

ABOUT US

DSA Legal is a full-service Law Firm providing Legal services since about last 57 years having profound expertise in various fields of law. The firm is a mid-size legal firm operating through its 10 offices in India, 4 in Delhi and one each in Mumbai, Kolkata, Hyderabad, Chennai and Bangalore apart from having over 1750 associates presently working with us, in almost all the major cities of India. We are representing clients before the Hon'ble Supreme Court, all the High Courts & 650 Districts in the Country, apart therefrom we are also providing legal services in Singapore, UAE, Saudi Arabia, London & Vietnam.

CORPORATE UPDATES

JANUARY 2024

FROM DSA LEGAL'S OFFICE

DSA LEGAL'S SPORTS DAY 2024



On the 20th of January 2024, DSA Legal's team converged at the Summerfields Ground in Delhi, uniting not only in their professional capacity but also in their love for cricket. The air was charged with excitement as colleagues came together for an interdepartmental match, ready to showcase their sports skills on the field.

As the game unfolded, it was evident that this was more than just a friendly match—it was a celebration of camaraderie and shared passions. The collective energy of the teams illuminated the ground, as they displayed not only their prowess in law but also their talent and enthusiasm for the sport.

With each run scored and every wicket taken, the bond between team members grew stronger. It was a testament to the power of teamwork and collaboration as is deeply embodied within the DSA's Culture.

DSA LEGAL AT ARBITRATION AND DISPUTE RESOLUTION SUMMIT 2024



On January 24th, 2024, the Arbitration and Dispute Resolution Summit 2024 took place at Hotel Eros in New Delhi.

During the summit, pertinent topics such as the latest trends in Arbitration in India, Recent Developments in India Relating to International Arbitration, Technology and Dispute Resolution, and the role of General Counsels (GCs) in adding value to dispute management and litigation practices were thoroughly discussed.

Mr. Deepak Sabharwal, Managing Partner, DSA Legal addressed the thought of leaders at the Summit.

By participating in such esteemed events and contributing to meaningful discussions, DSA Legal reaffirmed its commitment to upholding best practices within the legal community.

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Neither Statutory Set Off Nor Insolvency Set Off Apply On Corporate Insolvency Resolution Process: Supreme Court (Bharti Airtel Limited and Another v. Vijaykumar V. Iyer and Ors.)

According to the Hon'ble Court, the Insolvency and Bankruptcy Code (IBC) in the Corporate Insolvency Resolution Process (CIRP) case does not empower the indebted creditors to file a set-off claim against the corporate debtor. Furthermore, the set-off of insolvency claims under the IBC was neither automatic nor self-enforceable. Section 173 of the IBC allowed set-off in the case of a partnership or an individual bankruptcy. Regulation 29 of the IBC's Liquidation Regulations allowed for mutual credits as well as setoff. Chapter II, Part II of the IBC, dealing with CIRP, was not subject to the provisions of the Regulations. The Bench also carved out two exceptions to the applicability of statutory or insolvency set-off to CIRP proceedings. First, if a party was entitled to contractual set-off on the date effective either before or on the day when CIRP began. Second, when there was an "equitable set-off," several transactions related to each other and could be viewed as a single transaction.



Arbitral Tribunal Empowered To Award Compensation For Employer Delays Even When The Contract Specifies Only A Time Extension As The Remedy: Delhi High Court (MBL Infrastructure Ltd v. DMRC)

The Delhi High Court affirmed that the Arbitral Tribunal was authorized to grant monetary compensation as damages for employer-caused delays, even if the agreement stipulated only an extension of time as the sole remedy for the contractor. Justice Chandra Dhari Singh's bench upheld that in unforeseen circumstances not covered by the agreement, the tribunal had the authority to exceed the agreement's limits and provide the aggrieved party with the rightful relief. The Court clarified that the tribunal should not have denied relief solely based on the explicit provision in the agreement for such relief.

The Court further ruled that when a contract unlawfully restricted or inadequately provided remedies for the contractor to seek damages, the Arbitral Tribunal had the authority to surpass the contract's limit and provide the relief that the party was legally entitled to receive.



Quash Proceedings Under Section 138 of NI Act, If Settlement Deed Is Signed And Accepted By The Complainant: Supreme Court (Ghanshyam Gautam v. Usha Rani (Dead) Through Lrs. Ravi Shankar)

In a criminal appeal, the Hon'ble Supreme Court held that proceedings under Section 138 of the Negotiable Instruments Act must be quashed if the complainant had signed the settlement deed and accepted an amount in full and final settlement. The appeal had been filed by the accused person to challenge the impugned order passed by the High Court of Himachal Pradesh, Shimla bench on September 13, 2017. In the impugned order, the High Court upheld the conviction of the accused person under Section 138 of the NI Act. However, the accused person stated that in the meantime, a compromise deed was entered between the parties, and as per the deed, the complainant agreed to accept a certain amount as a full and final settlement of the Cheque amount and the fine imposed by the High Court. The Hon'ble Supreme Court granted the appeal and invalidated both the impugned orders and the procedures under Section 138 of the NI Act.



Failure To Provide A Written Statement Doesn't Automatically Lead To Judgment In Civil Disputes: Supreme Court (Asma Lateef & Anr. v. Shabbir Ahmad & Ors.)

The Hon'ble Supreme Court ruled that a decree in a civil dispute could not be set aside solely based on the defendant's failure to provide a written statement. The court emphasized that if the plaintiff could not establish their case, judgment could not be granted.

The bench noted that the plaintiff had to present evidence to substantiate their case. They clarified that the defendant's failure to file a written statement within the prescribed timeframe did not automatically result in a judgment against them.

The Court further clarified that under Order VIII Rule 10, there were two alternatives: either render judgment against the defendant for failing to file a written statement, or issue any other order deemed appropriate. It is pertinent to note that the first option, pronouncing judgment, was not obligatory in all cases.



Failure To Raise Arbitrator Bias During Proceeding Precludes Post-Award Challenge: Delhi High Court (Allied-Dynamic JV v. Ircon International Ltd.)

In this case, the Delhi High Court dismissed the petitioner's challenge to the arbitral award for two reasons. First, the petitioner's delayed challenge to the arbitrator's bias, despite raising concerns earlier, constituted a waiver of their right to challenge under Section 4 of the Arbitration and Conciliation Act, specifically for arbitration that commenced before the 2015 amendment. Second, the arbitrator's rejection of claims due to the delay being attributable to both parties and lack of solid evidence supporting the claims. The Court's review of the arbitration award was limited by the scope of Section 34 of the Arbitration and Conciliation Act. Consequently, the Court dismissed the challenge and upheld the arbitrator's decision.



Arbitration Agreement Must Be Clearly Written With An Interest Of Parties To Refer The Dispute To Arbitration: Calcutta High Court (BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd.)

In a recent Judgment, the Calcutta High Court rejecting a plea for the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 underscored the vital need for parties entering into arbitration agreements to express a clear and unambiguous intention to submit disputes to arbitration. The court emphasized that Section 11, being a preliminary intervention by the court presuming the existence of an arbitration clause, required an unequivocally worded arbitration agreement. The Calcutta High Court stressed that the proceedings under the Arbitration and Conciliation Act could not be initiated unless a concrete and unambiguous arbitration agreement existed.

Reducing The Awarded Interest Rate Alters The Original Arbitration Award: Allahabad High Court (Sushil Kumar Mishra v. State Of U.P. & Anr.)

The Allahabad High Court held that the District Judge exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 did not have the power to modify an award. The Court determined that although parts of an award could be severed and set aside, such severance should not affect the remaining award. Relying on the decision of the Supreme Court in Larsen Air Conditioning and Refrigeration Company v. Union of India and others, stated that the reduction of interest amounted to a modification of the original arbitration award, rendering it illegal and against established principles. Quashing the order the Court emphasized, "It is trite law, settled by a catena of Supreme Court judgments, that the Court does not have the power under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") to modify an award." The Court clarified that under Section 34(2) of the Act, the power vested in the Court was to sever parts of the award and set aside the same in toto if the severance did not impact the remaining award upheld under Section 34 of the Act.



Injunction Extended In Favor Of Tata's Trent Limited In A Trademark Dispute: Bombay High Court (Trent Limited v. Zudiofranchise & Ors.)

The Bombay High Court prolonged an ex-parte ad-interim injunction in support of Trent Limited, a part of the Tata Group, within a legal dispute concerning purported trademark infringement, copyright violation, and the misrepresentation of its "Zudio" trademark. The Court prohibited the defendants from utilizing the contested trademark, artwork, or any resembling trade dress. It instructed the domain name registrar, Tuscow's Domain Inc, to reveal information about the individual or entity registering the disputed domain name, Zudiofranchise.net. Additionally, the court mandated the Department of Telecommunications and Vodafone India to disclose the proprietor of specific phone numbers and relevant KYC details linked to the purported fraud. In the Court's order, it directed IndusInd Bank to freeze an account associated with the alleged fraudulent activities and disclose particulars of other specified bank accounts. The Court underscored that the order would not be made public until the defendants completed all required disclosures. It also allowed the defendants the freedom to request changes or adjustments to the order, provided they gave ample notice in advance.

Commercial Courts Act Does Not Provide For Second Appeal From The Appellate Decree and Judgment: Kerala High Court (State of Kerala v. Dr Praveen Kumar T K)

The Kerala High Court recently considered the maintainability of a second appeal filed under the Commercial Courts Act. The question before the court was whether a second appeal is provided from the appellate decree and judgment passed by a Commercial Appellate Court.

After rejecting the second appeal as unmaintainable, the bench made the following observation: *"..If so, Commercial Courts Act does not provide second appeal. Therefore, it has to be held that the present second appeal filed, challenging the decree and judgment of the Commercial Appellate Court Section 13 of the Commercial Courts Act, which permits appeals from commercial division and commercial court decisions, was examined by the court. Additionally, it mentioned Section 16 of the Commercial Courts, which introduced changes to the CPC. Looking over the aforementioned, one saw that there was nothing in there about the Second Appeal, is not maintainable and the same deserves dismissal."*



Dispute Can't Be Referred To Arbitration In Absence Of An Arbitration Agreement Under Article 226 Of Constitution: Patna High Court (State of Bihar v. Bihar Rajya Vikas Bank Samiti)

The Court highlighted that despite being given liberty by the High Court to challenge jurisdiction before the arbitral tribunal, the Appellant consistently objected to arbitration due to the absence of an agreement. Criticizing the arbitrator's dismissal of the objection solely based on the dismissal of the SLP, the Court emphasized that such a dismissal does not establish res judicata.

The Court reiterated that arbitration cannot be invoked under Article 226 without a prior agreement. Consequently, the Court concluded that arbitration, being a contractual remedy, cannot be invoked without a written agreement between the parties as mandated by Section 7 of the Arbitration and Conciliation Act. Therefore, the arbitrator lacked jurisdiction to adjudicate the dispute, leading the Court to set aside the award and the impugned order upholding it.

Arbitral Award To Not Be Challenged On Ground Of Unilateral Appointment Of Arbitrator If Appointment Was Not Contested Earlier: Delhi High Court

(Arjun Mall Retail Holdings Pvt Ltd v. Gunocen Inc.)

The High Court of Delhi held that a party could not challenge an arbitral award on the grounds of the unilateral appointment of the arbitrator if it had not raised this issue earlier. It clarified that the courts' interference under Section 34 of the Act is very limited and only warranted if there is a clear and evident illegality in the Arbitral Award. In the case at hand, even though the appellants had raised objections to the arbitrator's appointment by sending a letter, they had not formally challenged the appointment under Section 11(6) of the Act, 1996, nor did they participate in the arbitral proceedings despite being aware of them. Consequently, the appeal was dismissed as no illegality or perversity was found in the impugned judgment, and the Arbitral Award was upheld.



Judgement In Favor Of Established Pan Masala Brand "Rajshree" In A Trademark Infringement Suit: Delhi High Court (Kamal Kant And Company LLP v. Raashee Fragrances India Pvt Ltd)

In a trademark infringement suit initiated by "Rajshree" Pan Masala against a manufacturer for the unauthorized use of the "Raashee" mark in relation to pan masala, mouth fresheners, and other chewing tobacco products, the Delhi High Court issued a restraining order. This order prohibited the defendant from further using the "Raashee" mark. The defendant was permitted to use the alternative marks, "मेरी राशी" and "My Raashee," under the condition that the words 'My' or 'मेरी' are of the same font, color, and size as the word 'Raashee.' The dispute, which commenced in 2015, has finally been resolved, prompting the plaintiff's counsel to agree to forego claims for damages, rendition of accounts, and costs. Instead, the plaintiff's counsel proposed a settlement wherein the defendant would pay a sum of Rs. 50,000. The court accepted this settlement, rejecting all other reliefs sought by the plaintiff. Furthermore, the court mandated that the defendant must fulfill the agreed-upon payment within four weeks from the date of the order. This resolution brings closure to the prolonged litigation process and provides a satisfactory outcome for the parties involved.



E-commerce Platform Indiamart Restrained from Infringing PUMA Trademarks: Delhi High Court (Puma Se v. Indiamart Intermesh Ltd.)

In a trademark infringement case, the court issued interim injunctions in favor of PUMA, directing Indiamart to cease providing registered trademarks of PUMA as search options on its platform. The court also ordered the immediate removal of all infringing listings containing PUMA's trademarks from Indiamart's platform.

PUMA argued that Indiamart's search option displayed counterfeit goods bearing fake "Puma" marks, listed by third-party sellers. The court emphasized that as an intermediary, Indiamart is obligated under the IT Rules 2023 to make reasonable efforts to prevent the posting of infringing content and the sale of counterfeit goods on its platform.

However, the court clarified that the injunction is not perpetual, and Indiamart has the option to request modification or termination of the order by demonstrating the implementation of adequate regulatory measures to prevent platform abuse by counterfeits.



Financial Institutions Can Invoke Provisions of Arbitration & Conciliation Act 1996 Alongside SARFAESI Act Remedy: Madhya Pradesh High Court (Umesh Kumar Gupta v. The Collector, Rewa District & Anr.)

The Division Bench noted that Section 35 of the SARFAESI Act stipulated that the provisions of the said enactment would have overriding effect over anything inconsistent in any other law or instrument. Additionally, Section 37 of the SARFAESI Act prescribed that its provisions were mandated to take effect alongside, and not derogate from, the Companies Act, 1956, Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and any other prevailing laws.

The court ruled that the provisions of the Arbitration and Conciliation Act, 1996 can be invoked by a financial institution in addition to the remedies available under the SARFAESI Act for the settlement of disputes related to non-payment of amounts.

ABOUT US

OUR MISSION

DSA Legal is noted for its commitment to client service and its ability to solve the most complex and demanding legal & business challenges worldwide in a very cost-effective manner. Over the years we have helped shape and been involved in many ground-breaking developments in the legal field. Our constant endeavour is to safe guard our client's interest effectively & efficiently on a consistent basis.

OUR VISION

We have highly skilled and experienced leaders from this field to lead a dedicated team comprising of CA's, Company Secretary, lawyers & MBA's. We are a "Single Window Service" and provide all services on "Concept to Completion" basis in time and cost-efficient manner with high quality standards.

OUR STORY

Established in the year 1967, the firm embarked on its journey, steadily growing over the decades. Expanding its footprint beyond Delhi, the firm has established a strong foothold with individual offices in prominent metropolitan centers, including Mumbai, Kolkata, Hyderabad, Chennai, and Bangalore.

ACCOLADES

Law Firm of the Year

Law Firm of the Year - Due Diligence

Insolvency Law Firm of the Year

Most Trusted Corporate Lawyer in India

Excellence Award for Foreign International Legal Relations

Lawyer of the Year Arbitration