



APAC NEWSLETTER

## Legal, Compliance and ESG

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8<sup>th</sup> September 2022

*Dear Readers, we bring to your reading and attention following topics:*

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## A. Case Law update Negotiable Instruments Act, 1881 and Arbitration Law

- **Jayesh Gupta, Manager (Legal)**

### ➤ **Negotiable Instruments Act, 1881**

#### ***Case Details:***

Oriental Bank of Commerce v. Prabodh Kumar Tewari

Decided by the Hon'ble Supreme Court of India on 16<sup>th</sup> August 2022.

Criminal Application No.1260 of 2022.

#### ***Summary:***

The Supreme Court held in Oriental Bank of Commerce Vs. Prabodh Kumar Tewari (Criminal Application No. 1260 of 2022, 16 August 2022, Justices DY Chandrachud and AS Bopanna) a Landmark judgement of Hon'ble Supreme Court giving finality to the most common used defence by the accused in proceedings under S.138 of Negotiable Instruments Act.

A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defence whether cheque was issued towards payment of a debt or in discharge of a liability.

### ➤ **Arbitration and Conciliation Act, 1996**

#### ***I. Case details:***

Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation

Decided by the Hon'ble Supreme Court on 5<sup>th</sup> May 2022.

(Civil Appeal No. 3657 of 2022 arising out of S.L.P. (C) No. 4901 of 2022)

#### ***Issue before the Court:***

Whether the "sum" awarded under Section 31 (7) (a) of the Arbitration and Conciliation Act, 1996 would include the interest pendente lite (interest pending the litigation) or not?

***Finding:***

Power of Arbitral Tribunal to award interest is discretionary & contingent to the agreement between parties. If the parties have agreed otherwise, the Tribunal cannot award interest. It was also observed that party autonomy is one of the most essential principles of the Arbitration and Conciliation Act, 1996, and that if the parties exercised their autonomy under Section 31(7)(a) of the Act, the arbitrator's discretion would be nullified.

***Facts:***

A dispute emerged between the parties in this case, which was referred to arbitration. The arbitrator granted the appellant's claims in part. The appellant filed for the execution of the award and requested future interest on the entire amount of the sum awarded by the arbitrator. The executing court dismissed the appellant's argument, stating that the arbitrator only authorised future interest on the principal sum. The appellants took their case to the Supreme Court after being dissatisfied with the verdict. According to the Supreme Court, the arbitrator has the power to allow future interest on the pendente lite interest. However, the arbitrator's power is contingent on the parties' consent. The Court looked at the phrase 'unless otherwise agreed by the parties,' and determined that if the parties agree on the grant of interest, the arbitrator is bound by that agreement. The Court determined that the parties had reached an agreement that covers the question of interest in this case, and thus dismissed the appeal.

***II. Case Details:***

Union of India, Ministry of Railways, Railway Board & Anr. v. M/s. Jindal Rail Infrastructure Ltd.  
Decided by the Hon'ble High Court of Delhi on 23<sup>rd</sup> May 2022.  
O.M.P (Comm) 227/2019.

***Summary:***

**Arbitral Tribunal cannot rewrite the contract between parties.**

In response to a challenge an arbitral award passed against the Ministry of Railways in relation to its disputes with Jindal Rail Infrastructure Ltd (JRIL), the Delhi High Court ruled that the arbitral tribunal cannot examine the commercial wisdom of an agreement and rewrite a contract based on the commercial difficulties faced by a party in performing its obligations. According to the court, a commercial contract between the parties cannot be avoided/disregarded because one of the parties later discovers that performing the same is commercially unviable. The arbitral tribunal has virtually revised the contract and reworked the agreement between the parties in this case. This is clearly impermissible. The court stated this in its order, which was issued on May 23, 2022, while overturning the award in the case.

JRIL had used the arbitration agreement and had gotten/obtained a reward of over Rs 18 crore/ JRIL was awarded a sum of Rs.18 crore by the Arbitral Tribunal on the basis of the Arbitration Agreement. When the dispute was brought / when the said arbitral award was challenged before the Delhi High Court, it ruled that the arbitral tribunal's decision to award the difference between the tenderers' and JRIL's prices was unsustainable. The Court went on to say / further observed that JRIL had quoted a particular price for supplying in its/ as per its commercial wisdom, and that it was not open to the arbitral tribunal to examine this commercial wisdom and rewrite the agreement on the basis of JRIL's commercial difficulties in completing its responsibilities. It further stated / observed that it is not necessary that all contracts must result in profit; some contracts may result in a loss. This is not a circumstance used to excuse a party from fulfilling its contractual responsibilities. – such loopholes/circumstances should not be used as excuses to wrongfully allow a party to not oblige its contractual responsibilities.

The logo for APACFIN features a stylized white 'A' shape composed of two overlapping, curved lines that meet at the top and bottom, creating a central vertical gap. This graphic is centered above the company name.

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## **B. Case Law update on Section 8 of the Arbitration & Conciliation Act, 1996**

- *Ritu Uplap, Assistant Manager (Legal)*

### **Case Details:**

M/s. Sundaram Finance Ltd. & Anr. v. T. Thankam.

Decided by the Hon'ble Supreme Court of India on 20<sup>th</sup> February 2015.

Civil Appeal No.2079/2015.

### ***Facts:***

A car was purchased by T. Thankam (Hereinafter "Respondent") by availing loan facility from M/s. Sundaram Finance Ltd and Anr. (Hereinafter "Appellants"). It is to be noted that an arbitration clause was duly incorporated in the agreement dealing with the said loan facility. Originally, the Respondent had filed a suit for injunctive relief in the Trial Court in order to restrain the Appellants from illegally taking away the said car from the possession of the Respondent herein or her employee. In the said suit, the Appellants herein rightly relied upon Section 8 of the Arbitration and Conciliation Act, 1996 which stipulates that subject to conditions stated therein, a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration. The Trial Court erroneously held that "even though the agreement provides that disputes should be referred to arbitration this will not prevent the Plaintiff (present Respondent) from approaching this court especially when one of the parties to the agreement are trying to commit an act opposed to public policy and per se illegal."

The Appellants herein challenged the said judgment of the Trial Court before the High Court, wherein it was again wrongfully held that "mere inclusion of an arbitration clause in the agreement does not bar or cause to oust the jurisdiction of the civil court provided under Section 9 of the Code of Civil Procedure." Again, aggrieved by the said judgement of the High Court, the Appellant challenged the same before the Hon'ble Supreme Court of India vide the present civil appeal.

### ***Issue before the Supreme Court:***

Once an application is duly filed in terms of Section 8 of The Arbitration and Conciliation Act, 1996 before the civil court, what should be the approach of the Court?

### ***Finding:***

- The Supreme Court rightly set aside the judgments of the Trial Court and High Court respectively and observed that "Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted under a special law."

- That basically means that once an application is duly filed under Section 8 of the Arbitration Act (which is a special law) and it is brought to the notice of the Court that its jurisdiction has been ousted in a particular dispute under a special statute in view of an arbitration agreement, then the Court is under an obligation to refer the parties to Arbitration and as such a suit is not maintainable. So, if jurisdiction of civil courts is barred under special statutes and the same is not obliged, it only adds to pendency of cases thereby destroying the legislative intent of speedy disposal.

- Essentials of Section 8 of the Arbitration and Conciliation Act, 1996:
  - i. A party should file section 8 application before submitting his first statement on the substance of the dispute.
  - ii. Party filing the section 8 application should duly submit the original/duly certified copy of the arbitration agreement along with the application.
  - iii. An arbitration may be started/continued, and an award can be passed even during the pendency of any Section 8 application.



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### **C. The Concept of Khata (in property)**

**- Kiran Thakur, Manager (Legal) & Vivek Ugale, Senior Officer (Legal)**

#### ***What do you mean by Khata (In property)?***

A Khata is a certificate which is a legal document used for computing and filing of property tax in the State of Karnataka. The Bangalore city falls under the jurisdiction of the Bruhat Bengaluru Mahanagara Palika (Hereinafter referred to as 'BBMP'). BBMP is Bangalore's Municipal corporation. Whereas, for other locations of Karnataka Municipal Corporations / Panchayats issues Khata certificate.

This concept is introduced to simplify the collection of property taxes from the residents of Karnataka. Khata contains all details of the particular property like the details of the owner of the property, size of the property, location of the property, carpet & built-up area of the property and the property identification number.

#### ***What is the purpose of the Khata & How many kinds of Khata are there?***

The Khata certificate is a document through which we can identify the owner of the property. There are two kinds of Khata. Khata 'A' & Khata 'B.'

#### ***What is the difference between 'A' Khata property & 'B' Khata property?***

'A' Khata & 'B' Khata are two types of accounts maintained by concerned Municipalities / Municipal Corporations / Panchayats of Karnataka for the collection of taxes.

The A Khata denotes a document that certifies that the property owner has duly paid property taxes to the Karnataka Government and is in ownership of a legal property. If a property owner has an 'A' Khata certificate he can easily get Loan from Banks & Financial Institutions.

Whereas, the concerned Municipalities / Municipal Corporations / Panchayats of Karnataka maintains a separate register for the 'B' Khata property. 'B' Khata properties are known as Illegal/Semi legal properties. The buildings which are constructed illegally, which includes unauthorized layouts, properties in violations of by-laws, constructions on revenue land, properties without completion or issuance of certificates.

The 'B' Khata properties can be converted into 'A' Khata properties by fulfilling some criteria like payment of all property taxes till date and the payment of all the charges which are to be paid to the concerned Municipalities / Municipal Corporations / Panchayats of Karnataka.



**Basic difference between 'A' Khata & 'B' Khata:**

<b>Particulars</b>	<b>'A' Khata Property</b>	<b>'B' Khata Property</b>
Property Expansion & Construction:	Properties can be expanded and can apply for construction	Properties cannot be expanded and cannot apply for construction
Property Transfer:	These properties are easy to transfer	These properties are not easy to transfer
Document Importance:	'A' Khata certificate is a final document that certifies that the property is legal and tradeable	'B' Khata certificate is a temporary document which needs to be upgraded to 'A' Khata
Legality:	'A' Khata property is considered as legal property.	'B' Khata property is considered as Illegal or semi legal property.



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