



Luthra and Luthra
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It gives us immense pleasure to circulate the April 2025 edition of the Luthra and Luthra Law Offices India's Dispute Resolution Newsletter. In this edition, we have primarily focused on the recent legal developments in the fields of Criminal Laws, Insolvency Laws, Property Law, Company Law, etc. Accordingly, we have covered key judgments passed by the Hon'ble Supreme Court and Tribunals during March 2025. We hope you enjoy reading our Newsletter.

SUPREME COURT

Supreme Court Clarifies Scope of Interim Moratorium Under IBC: No Stay on NCDRC Penalty Orders

The Supreme Court in the case of *Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth*¹ decided on 4th March 2025, dealt with the question whether the interim moratorium available under Section 96 of the Insolvency and Bankruptcy Code, 2016 ("IBC") automatically also grants a stay against the execution of penalty orders passed by the National Consumer Disputes Redressal Commission ("NCDRC"). The Appellant (Saranga Anilkumar Aggarwal) argued that an interim moratorium granted under Section 96 of the IBC should impliedly and automatically grant a stay against any enforcement of an award including an award pronounced under Section 27 of the Consumer Protection Act, 1986. The Hon'ble Supreme Court clarified the scope of Section 96 of the IBC and stated that Section 96 limits the moratorium to any legal action or proceedings pending in respect of any debt and it does not give any protection against punitive proceedings, such as those contemplated under Section 27 of the Consumer Protection Act, 1986.

Further, the Hon'ble Supreme Court also clarified that the proceedings of the NCDRC under Section 27 of the Consumer Protection Act, 1986 for enforcement of penalties does not constitute a proceeding for recovery of debt but rather falls under the category of 'excluded debts' as defined in Section 79 (15) of the IBC. Consequently, the interim moratorium granted under Section 96 of the IBC would not have any effect of stay penalties under the Consumer Protection Act, 1986.

¹ (Civil Appeal No(s). 4048 of 2024).



Supreme Court Ruling that Registered title document creates a dominant title hence a legal mortgage on registered document will be in priority over a valid equitable mortgage created prior in time by deposit of an unregistered Agreement of Sale

The significant ruling of the Hon'ble Supreme Court in the case of *the Cosmos Co-operative Bank Ltd. v. Central Bank of India & Ors.*² involved competing claims by parties regarding a mortgaged property, with Cosmos Co-operative Bank ("Cosmos Bank") and Central Bank of India ("Central Bank"), both claiming rights over the suit property of a Housing Society, which reversed the judgment of the High Court of Judicature at Bombay. The primary issue involved the fact that both mortgages were created on the basis on an unregistered sale agreement, with Cosmos Bank in addition, was also in possession of the Share Certificate issued by the Housing Society, which was claimed as to be the registered title document over the suit property. As per the Hon'ble Supreme Court, although both mortgages were valid, the latter mortgage was based on registered title documents which made the claim of Cosmos Bank on the suit property superior to that of Central Bank, even though the mortgage of Central Bank was prior in time. The Hon'ble Supreme Court reiterated the principle that an equitable mortgage is valid in India, however, such would stand second to a valid legal mortgage especially one based on registered title documents. The issue which came before the Hon'ble Supreme Court was whether the charge created by the Central Bank of India, based on an unregistered Agreement of Sale, was valid or subservient to a latter mortgage based on a registered title document?

The Hon'ble Supreme Court held that depositing an unregistered Agreement of Sale may establish a legal interest in a property, however a legal mortgage would be superior to a equitable mortgage based on registered title documents despite the mortgage being created on an earlier date. Apart from applying the principal that a registered transaction document is always superior to an unregistered document, the Central Bank's mortgage is also inferior in law to the subsequent mortgage created by Cosmos Bank due the fact that an equitable mortgage does not create any charge on the property but rather a personal liability between the mortgagor and mortgagee. The Hon'ble Supreme Court set aside the judgement of the Hon'ble High Court of Judicature at Bombay and awarded an amount of Rs. 51 Lakh with interest to the Cosmos bank, which was to be disbursed from an escrow account held by the Debt Recovery Tribunal.

²Civil Appeal No. 1565 of 2025



Supreme Court Sets Guidelines for Permissibility of Second FIRs

In a significant ruling, a two-Judge bench of the Hon'ble Supreme Court in the case of *State of Rajasthan v Surendra Singh Rathore*³, has provided clarity on the principles governing the permissibility of registering a second First Information Report (FIR). The judgement outlines five specific circumstances under which a second FIR may be registered:

- **Rival or Counter-Set of Facts:** A second FIR is permissible if it presents a rival or counter-set of facts in relation to the first FIR. This means that if the second FIR offers a different version of events or facts that contradict the first FIR, it can be registered.
- **Different Ambit:** Even if the FIRs arise from the same set of facts and circumstances, a second FIR is allowed if it differs in its scope or ambit. This implies that the second FIR addresses different aspects or issues not covered in the first FIR.
- **Part of a Larger Issue:** If the investigation of the first FIR reveals that the set of facts is part of a larger issue or group of issues, a second FIR can be registered. This allows for a broader investigation into related matters that were not initially apparent.
- **New Facts or Knowledge:** A second FIR is permissible if the investigation into the first FIR brings to light certain facts or knowledge that were unknown at the time of filing the first FIR. This ensures that new evidence or information can be properly investigated.
- **Separate or Differing Incidents:** When there are similar offences, but they occur in separate or differing incidents, a second FIR can be registered. This allows for the investigation of each incident independently, even if the offences are similar in nature.

The Hon'ble Supreme Court emphasized that these principles provide flexibility in the registration of FIRs, ensuring that justice is served by allowing comprehensive investigations into all relevant facts and circumstances. This ruling is expected to have a significant impact on how FIRs are handled, providing clearer guidelines for law enforcement and ensuring that all relevant information can be thoroughly investigated.

NCLAT

NCLAT Confirms Admissibility of SFIO Report as Evidence in Tribunal Proceedings

The National Company Law Appellate Tribunal ("NCLAT") in *Deloitte Haskins & Sells LLP v. Union of India*⁴ dealt with the question of whether a report by Serious Fraud Investigation Office ("SFIO")

³ 2025 IN SC 248.

⁴ Company Appeal (AT) No. 255 of 2024



is admissible as evidence during proceedings due to it being deemed as a Police Report under Section 212(15) of the Companies Act, 2013 (“Companies Act”). The primary argument against the admissibility of the report was that due to the SFIO report being deemed as a police report, as under Section 173 of the Code of Criminal Procedure 1973, it is inadmissible in court as evidence and is only a reflection of the opinion of the Investigating Officer. The Tribunal interpreted Section 212(15) of the Companies Act as a deeming fiction, which would enable the use of the report for filing of charges and initiation of criminal proceedings in the Tribunal, without interrupting its evidentiary value. The Tribunal relied on the harmonious construction of Section 212 and Section 223 of the Companies Act to highlight the admissibility of the SFIO report, explaining that the legislative intent behind deeming it as a police report is to enable initiation of proceedings and filing of charges against accused and not to render it inadmissible.

Fraudulent CIRP Initiation: NCLAT Limits Penalty Imposition to CIRP Initiators

The case of *Rakesh Arora and Anr. V. Acute Daily Media Pvt. Ltd. and Ors.*⁵ dealt with the question of whether the National Company Law Tribunal (“NCLT / Adjudicatory Authority”) has the authority to impose penalties under Section 65 of the IBC for fraudulent or malicious initiation of proceedings. The NCLAT agreed with the contention that the CIRP was initiated fraudulently by the parties, by way of collusion and malicious intent. The Appellate Tribunal clarified that though the above act was done fraudulently, the interpretation of Section 65 of the IBC must be done in a strict sense due to it being a penal provision and thus held that the IBC did not contemplate the imposition of penalties on any person except those who initiate the proceedings themselves, freeing the promoters from any liability under the provision. However, the Appellate Tribunal held that the power to impose penalties only lies with the Adjudicatory Authority.

⁵ Company Appeal (AT) (Insolvency) No. 1606 of 2024



This bulletin is only for general informational purposes, and nothing in this bulletin could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this bulletin, please feel free to contact the Dispute Resolution team at the contact listed below. © Luthra & Luthra Law Offices India 2024. All rights reserved.

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