



# MONTHLY NEWSLETTER

The Law Desk

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## CONTENTS

1. Supreme Court Re-Affirms Bodily Integrity And Autonomy By Upholding Unmarried Woman's Right To Abortion.....2
2. Government Bodies To Be Considered As Secured Creditor - Supreme Court .....5

3. Power U/S 9 Of Arbitration And Conciliation Act, 1966 Not Bound By Civil Procedure Code - Supreme Court.....9
4. Legal News And Updates.....13





## FACTS

An unmarried woman, aged 25 years approached the Delhi High Court seeking permission to terminate her pregnancy in terms of Section 3 (2)(b) of the Medical Termination of Pregnancy Act, 1971 (Hereinafter Referred as MTP, 1971) & Rule 3B(c) of the Medical Termination of Pregnancy Rule 2003.

It is apposite to mention here that section 3 of the MTP Act, 1971, states the conditions under which the pregnancy can be terminated and Rule 3B of the MTP Rule, 2003 specifies the categories of women who are considered eligible for termination of pregnancy wherein section 3(B)(c) of the concerned Rules specifies the Hon'ble High Court of Delhi refused to grant her interim relief stating that she being unmarried and her relationship being consensual was not covered by any of the Clauses under the Medical Termination of Pregnancy Rules, 2003. The matter then reached the Supreme Court and the Hon'ble Apex Court held that Rule 3B of the Medical

Termination of Pregnancy Rules must be interpreted in such a way so as to include unmarried women else the same would be in contravention of the Right to Equality enshrined under Article 14 of the Constitution of India.



## ISSUES IN QUESTIONS

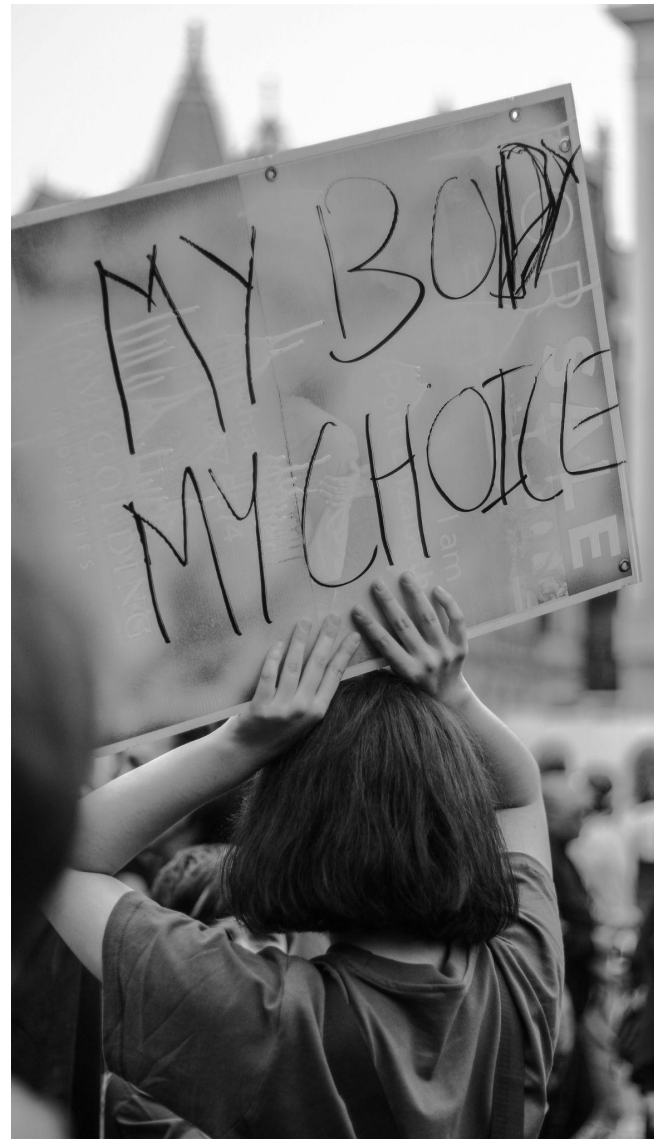
The issue relates to whether the exclusion of unmarried women, whose pregnancy arises out of consensual relationship, from Rule 3B of the Medical Termination of Pregnancy rules is valid.

## JUDGEMENT

The Supreme Court in the case of X versus The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.<sup>[1]</sup> held that under the relevant provisions of the MTP Act, 1971 an unmarried woman can terminate her pregnancy within the 20-24 week. The court held that Rule 3B of the MTP Rules, which specifies the categories of women who can seek an abortion beyond 20 weeks, must be interpreted to include unmarried women as their exclusion would violate the right to equality.

The Apex Court further added that the rights of reproductive autonomy give an unmarried woman similar right as a married woman. The object of section 3(2)(b) of the MTP Act is in allowing woman to undergo abortion after 20-24 weeks. Therefore, including only married

and excluding unmarried women will be violative of Article 14 of the Constitution.



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<sup>[1]</sup> Civil Appeal No 5802 of 2022 (Arising out of SLP (C) No 12612 of 2022)





include the right to abortion. Therefore, if the state forces a woman to carry an unwanted pregnancy to the full term, it will amount to violation of her dignity and individual autonomy.

Law must change with the change in society and if the law is unable to keep up with the changing societal norms and regulations then the same will ultimately make the society anarchy.

The right to personal autonomy forms the very basis of the dignity of each individual. It includes the right to make decisions about issues innate to our personality without any restrictions by the State and Society.

When a state bans abortion or regulates the same in the garb of ensuring safe access to abortions, it makes abortion dependent on medical practitioners and the laws framed by the legislators and not on a woman's choice alone.

## ANALYSIS

The Judgment by the Apex Court re-affirms right of bodily integrity, autonomy, freedom of choice of an unmarried woman and how reproductive rights form an intrinsic part of the above -mentioned rights. The rights pertaining to an individual's reproductive choices also

## 2 GOVERNMENT BODIES TO BE CONSIDERED AS SECURED CREDITOR- SUPREME COURT - DOLLY SHARMA

The Apex Court in the case of *STATE TAX OFFICER (I) v RAINBOW PAPERS LIMITED*<sup>[1]</sup> rendered under the Insolvency and Bankruptcy Code (*in short "IBC"*) has ruled on a significant aspect of priority of Government dues. The Court has held that statutory dues under Gujarat VAT Act (hereinafter referred as "GVAT Act") are secured creditors and would require consideration as such in the resolution plan. It was held that section 48 of the GVAT Act which states that *"any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case maybe, such person"* is not contrary to or inconsistent with section 53 or any other provisions of the IBC. The Court further held that a resolution plan which does not confirm to the provisions of Sec. 31(2) of the IBC inter-alia prescribing payment of dues of operational creditors, dissenting financial creditors, etc. would not

be binding on the parties to whom a debt in respect of dues arising under any law is owed. Such a resolution plan ought to be rejected. Further it was also held that the time period of submitting the claims as prescribed under the IBC are not mandatory but only directory in nature.



<sup>[2]</sup> Civil Appeal No. 1661 of 2020





## BRIEF FACTS OF THE CASE

The Rainbow Papers Limited ("**Respondent**") was involved in the manufacturing of Crafts and Oars in and outside of Gujarat since 1990. The State Tax Officer ("**Appellant**") had assessed value added tax and central sales tax of an

aggregate amount of Rs. 53,71,65,489/- as due and payable by the Respondent under the GVAT to the Sales Tax Authorities. In pursuance thereof, the Appellant in the year 2016 initiated recovery proceedings and attached certain properties of the Respondent.

Neeraj Papers Pvt Ltd. One of the Operational Creditor (OC) of the Respondent Company initiated Corporate Insolvency Resolution Process ("**CIRP**") before NCLT, Ahmedabad Bench, which was admitted in Sept. 2017. An Interim Resolution Professional ("**IRP**") was appointed and claims were invited from the creditors of the Respondent Company in terms of Section 15 of the IBC (with the last date of submission of claims being 5th October, 2017).

The Appellant filed its claim of approx. Rs. 47,36,00,000/- after the expiry of the aforementioned time period. The Resolution Professional ("**RP**"), however informed the Appellant that the entire claim amount of approx. Rs. 47.36 Crs. had been waived off. In pursuance of the same, the Appellant challenged the Resolution Plan before the NCLT, stating therein that the Sales Tax officer was a "Secured Creditor" within the meaning of IBC and the Government dues could not be waived off, but the same was rejected. Being aggrieved by the said order, the Appellant filed an Appeal before the National Company Law Appellate Tribunal ("**NCLAT**") challenging the

said order of the NCLT which was again dismissed, aggrieved by this the Appellant preferred an Appeal before the Hon'ble Supreme Court

## OBSERVATIONS

The SC has made certain observation suggesting that if the corporate debtor is unable to pay statutory dues to the government and there is no plan to dissipate the debts, the corporate debtor would need to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC. The Court accepted that u/s 48 of GVAT, the claim of the Tax Department of the State, would be within the definition of "Security Interest" as set out under Section 3(31) of IBC. The Court further emphasized on the term used under section 31(2) for approving or rejecting a resolution plan. While the term "shall" is used for the approval of the resolution plan, the term "may" is used in case of rejecting a resolution plan. Although the statute states that a resolution plan may be rejected, it can also be interpreted that it may not be rejected. Thus, even if the Adjudicating Authority has the power to reject the resolution plan under section 31(2), the Authority must keep in mind that such discretionary power cannot be exercised *"arbitrarily, whimsically, or without proper application of mind"*.

The Hon'ble Court came to the conclusion that "Section 48 of GVAT is not inconsistent with Section 53 or any other provisions of IBC". As per section 53(1)(b)(ii) of IBC, the Government's debt is to rank equally with other specified debts. The State being a secured creditor under GVAT, would fall within the ambit of a Secured Creditor u/s 3(30) of IBC, as the definition does not exclude the Government and that NCLT and NCLAT had erred in law by rejecting the appeals of the Appellant, and further that the RP could not reject the claim of the Appellant solely on the ground of delay in filing.





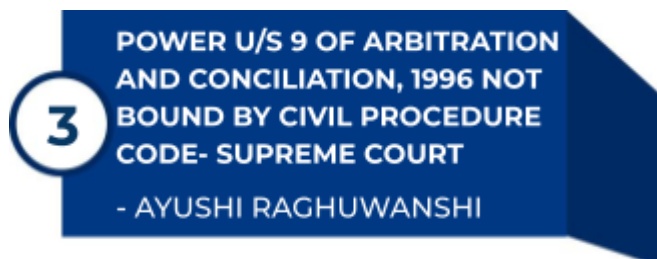
## ANALYSIS

By way of the said verdict of the Apex Court that any resolution plan which fails to satisfy the requirements of Section 30 (2) of IBC is bound to be rejected, would now lead to a massive inflow of various state/central organization challenging plans including approved resolution plans, which may in turn lead to heavy burden the judiciary. The leeway of challenging such plans is afforded to state institutions irrespective of any ongoing dispute regarding the validity of the pending dues thereof. Though tax dues are most of the times considered subservient to those of other secured creditors, which is even clear from the bear reading of section 30(4) of the IBC, the Hon'ble Court in this case was of an opposite view wherein by saying that the taxes must be paid without even considering the value of the entire liquidated company may be a farfetched approach. Additionally, the Court has adopted a relatively lenient stance in regards to the State Government's claims that are time-barred and the meaning of the word "may" in relation to rejecting a settlement plan under Section 30(2) of the IBC. It is imperative to state that the object of the IBC was the resurrection of enterprises, but given the Hon'ble Court's recent ruling that financial creditors cannot secure their own obligations

at the expense of statutory obligations, liquidation would be preferred over settlement.







## INTRODUCTION

Section 9 of the Arbitration and Conciliation Act, 1996 (*for brevity, 'the Act'*) provides for the framework under which interim relief can be claimed, which is significant given the interests of the parties during the pendency of the matter. The scope of the same has been interpreted by the High Courts and the Apex Court by way of different judgments.

In *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited*<sup>[3]</sup>, the Hon'ble Supreme Court has held that the provisions of the Civil Procedure Code are not binding upon Section 9 of the Act and on mere technicality the relief cannot be withheld.

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<sup>[3]</sup> 2022 LiveLaw (SC) 765 | SLP(C) 3187 of 2021



## Facts and Finding

Bombay High Court allowed the application filed under Section 9 of the Act by Arcellor Mittal Nippon Steel India Limited which

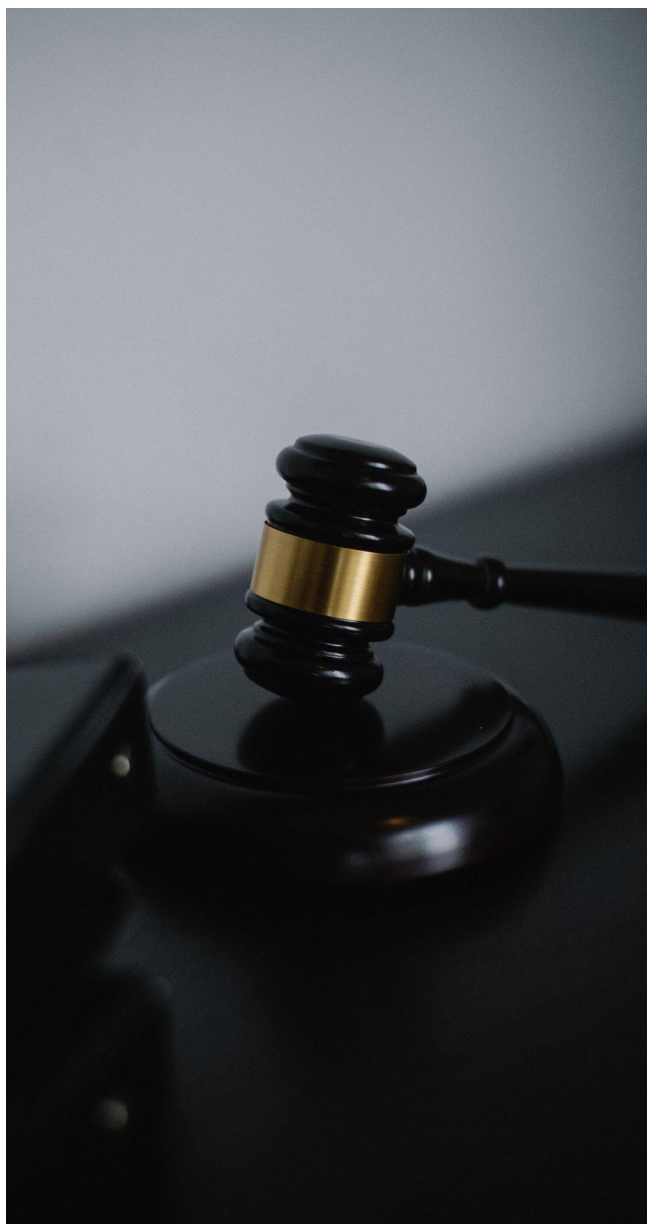
directed Essar Services to deposit Rs 47.41 crores with the Prothonotary and Senior Master of the High Court.

Essar Services filed an appeal before the Supreme Court challenging the aforesaid order and the Supreme Court categorically held, *“Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.*

*If a strong prima facie case is made out and the balance of convenience is in favour of*

*interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC.*

*Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending Arbitral Award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail.”*



### IMPORTANT VERDICTS ON THE ISSUE

In *Ajay Singh & Ors. v. Kal Airways Private Limited and Ors*<sup>[4]</sup> the Delhi High Court held that wide powers are granted to the Court

under Section 9 and that the Courts cannot be bound *litera scripta* by the provisions of Orders 38 and 39 but must follow the principles underlying.

In *Srei Infrastructure Finance Limited v. M/s. Ravi Udyog Pvt. Ltd & Anr*<sup>[2]</sup> the Calcutta High Court held, “An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit.”

### CONCLUSION

The Act being a special legislation<sup>[6]</sup> could not be restricted in its scope in terms of the provisions of the Civil Procedure Code. Thus, to bind the powers of the Court under any provision of the Act as per the standards laid down in the Civil Procedure Code would

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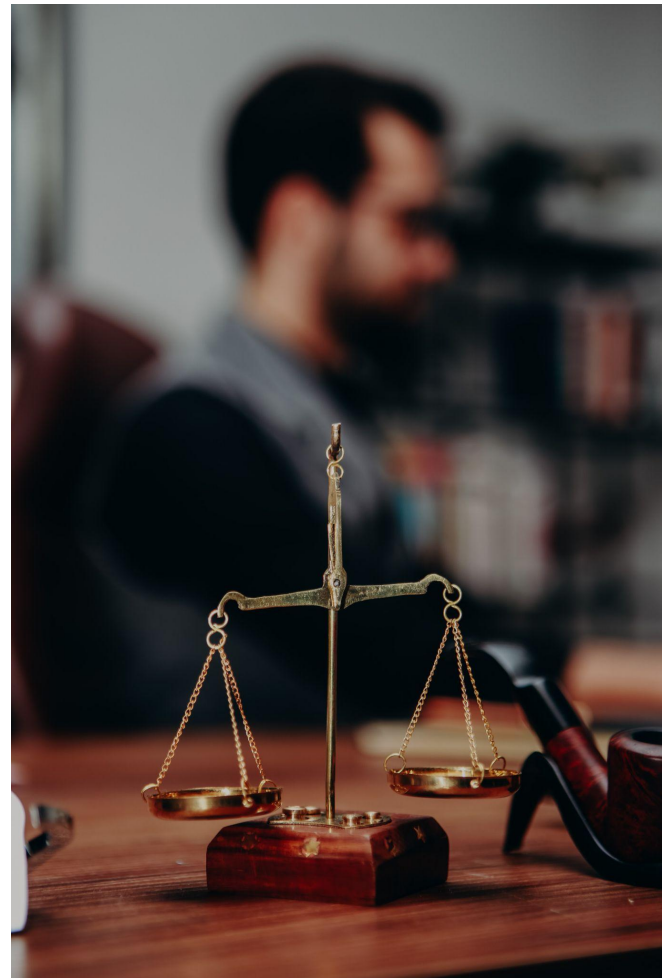
<sup>[4]</sup> (2017) SCC Online Del 8934

<sup>[5]</sup> A.P. No. 522 of 2008

<sup>[6]</sup> *Engineering Enterprises v. Principal Secretary, Irrigation Department and others*, (2008) 7 SCC 169



not be amenable. The same has been reiterated by a number of Judgments of the High Courts and rightly upheld by the Apex Court in *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited*. This gives wide powers to the Courts while exercising authority under Section 9 of the Act. The Court is not strictly bound by the provisions of Order 38 Rule 5 while granting relief under Section 9 of the Act and the scope of Section 9 is very broad. It is the Court's discretion to grant a wide range of interim measures which may appear to the Court to be just and proper. The discretion has to be exercised in a judicious manner and not arbitrarily.



A blue graphic element consisting of a white circle containing the number '4' and a blue rectangular banner to its right. The banner contains the text 'LEGAL NEWS AND UPDATES' in white, uppercase, sans-serif font.

## 4 LEGAL NEWS AND UPDATES

1. Senior Advocate Mukul Rohatgi Declines to Be the Next Attorney General For India. Rohatgi had resigned earlier as the Attorney General in June 2017 after serving three years. Following Rohatgi, Venugopal was appointed to a three-year mandate, which was extended for one year in 2020 and 2021.

2. Senior advocate R Venkataramani has been appointed as the new Attorney General of India. The President has appointed Mr. Venkataramani as the new Attorney General for a period of three years from the 1st of October.

3. SC Collegium Recommends to Elevate Bombay HC Chief Justice Dipankar Datta as Judge of Supreme Court. As CJ of the Bombay High Court, he has passed several significant judgments, including home vaccination for the bedridden, directing a preliminary inquiry against Anil Deshmukh – Maharashtra Home Minister at the time, and an authoritative pronouncement on illegal constructions.

4. Validity Of AIBE: Supreme Court Constitution Bench to Consider BCI's Powers to Prescribe

Post-Enrolment Exam on September 27 reserves its judgment.

5. Supreme Court Refers Issue On "Framing Guidelines on Mitigating Circumstances to Be Considered While Imposing Death Sentences" To Five Judge Bench.

6. Cheque Case Against Director/Partner Of Firm Can Be Quashed Only If There Is Unimpeachable & Incontrovertible Evidence That They Were Not Concerned With Issuance Of Cheque: Supreme Court.

7. Union Minister for Law and Justice Kiren Rijiju has written a letter to the Chief Justices of the High Courts based upon a review of the status of functioning of the existing Fast Track Courts and Fast Track Special Courts set up under Centrally Sponsored Scheme for expeditious trial of Rape and POCSO Act cases.

8. Supreme Court Judge, Justice D.Y. Chandrachud emphasized that equality is not achieved with the decriminalization of homosexuality alone but must extend to "all spheres of life" including the home, workplace, and public places.

9. Justice Uday Umesh Lalit, Judge of the Supreme Court as the Chief Justice of India. Justice Uday Umesh Lalit will take over as the 49th Chief Justice of India on 27th August 2022.



10. Justice Uday Umesh Lalit was appointed as Judge of the Supreme Court of India in August 2014 from the Bar. Justice Lalit will become the second Chief Justice of India to be directly elevated to the Supreme Court from the Bar, after Justice S.M. Sikri, who served as the 13<sup>th</sup> CJI in 1971. After Justice Lalit's retirement on November 8, Justice DY Chandrachud is expected to be appointed as the 50th Chief Justice of India.

11. The Supreme Court Constitution Bench led by Justice DY Chandrachud on Wednesday said that it will be a "green bench" and asked lawyers to not to bring any papers or physical documents. Justice Chandrachud also said that the officials of the Supreme Court registry and IT cell can offer training for lawyers on a Saturday for using technology to present arguments.

12. The Supreme Court observed that registration of multiple FIRs by the same person against the same accused based on the same set of facts and the same cause of action is impermissible.





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