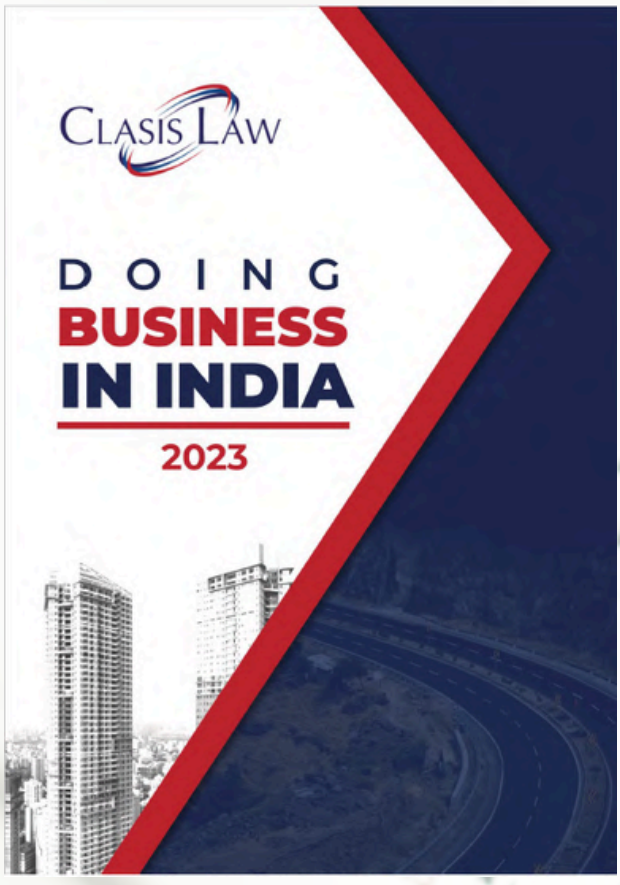
CLASIS LAW

DOING BUSINESS IN INDIA

We are pleased to share the **Fifth Edition** of our e-book titled

"Doing Business in India".

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



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DIWALI CELEBRATIONS

FEATURED ARTICLE

Delhi High Court's clarifies on maintainability of Writ Petitions under Article 227 of Constitution of India and non-applicability of Section 42 of the Arbitration and Conciliation Act, 1996 to petitions for appointment of arbitrators

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Introduction:

In a significant ruling dated 22.10.2024, the Hon'ble High Court of Delhi in ***MS CP Rama Rao v. National Highways Authority of India, W.P. (C) 11484/2023,*** examined the following two pivotal legal questions:

(a) the maintainability of a writ petition under Article 227 of the Constitution of India in response to an impugned order 'perceived' as a refusal to entertain an application under Section 34 of the Arbitration and Conciliation Act, 1996 (**"A&C Act"**); and

(b) the interpretation of Section 42 of the A&C Act by the District Judge, which directed subsequent arbitration-related applications to the High Court based on a prior application under Section 11 A&C Act.

Facts:

The petitioner filed a writ petition under Article 227, thereby, challenging the order passed by the District Judge, wherein it was held that the application filed under Section 34 A&C Act was not maintainable before the commercial court. The said order was backed with the reasoning that the earlier application for appointment of arbitrator under Section 11(6) of A&C Act was filed before the High Court. Thus, as per the requirement of Section 42 of the A&C Act, all subsequent applications need to be made before the same High Court.

Thus, by way of writ petition the petitioner claimed that the District Judge's order was erroneous and that the commercial court was not competent to hear the application under Section 34 of the A&C Act.

Observations:

The High Court while examining the maintainability of the writ petition under Article 227, considered various judgments[1] wherein it was held that an order declining to adjudicate a Section 34 application for lack of jurisdiction does not equate to an order "refusing to set aside an arbitral award" within the meaning of Section 37(1)(c) of the A&C Act. Therefore, no appeal under Section 37(1)(c) of the A&C Act would be maintainable in case of return of the case for lack of jurisdiction. Thus, the High Court observed that invoking Article 227 would be an appropriate remedy.

It was further observed that the constitutional power of superintendence under Article 227 remains unaffected by statutory provisions like Section 37 of the A&C Act or Section 8 of the Commercial Courts Act, 2015.

Further, while dealing with the interpretation of Section 42 of the A&C Act, the High Court, in its analysis of the facts and earlier precedents[2], found that Section 42 of the A&C Act does not apply to proceedings initiated under Section 11 of the A&C Act. The

High Court further observed that an application under Section 11 for the appointment of an arbitrator is not considered an application made to a "court" as defined under Section 2(1)(e) of the A&C Act. Consequently, Section 42 of the A&C Act, which mandates that subsequent applications be filed in the court where the initial application was made, is inapplicable to Section 11 applications.

Decision:

The High Court held that the District Judge's interpretation of Section 42 of A&C Act was incorrect, stating: "A petition under Section 11 for the constitution of an arbitral tribunal cannot be recognized as an application made to a court." Consequently, the High Court set aside the order of the District Judge and directed the revival of the Section 34 application before the commercial court for fresh consideration.

Conclusion and Way Forward:

The present judgment reaffirms that under Article 227, a High Court is under a duty to keep inferior courts and tribunals within the bounds of their authority. The order capsulates the fact that the remedy under Article 227 being a constitutional remedy could not be affected by a statute framed by a legislature which was itself a creature of the constitution. However, it has been noted that the said power is not unrestricted or meant to correct every erroneous decision by a subordinate court or Tribunal and thus would be exercised only in utilised where a failure to correct may amount to grave injustice. Thus, High Court specifically held that when a Section 34 application is dismissed solely on jurisdictional grounds, it does not constitute an order "refusing to set aside an arbitral award" under Section 37(1)(c) of the A&C Act, thereby precluding an appeal under Section 37. In such instances, where the parties are remediless, a writ petition under Article 227 is the appropriate recourse, allowing the High Court to correct jurisdictional errors without statutory appeal constraints.

Footnotes :

[1] BGS SGS Soma JV v. NHPC Limited [(2020) 4 SCC 234] and Black Diamond Track parts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd. [2021 SCC OnLine Del 3946]

[2] State of West Bengal v. Associated Contractors [(2015) 1 SCC 32]

DELHI HIGH COURT ORDERS RELEASE OF LIFE CONVICT 26 YEARS AFTER INCARCERATION: IMPORTANCE PLACED ON ESTABLISHED GUIDELINES FOR PREMATURE RELEASE AND NEED FOR REHABILITATION - FOCUSED DECISIONS

Introduction:

In a recent judgment [1], the Delhi High Court (DHC) has ordered release of a murder convict serving life imprisonment, 26 years after his incarceration by quashing the decision of Sentence Review Board (SRB) rejecting his plea for premature release by calling it arbitrary, irrational and illogical. The Court underscored that SRB procedures require "better compliance and deeper consideration", keeping into account the principles of reformation and rehabilitation, which form part of criminal jurisprudence.

Facts of the Case:

The petitioner was found guilty of murder of a police constable who had apprehended him for consuming alcohol in a public place. At the time of the incident, the petitioner was found in possession of a loaded pistol and cartridges and in an attempt to escape the arrest by the police constable, the petitioner fired at the constable and then fled the scene. The petitioner was convicted on 22nd September 2009 in FIR bearing No. 48 of 2001. The petitioner was sentenced to life imprisonment on 24th September 2009, and the petitioner has been in judicial custody since 2001, serving over 23 years without remission and nearly 27 years with remission.

Throughout his incarceration, the petitioner's conduct has been exemplary, earning him multiple certificates of recognition for good behavior, hard work, and excellent services with sincerity in jail. The petitioner has also been granted parole and furlough on several occasions and there is no record that he misused the liberty granted when released either on parole or furlough. In 2017, he was transferred to a semi-open prison and later relocated to an open prison in 2020, reflecting his positive prison conduct. Despite this, his applications for premature release have been rejected multiple times. It was first rejected in In August 2020, the SRB rejected his application on the basis of factors of 'the facts and circumstances of the case' and 'gravity and perversity of the crime' and this rejection was upheld by the Lieutenant Governor (LG) in October 2020, December 2020, and several times thereafter, with reasons including the nature of the crime and opposition from the police department.

Observations of the Court:

The Delhi High Court intervened in the rejection of the petitioner's premature release by the SRB and observed that despite a positive jail record, including commendations for good behaviour, parole and furlough releases without misuse, and relocation to semi-open and open prison environments, the SRB and the competent authority consistently rejected the petitioner's release. That since August 2020, the petitioner's case was repeatedly rejected by

the SRB noting the same reasons each time as stated above.

That from an ex-facie reading of the impugned order of SRB, it can be noted that only three aspects have been stated in the speaking order i.e., the original crime, gravity and perversity of it, and strong opposition by police. This is further embellished by an open-ended 'etcetera' mentioned in the order, which in its own right is dispositive of non-application of mind. The Court stated that rejecting premature release of a 26-year-old convict with an 'etcetera' is an unfortunate short-cut, perfectly opaque and a disservice to the rules and guidelines which the SRB is mandated to follow.

Further, the Court found the SRB's rejection arbitrary and irrational, noting that the SRB failed to meet the procedural requirements under the Delhi Prisons Rules (DPR) 2018, particularly the requirement to convene regular meetings and provide a detailed "speaking order" explaining the rejection of the petitioner's release. That despite the petitioner's positive conduct in prison, the SRB repeatedly rejected his release on the same grounds without providing adequate justification.

The Court emphasized that decisions regarding premature release must be based on the principles of reformation, rehabilitation, and societal integration, and that the SRB must adhere to constitutional safeguards under Articles 14 and 21, guaranteeing equality, fairness, and the right to life, which must be respected throughout the review process.

Conclusion:

Considering these facts and circumstances as articulated above, the Court observed that the impugned rejection order was arbitrary, irrational, illogical and disproportionate, ignoring the relevant material which was there before the SRB. The Court therefore opined that the impugned rejection by the SRB and its approval by the competent authority was not in consonance with the rules or guidelines applicable to that process and subsequently, ordered the immediate release of the petitioner from custody, emphasizing the need for the SRB to adhere to its procedural obligations and apply its discretion with reason, fairness, and proper application of mind.

The judgment underscores the importance of compliance with established guidelines for premature release, reaffirms the need for rehabilitation-focused decisions, and reiterates the constitutional protections afforded to prisoners under Indian law.

[1] VIJAY KUMAR SHUKLA vs STATE NCT OF DELHI & ANR. [W.P.(CRL) 1485/2024]

CORPORATE REGULATORY UPDATES

Ministry of Finance Releases Revised Guidelines for Compounding of Offences under the Income-tax Act, 1961

On October 17, 2024, Ministry of Finance issued has issued revised guidelines for compounding of offences under the Income-tax Act, 1961. The revised guidelines supersede previous guidelines and apply to both pending and new applications from the date of issuance. Aimed at reducing complexities, simplifying the process, and lowering compounding charges, the guidelines eliminate the categorization of offences and remove restrictions on the number of applications. Stakeholders can now submit a fresh application upon curing any defects. Compounding charges have been rationalized, including the removal of interest on delayed payments of compounding charges, reducing rates for TDS defaults to a unified rate of 1.5% per month, and simplifying the calculation basis for charges related to non-filing of returns.

IFSCA's Payment and Settlement Systems Regulations, 2024

The International Financial Services Centre's Authority (**"IFSCA"**) published the "Payment and Settlement Systems Regulations, 2024", on October 14, 2024, with an effective date of October 21, 2024. These regulations govern the authorization and operation of payment systems in International Financial Services Centre's, adhering to the principles for financial market infrastructures. Applicants are required to pay a non-refundable application fee of USD 1,000 for authorization to commence or operate a payment system. The IFSCA also has the authority to impose additional requirements or relax certain enforcement measures as necessary for market development. The prior Payment and Settlement Systems Regulations, 2008, issued by the Reserve Bank of India, will no longer apply within International Financial Services Centre's.

Amendment to the 'Framework for Aircraft Lease'

On October 30, 2024, IFSCA issued a circular regarding the amendment to the "Framework for Aircraft Lease" with regard to transactions with person(s) resident in India (**"PROI"**). The IFSCA has amended the framework by adding a new clause (O.2) regarding transactions with PROI. The clause prohibits PROI from transferring or leasing assets under the framework to finance companies for exclusive use in India, except in cases where (i) the transfer is to a non-group entity lessor; or (ii) it is part of a first-time sale and leaseback arrangement for assets imported into India. The updated framework is available on the IFSCA website and is effective immediately.

SEBI Circular on Extension of Timeline for Direct Securities Pay-out to Client

The Securities and Exchange Board of India (**"SEBI"**) issued a circular on October 10, 2024, extending the timeline for implementing its June 5, 2024, circular titled "Enhancement of Operational Efficiency and Risk Reduction – Pay-out of Securities Directly to Client Demat Account" (SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75) (**"Circular"**). The Circular, aimed at protecting clients' securities and enhancing operational efficiency, mandated that securities pay-outs be made directly to clients' demat accounts. Initially scheduled to take effect on October 14, 2024, SEBI decided, based on a review meeting with market infrastructure institutions and representations from the brokers' industry forum, to delay implementation until November 11, 2024.

RBI Circular on Credit Information Reporting Following License/Certificate of Registration Cancellation

On October 10, 2024, the Reserve Bank of India (**"RBI"**) issued a circular on implementing a credit information reporting mechanism for Credit Institutions (**"CIs"**) whose licenses or Certificates of Registration (**"CoRs"**) have been cancelled. The circular specifies that:

- All CIs with cancelled licenses or CoRs will be categorized as "Credit Institutions" under the Credit Information Companies (Regulation) Act, 2005.
- These CIs must continue reporting credit information for borrowers onboarded and previously reported to Credit Information Companies (CICs) until the loan lifecycle is completed or the institution is wound up, whichever comes first.
- Access to credit information reports is restricted to borrowers reported to CICs before license/CoR cancellation.
- CICs must waive annual and membership fees for these CIs.
- CICs will tag these CIs as "license-cancelled entities" in the Credit Information Report (CIR), based on information on the RBI website or RBI cancellation orders.
- Provisions apply retroactively to entities whose licenses or CoRs were cancelled prior to this circular, and all other reporting instructions for CIs to CICs remain unchanged.

RBI Guidelines for ARCs on Submitting Information to CICs

The RBI issued guidelines on October 10, 2024, updating the requirements for Asset Reconstruction Companies (**"ARCs"**) to submit information to CICs. As per a circular dated November 25, 2010, ARCs were advised to join at least one CIC. To align these guidelines with those applicable to banks and Non-Banking Financial Companies and to maintain

borrower credit history tracking post-loan transfer to ARCs, these guidelines have been revised. ARCs must ensure compliance with these updated guidelines by January 1, 2025.

RBI Guidance Note on Internal Risk Assessment for Money Laundering/Terrorist Financing Risks

The RBI issued a press release on October 10, 2024, announcing the publication of "Internal Risk Assessment Guidance for Money Laundering/Terrorist Financing" on its website **("Guidance Note")**. This Guidance Note is intended for RBI-regulated entities, specifically for the dealing staff and Anti-Money Laundering **("AML")**, Countering Financing of Terrorism **("CFT")**, and Counter Proliferation Financing **("CPF")** practitioners. It aims to support AML/CFT/CPF compliance efforts by outlining key principles, methodologies, and enhancing the financial sector's ability to detect and deter money laundering, terrorist financing, and proliferation financing activities.

SEBI introduces Liquidity Window facility to enhance investments in debt securities

SEBI issued a circular titled "Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism" on October 16, 2024. This initiative aims to improve liquidity for investors, especially retail investors, by introducing a Liquidity Window framework that offers put options exercisable by investors on pre-specified dates or intervals. The facility applies exclusively to future issuances of debt securities through public issues or private placements (intended for listing) as specified in the circular. Notably, issuers can only offer the Liquidity Window after one year from the issuance date of the debt securities. Furthermore, re-issuances will not be allowed under International Securities Identification Numbers (ISINs) that provide the Liquidity Window, and such ISINs will be excluded from the computation of the maximum limit on ISINs.

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Notable Recognitions & Accolades

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