

NEWSLETTER

AUGUST, 2025



Monthly Bulletin



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DOING BUSINESS IN INDIA

We are pleased to share our e-book titled

"Doing Business in India"



Please scan the **QR code** above or **[Click Here](#)** to download the e-book. Alternatively, you may write to us at **info@clasislaw.com**

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

FEATURED ARTICLE



Legal Representation and Limitation Under the Payment of Gratuity Act: An Analysis of Thankamma and Ors v. Regional Joint Labour Commissioner

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Introduction

In Thankamma and Ors v. Regional Joint Labour Commissioner[1], the Kerala High Court delved into two crucial issues under the Payment of Gratuity Act, 1972:

- (i) who qualifies as the "employer" for the purpose of gratuity proceedings post the death of the proprietor, and
- (ii) whether the Appellate Authority is empowered to condone delay beyond the statutory limit in filing gratuity appeals.

The judgment clarifies the statutory interpretation of "employer" and reiterates the limitation framework under Section 7(7) of the Act, thereby significantly impacting labour law litigation and procedural conduct before gratuity authorities.

Background

The petitioners, legal heirs of the deceased owner of Thankam Cashew Factory, challenged the gratuity award made to a former employee, Smt. Krishnapriya S., who had retired on 30.10.2021. After her gratuity claim was denied by the employer, she approached the Controlling Authority under Section 7(4) of the Payment of Gratuity Act. The proceedings resulted in an ex parte order awarding her ₹44,438 plus interest, as the factory manager failed to appear despite receiving notice.

The petitioners later claimed the order was invalid, arguing it was issued against a deceased employer and sought to file a delayed appeal of 472 days. However, the Appellate Authority refused to number the appeal due to the delay.

Issue 1: Validity of Proceedings

The petitioners argued that the gratuity proceedings were void ab initio, as they were initiated against a person (Jose Samuel) who had passed away prior to the adjudication. Relying on Ashok Transport Agency v. Awadhesh Kumar[2], they contended that a proceeding cannot be sustained against a dead person.

The High Court distinguished this precedent, emphasising that the definition of "employer" in Section 2(f) of the Gratuity Act is broader than the concept of ownership. It includes:

The person or authority with ultimate control over the affairs of the establishment; and

Where control is delegated, the person so entrusted (manager, managing director, etc.).

The High Court noted that the factory manager (at the relevant time) was the person actually responsible for running the business. Since, the factory manager was served notice and the establishment was operational under a valid license issued in the name of the deceased's widow (petitioner no.1), the Court held that the "employer" was adequately represented.

FEATURED ARTICLE

The intent of the legislation is to safeguard uninterrupted employee benefits, and the demise of a proprietor cannot be allowed to obstruct a worker's legitimate claim to gratuity irrespective of the demise of its previous proprietor. Accordingly, the Court emphasized that the cashew factory, being a continuing legal entity under the Factories Act, remained liable to honor gratuity obligations.

Issue 2: Delay in Filing the Appeal

Section 7(7) of the Gratuity Act stipulates a limitation period of 60 days to file an appeal against an order of the Controlling Authority, with a further extension of 60 days if sufficient cause is shown. The petitioners had filed the appeal with a delay of 472 days.

The High Court, reaffirming earlier decisions such as *Commanding Officer, Naval Base v. Appellate Authority*[3] and *Secretary, Sree Avittom Thirunal Hospital v. State of Kerala*[4], held that the Appellate Authority has no jurisdiction to entertain appeals beyond 120 days, even if sufficient cause exists. In *Commanding Officer*, the court interpreted that the settled principle of interpretation of statutes is that when there are two mandates in two statutes, the provision in the later statute would prevail. When the period of limitation has been specifically prescribed in the subsequent statute viz. the Payment of Gratuity Act and the Appellate Authority has been given jurisdiction to condone the delay of a specified period on establishing sufficient cause, there is an implied prohibition from invoking the provisions under the Limitation Act for condoning the delay.

In *Sree Avittom Thirunal Hospital*, reiterating the principle held in *Commanding Officer*, the court held that the legislature, while enacting subsection (7) of Section 7 of the Gratuity Act specifically excluded the application of Limitation Act by providing the limitation of appeal for a period of 60+60 days.

Observations

This judgment provides a vital reminder on two fronts:

Substantive Legal Continuity: The continuation of a factory or establishment ensures legal responsibility, even after the death of the original proprietor. Designated roles such as "manager" and "employer" maintain the legal subjectivity of such establishments.

Procedural Finality: The Payment of Gratuity Act prescribes a strict and self-contained limitation period, intentionally excluding the application of Section 5 of the Limitation Act, 1963.

Conclusion

The Kerala High Court in *Thankamma and Ors v. Regional Joint Labour Commissioner* reinforces that the law prioritises substance over form what matters is the functioning and control of the establishment, not the personal status of its proprietor. The ruling serves as a precedent regarding the broad definition of an "employer." It also highlights the importance of adherence to the limitation/procedural timelines as specified in labour laws by barring the invoking of the provisions of the Limitation Act, 1963.

FOOTNOTES:-

[1] WP(C) No. 24720 of 2025

[2] (1998) 5 SCC 567

[3] 2004 KHC 1073

[4] 2023 KHC 9015

LEGAL UPDATES

COMBINING OF MULTI-PROJECT CLAIMS TO MEET THRESHOLD LIMIT IS NOT PERMISSIBLE

Introduction

In a recent decision[1], the National Company Law Tribunal (NCLT), Chennai Bench, held that claims arising from distinct work orders pertaining to separate project sites cannot be combined to meet the minimum threshold for initiating an insolvency petition under Section 9 of the Insolvency and Bankruptcy Code (IBC). The Tribunal emphasized that each project site involves a different cause of action, therefore, claims arising from them must be treated individually and therefore,

- No aggregation of claims from multiple work orders or projects for threshold computation.
- Limitation periods operate independently for each project site/ work order, so a lapse in one does not impact the others.

Brief facts

The petitioner, Suraksha Group of Companies, through its sole proprietor, claimed to have been engaged by the corporate debtor, ETA Engineering Pvt. Ltd., to provide security services at various project sites pursuant to work orders issued between January 2012 to August 2020. The petitioner alleged that despite performing the contracted services and raising invoices acknowledged by the corporate debtor, substantial amounts remained unpaid. It was asserted that in December 2019, the corporate debtor acknowledged its liability during a meeting, agreed to clear the dues in monthly instalments of ₹2–4 lakhs, and made a single part-payment of ₹2 lakhs before defaulting again.

The petitioner issued a demand notice on 28 June 2021 for an outstanding amount of Rs.1,03,57,763/- (principal amount Rs.81,55,720) and omission of Rs.16,00,000/- was for the services given by its associate company, Suraksha Guard Services and a subsequent notice on 11 April 2022 claiming ₹1,45,08,575, which included not only the petitioner's dues but also the claims of its sister concern, Suraksha Guard Services. According to the petitioner, the inclusion was justified on the ground that both entities were part of the same group and maintained a consolidated ledger for internal purposes. The respondent opposed the petition, contending that the claims arose from project-specific work orders and were therefore, having distinct causes of action, that several claims were time-barred, and that the petitioner had improperly combined claims from two different entities solely to meet the ₹1 crore threshold required under IBC.

LEGAL UPDATES

Observations of the Court

The Tribunal, after examining the pleadings, documents, and arguments, observed that the work orders and corresponding invoices were specific to individual projects or sites, with each having its own defined scope of work, value, start date, and completion date. This project-specific nature, supported by references to work order numbers in several invoices and by separate ledgers maintained for each site, led the Bench to conclude that each project constituted a separate cause of action. The Tribunal held that the petitioner's contention of a consolidated running ledger was an afterthought and lacked credibility. It was further noted that when the claims were considered on a project-by-project basis, many of them were barred by limitation. The Tribunal relied on the principle that different claims arising from distinct work orders cannot be clubbed together to circumvent limitation periods or to meet the monetary threshold under the IBC. Reference was made to decisions such as *Amirsons Timber*[2] and *International Road Dynamics*[3], which held that separate causes of action cannot be artificially merged.

On the issue of combining claims from two entities, the Tribunal found that the petitioner had indeed included amounts owed to its sister concern in the second demand notice and in the petition. Citing *Yuvrraj Agarwal*[4] and *Uttam Galva Steels*[5], it reiterated that a joint application under Section 9 by multiple operational creditors is not maintainable and that the threshold must be satisfied independently by a single operational creditor.

Conclusion

It concluded that, in the present case, most claims were time-barred when assessed on a project-specific basis, that each site's work order constituted a distinct cause of action which could not be aggregated to meet the statutory threshold, and that combining claims of two separate entities in a single Section 9 petition was impermissible. Accordingly, the petition was dismissed.

FOOTNOTES:-

[1] *Suraksha Group of Companies Vs. ETA Engineering Pvt Ltd* [CP(IB)/77/CHE/2024]

[2] *Amirsons Timber vs. Skyline Engineering Contracts (India) Private Limited* [MANU/NC/0170/2024]

[3] *International Road Dynamics South Asia Private Limited vs. Reliance Infrastructure Limited* [Company Appeal (AT) (Insolvency) 72 of 2017]

[4] *Yuvrraj Agarwal vs. Aspek Media Private Limited* [Company Appeal (AT) (Insolvency) 340 of 2021]

[5] *Utam Galva Steels Limited vs. DF Deutsche Forfait AG & Anr.* [Company Appeal (AT) (Insolvency) 39 of 2017]

COMPILED REGULATORY UPDATES

1. Issuance of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025

The Insolvency and Bankruptcy Board of India ('IBBI') on July 4, 2025, issued Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025 amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Key updates include:

- Insertion in Regulation 36 (Information memorandum) mandating the inclusion of “subsequent updates” to the information memorandum beyond the insolvency commencement date. Additionally, a new clause requires detailed disclosure of all identified avoidance transactions and any fraudulent or wrongful trading activities under the Code and subsequent filings before the Adjudicating Authority.
- Regulation 38 (Mandatory contents of the resolution plan) has been amended to insert sub-regulation (2A), which prohibits the assignment of avoidance transactions or fraudulent trading liabilities unless these were disclosed in the information memorandum and communicated to all prospective resolution applicants before the last date for submission of resolution plans.

2. RBI issued Foreign Exchange Management (Export of Goods & Services) (Amendment) Regulations, 2025.

The Reserve Bank of India ('RBI') on July 4, 2025, has issued the Foreign Exchange Management (Export of Goods & Services) (Amendment) Regulations, 2025. This amendment modifies the existing Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. The amendment modifies Regulation 4 (Exemptions) to include a new exemption in clause (ca), allowing the export of Tugs or Tug Boats, Dredgers, and Vessels used for providing offshore support services without furnishing a declaration, subject to their re-importation into India.

3. IFSCA issued a consultation paper pertaining to IFSCA (Capital Market Intermediaries) Regulations, 2025

On April 11, 2025, the IFSCA issued the IFSCA (Capital Market Intermediaries) Regulations, 2025, which empower the authority to define procedures, norms, and implementation requirements via circulars, guidelines, or directions for various capital market intermediaries in the IFSC. On July 11, 2025, IFSCA released a consultation paper on master circulars, aiming to gather feedback from the public and stakeholders on draft master circulars for the following intermediary categories: Credit Rating Agencies, Debenture Trustees, Distributors, ESG Ratings and Data Products Providers, Investment Advisers, Investment Bankers, and Research Entities. The comments may be sent by email latest by July 21, 2025.

4. IFSCA issued a public consultation paper inviting feedback on the proposed Draft IFSCA (TechFin and Ancillary Services) Regulations, 2025

On May 9, 2025, the IFSCA issued a public consultation paper inviting feedback on the proposed Draft IFSCA (TechFin and Ancillary Services) Regulations, 2025. Stakeholders and the general public were requested to submit comments and suggestions by June 1, 2025. Subsequently, on July 11, 2025, IFSCA released its Public Comments on the draft regulations, noting that the submissions received during May 9 to June 1, 2025 were considered by the competent authority.

5. SEBI issued consultation paper on the proposed review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”)

On July 25, 2025, Securities and Exchange Board of India (“SEBI”) issued a consultation paper inviting public comments on the proposed review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), as part of its ongoing efforts to promote ease of doing business.

The draft proposal aims to simplify compliance requirements for issuers of non-convertible securities by amending Regulation 58(1)(b) of the LODR Regulations. Under the current provisions, issuers are required to send a hard copy of the salient features of the annual report to debenture holders who have not registered their email addresses. The proposed amendment seeks to replace this requirement; issuers would instead send a letter containing a web link and a quick response code, providing direct digital access to the annual report.

Additionally, the draft seeks to codify a clear timeline for sending financial statements to debenture holders. Companies registered under the Companies Act, 2013 must send these documents within the timelines already prescribed under the Act. For entities governed by other laws or statutes, the timelines specified under those respective laws will apply. If no specific timeline is provided under the applicable law, the financials must be sent at least 21 days prior to the annual general meeting.

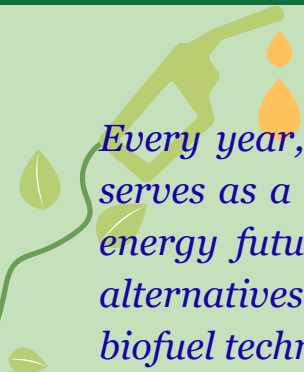
6. IFSCA has issued guidelines outlining the eligibility criteria for Key Managerial Personnel (“KMPs”)

On July 25, 2025, International Financial Services Centres Authority (“IFSCA”) has issued guidelines outlining the eligibility criteria for Key Managerial Personnel (“KMPs”) such as Principal Officers (“POs”) and Compliance Officers (“COs”) in Fund Management Entities (“FMEs”). Key highlights include:

- KMPs must be based in International Financial Services Centres Authority (“IFSC”) and hold a relevant professional qualification or postgraduate degree in finance, law, accountancy, business management, economics, or related fields.
- A minimum of five years of experience in securities market or financial product activities is required, with a maximum of two years allowed for consultancy roles related to fund management.
- Relevant experience includes roles such as portfolio manager, investment advisor, broker-dealer, research analyst, or position within entities regulated by financial sector regulators including SEBI, RBI, IRDA, and PFRDA.
- Experience in non-core roles or personal fund management is excluded.

OFF BEAT SECTION

WORLD BIOFUEL DAY



Every year, on 10 August 2025, we observe the World Biofuel Day. This day serves as a reminder of the critical role biofuels play in shaping a sustainable energy future. It is an opportunity to raise awareness about non-fossil fuel alternatives and the strides made by the Indian Government in advancing biofuel technology.



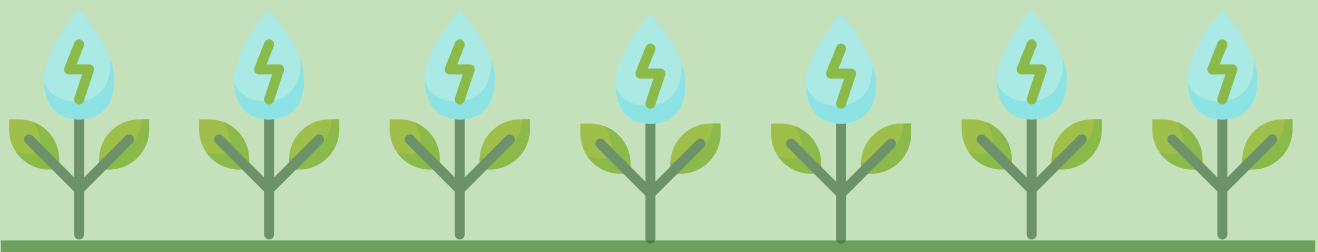
The day also commemorates the pioneering work of Sir Rudolf Diesel, who, in 1893, successfully ran an engine on peanut oil. His groundbreaking experiment predicted that vegetable oils could one day replace fossil fuels in powering engines, an insight that resonates even today as biofuels take centre stage in the global energy transition.

Since 2015, the Ministry of Petroleum and Natural Gas has marked this day with an annual event to promote the use of biofuels in India, the world's third-largest oil consumer. In recent years, the event has garnered the attention of key stakeholders, including Prime Minister Narendra Modi, who highlighted the importance of biofuels in meeting the country's growing energy demands while reducing dependence on crude oil imports.

Biofuels offer multiple benefits: they are renewable, help reduce carbon emissions, and support sustainable agricultural practices. By using biomass resources like agricultural waste, biofuels contribute to cleaner air, offer a potential income boost for farmers, and generate employment in rural areas.



On this World Biofuel Day, we move toward a cleaner, greener future, biofuels stand as a testament to innovation and a sustainable energy alternative.



Notable Recognitions & Accolades

