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### In the News...

- The Supreme Court asks State Bar Councils to report compliance with the rule which mandates Senior Advocates to provide internships to law students. [Ú^æÁ |!^...](#)
- The investigating officer is not barred from appearing as a witness for the accused in a cross-case: Madhya Pradesh High Court. [Ú^æÁ |!^...](#)
- Foreigners can't claim the right to reside and settle in India: Delhi HC [Ú^æÁ |!^...](#)
- Don't allow travel agents to sell tickets if their websites aren't accessible to the visibly impaired. [Ú^æÁ |!^...](#)



S.K. SINGHI  
Founder & Managing  
Partner

#### Message from Managing Partner

The economy's momentum unfolds new legal growth vistas as we enter a Happy New Year. The spurt in mergers and acquisitions, the enhanced inflow of Foreign Direct Investments (FDIs), Foreign Institutional Investments (FIIs) and Foreign Portfolio Investments (FPIs) and the Internationalisation of the Indian Rupee bring a paradigm shift in a legal advisory to the Corporate.

The increasing trend to borrow in foreign currency through the External Commercial Borrowings (ECB) route and modifications in the Liberalised Remittance Scheme (LRS) and the emphasis on supporting Start-Up ventures provide a massive opportunity for Indian Law Firms to enhance their footprints across reputed corporations within India and abroad.

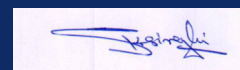
Sensing the opportunity, we have opened the International Desks at our offices across Mumbai, Delhi and Kolkata. This year's focus would be to leverage the firm's strength to serve new clients belonging to this segment. Simultaneously, our focus would remain customer-centric for the existing clients.

During the new year, we shall double our efforts to position our firm in the Arbitration assignments, Corporate Loan documentation and Transaction advisory to keep pace with time.

The achievement of goals is possible with the wholehearted support of each of you. A team is as strong as its members.

I call upon you to put your best foot forward in all professional endeavours and take the firm to deserving heights.

With best wishes.



“Justice will not be served until those unaffected are as outraged as those who are affected.”



## Systemic Issues on Delays on Bail Applications Addressed By Advocate Surbhi Choraria

Every crime is considered wrong against society, and it is in society's interest to maintain order, stability, and justice by ensuring the apprehension of wrongdoers. The concept of bail lies in balancing an individual's fundamental rights with the societal interest in a thorough investigation and accountability for the crime committed. Simultaneously, under Article 21 of the Constitution, the accused, who has not yet been proven a culprit, enjoys his right to life and personal liberty subject to limitations in the societal interest.

In *Kavish Gupta v. The State of Chhattisgarh* (SLP (Crl.) No. 16025/2023), the Hon'ble Supreme Court brought attention to the persistent issue of delays in considering bail matters.

Justices C.T. Ravikumar and Sanjay Kumar stated, *We have no hesitation in holding that such an order sans definiteness in the matter relating to anticipatory bail/regular bail, that too after admitting the matter, would delay due consideration of the application and such an eventuality will be detrimental to the liberty of a person. It is taking into account such aspects that this Court held that matters pertaining to personal liberty shall be taken up and decided at the earliest.*"

The Court directed the Registry to disseminate a copy of the Order to the Registrar General and all High Courts, aiming to ensure that bail application matters are listed promptly across jurisdictions, reflecting a broader effort to address systemic issues and promote efficient justice delivery. The Court underscored the urgent need to rectify this situation to ensure justice is not delayed, especially in individual liberty cases.

In a recent Order dated 17.01.2024 in *Rajanti Devi @ Rajanti Kumari v. The Union of India* (SLP (Crl.) No. 43646/2023), a bench comprising Justices Bela Trivedi and Satish Chandra Sharma examining the Compliance Report submitted by the Registrar General of the Patna High Court regarding an anticipatory bail case, observed that the judgment reserved was passed on 04.04.2023, nearly a year after it was reserved.

The Court, expressing its dismay, noted,

*"Though we are very much alive about the magnitude of the bail applications being filed and heard by the Courts at all levels, we cannot be oblivious to the delay in the disposal of the Bail applications.*

*Time and again, this Court has expressed great concern about the delay taking place in the disposal of the bail applications and has issued guidelines from time to time."*

The Supreme Court, aware of the recurring problem of delays in disposing of bail applications, referred to numerous judgments addressing the same issue. In *R.C. Sharma vs. Union of India* (1976) 3 SCC 574 and *Anil Rai vs. State of Bihar* (2001) 7 SCC 313, the Court had issued guidelines to expedite judgment pronouncements. These include adding a specific column in reserved judgments, indicating the reserving dates, and pronouncing the judgment.

Continued...



## Systemic Issues on Delays on Bail Applications Addressed By Advocate Surbhi Choraria

The Supreme Court has advised the Chief Justices to direct Court Officers/Readers to provide monthly lists of cases with pending judgments. Post arguments, the judgement must be pronounced within two months. The Chief Justice will alert the concerned Bench, and confidential communication may circulate among Judges after six weeks of delay. Parties can file for early judgment after three months, and if a judgment remains unpublished for six months, parties can request a transfer to another Bench, subject to the Chief Justice's discretion.

The Court also highlighted a recent decision in *Satendra Kumar Antil v. Central Bureau of Investigation and Anr.*, (2022) 10 SCC 51, where the Court directed the disposal of bail applications within two weeks, except for intervening applications and anticipatory bail applications within six weeks, with similar exceptions.

Additionally, in the *Bharatiya Nagarik Suraksha Sanhita, 2023* (hereinafter referred to as "BNSS"), set to replace the existing Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), definitions for bail, bond, and bail bond have been incorporated into Section 2.

According to the BNSS, if a person faces investigations, inquiries, or trials for multiple offences, they will not be granted bail by the Court. Notably, Section 482 of the BNSS eliminates the conditions outlined in Section 438(1) of the CrPC for the provision of anticipatory bail, and BNSS excludes the provisions of Section 438(1A) and (1B) of the CrPC.

The Supreme Court thereby aims to streamline the adjudication process, ensuring that bail matters are handled expeditiously and that justice is delivered promptly without compromising individual liberties. It highlights the imperativeness of expediting the consideration of bail matters, emphasising the need for definitive orders and fixed timelines to prevent delays that could compromise an individual's liberty.

Therefore, the essence of bail lies in navigating the intricate interplay between individual rights and societal interests. Thus, the legal system strives to uphold justice by striking the necessary balance.



## WHETHER A RESOLUTION PLAN CAN BE SENT BACK BY THE ADJUDICATING AUTHORITY TO CoC FOR RE-CONSIDERATION.

By Advocate Ayant Shaw

**Citation:** Company Appeal (AT) (Insolvency) No. 1184 of 2022 & I.A. No. 3573 of 2022 with Company Appeal (AT) (Insolvency) No. 1186 of 2022 & I.A. No. 3578 of 2022; Nivaya Resources Pvt. Ltd. v. Asset Reconstruction Company (India) Ltd. and Anr. [2022 SCC OnLine NCLAT 390]

**Before:** NCLAT, Principal Bench, New Delhi

**Coram:** Mr. Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member)

In the recent case of Nivaya Resources Pvt. Ltd. v. Asset Reconstruction Company (India) Ltd. and Anr., the NCLAT upheld the settled position in law that an approved Resolution Plan is binding on the CoC and the CoC cannot review its own decision or pray for review of its opinion. However, the approved RP does not comply with Sec 30 (2) of the IBC. In that case, the Adjudicating Authority (“AA”) has ample powers to remit back the Resolution Plan for reconsideration by the CoC.

In the above matter, the CIRP of the Corporate Debtor (“CD”) commenced on 02.05.2019, and the Resolution Plan proposed by Nivaya Resources Pvt. Ltd. (“SRA”) was approved by the CoC on 18.02.2020. Under such approval, the second highest bidder challenged such approval before the AA, which was dismissed promptly, and such order of dismissal was upheld by the NCLAT and, later, by the Hon'ble Supreme Court.

During the pendency of the application for approval of the Resolution Plan made by the Resolution Professional (“RP”) before the AA, the Financial Creditor (“FC”) applied to remit the Resolution Plan to the CoC by the AA on the following grounds;

1. The SRA failed to implement two approved resolution plans in the CIRPs of Allied Strips Ltd. and Tirupati Infraprojects Pvt Ltd.
2. The Hon'ble Delhi High Court passed a freezing order against the parent company of the SRA.
3. The credit rating of the SRA had gone down.

The AA had allowed such an application by the FC and remitted the Resolution Plan back to the CoC for re-consideration, given the grounds above.

Subsequently, the SRA had preferred the present appeal against such an order of the AA. The NCLAT, after hearing both the parties, reiterated the legal position as has been settled by the Hon'ble Supreme Court in *Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Limited and Anr.* [2021 SCC OnLine SC 707] wherein it was held that the Resolution Plan is not a typical contract, and the same is binding between the CoC and the SRA even before the approval of the AA.

As held by the Hon'ble Supreme Court in *K. Sashidhar vs. Indian Overseas Bank and Ors.* [2019 SCC OnLine SC 257], the commercial wisdom of the CoC must be given paramount status, and the commercial understanding of the CoC is not to be challenged or adjudicated by the AA. Hence, the AA cannot return a Resolution Plan to the CoC unless the same violates Sec 30 (2) of the IBC.

Before the approval of the Resolution Plan, the issue of the delay in implementation of the Resolution Plans by the SRA in Allied Strips Ltd. and Tirupati Infraprojects Pvt Ltd was raised before the CoC, and the same had been recorded in the minutes of its meetings. There was no clause/condition in the Resolution Plan that could attach any ineligibility and disqualification to the SRA about the freezing order of the Hon'ble Delhi High Court on the parent company of the SRA or the decline in the credit rating of the SRA. Hence, the said grounds were of no relevance here.

Given the above and the two judgements relied upon by the Advocate appearing for the Appellant, namely *Kalinga Allied Industries India Private Limited vs. CoC and Ors.* [2022 SCC OnLine NCLAT 1618] and *Noble Marine Metals Co WLL vs. Kotak Mahindra Band Ltd. and Anr.*, the NCLAT [2023 SCC OnLine NCLAT 83] concluded that there were no grounds on which the Resolution Plan could be sent back for reconsideration before the CoC and was pleased to set aside the order dated 27.07.2023 passed by the AA.

Further, given the enormous delay, the NCLAT requested the AA to pass necessary orders within three (3) months from the date of procurement of a copy of this order.

# SKS Legal Quiz February 2024

1. Which of the following Articles of the Constitution of India provides the “ Right to Education.”  
a. Article 39 A   b. Article 44   c. Article 12   d. Article 21 A
2. Which of the following is not an instance of an exercise of a fundamental right?  
a. Seeking employment by a Punjabi graduate in Bihar.  
b. Establishing mission schools by Christian missionaries.  
c. Getting similar salaries by men and women on the same post.  
d. Inheriting parental property by the children.
3. The Right to Constitutional remedies comes under:  
a. Fundamental Rights   b. Legal Rights   c. Constitutional Rights   d. Natural Rights
4. The \_\_\_\_\_ states that no woman shall be arrested after sunset and before sunrise except under exceptional circumstances:  
a. Code of Criminal Procedure (Bharatiya Nagarik Suraksha Sanhita)  
b. Police Act  
c. Indian Penal Code (Bharatiya Nyaya Sanhita)  
d. Probation of Offenders Act
5. Right to Freedom as under Article 19 is automatically suspended when a proclamation of Emergency is made under which of the following grounds?  
a. Armed rebellion   b. Internal disturbance   c. Loss of election   d. War or external aggression.
6. As part of the Fundamental rights, the Constitution of India guarantees the right to :  
a. Divorce   b. Travel   c. Equality   d. Marriage
7. Which part of the Constitution of India declares the ideal of a Welfare State?  
a. Directive Principles of the State Policy.  
b. Fundamental Rights  
c. Preamble  
d. Seventh Schedule
8. Where in a contract between the partners, no provision is made for the duration of their partnership, the partnership is :  
a. LLP   b. Unlimited Partnership   c. Partnership at Will   d. Implied Partnership
9. Section 16 of the Hindu Marriage Act, 1955 confers legitimacy on the children of:-  
a. A void marriage   b. A voidable marriage   c. A broken marriage   d. Both a and b above.
10. Ramesh and Mona are husband and wife, and they have a son and a daughter. They adopt a girl. The adoption under the Hindu Adoption and Maintenance Act, 1956 is :  
a. Valid   b. Void   c. Voidable   d. Illegal

The upcoming Brain Boost Lounge Webinar on  
**FORENSIC AUDIT**



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### HARGOVIND SACHDEV

Former GM (SBI)/ Ex CVO UCO Bank & United Bank of India

DIRECTOR- INNOVACE ADVISORS PRIVATE LIMITED

ADVISOR - S.K. Singhi & Partners LLP

(Delhi/ Kolkata/ Mumbai)



February 10, 2024  
Saturday  
Virtually- on Zoom  
11 a.m. to 1 p.m.



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## Social Events



**Birthday Celebration of the Managing Partner  
at Kolkata Office**



**Birthday Celebration at  
New Delhi Office**



**Celebrating the Historic Moment of  
Ayodhya Ram Mandir inauguration  
at Mumbai Office**



**Pooja done by Managing Partner on  
the occasion of Ayodhya Ram Mandir  
inauguration at New Delhi Office**

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