

# LEXPORT NEWSLETTER

## SEPTEMBER 2025 | Week 1

Dear Readers,

This weekly newsletter offers you a concise analysis of important developments, notable judgments, and noteworthy regulatory amendments and developments in the corporate and financial sectors.

This newsletter will cover updates inter alia from **Banking Laws & FEMA, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Indirect Taxes, Customs and Foreign Trade, Intellectual Property Laws, and Arbitration Laws.**

Acknowledging the significance of these updates and the need to stay informed, this newsletter provides a concise overview of the various changes brought in by our proactive regulatory authorities and the courts.

Feedback and suggestions will be much appreciated. Please feel free to write to us at mail@lexport.in.

Regards,  
Team Lexport



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## Indirect Tax

### **CESTAT Must Decide Appeals on Merits; Cannot Dismiss Solely on Non-Appearence**

The Bombay High Court has reaffirmed that CESTAT cannot dismiss appeals merely due to non-appearance of the parties. Instead, it must decide the matters on their merits, not on default.

Modelled after the Supreme Court's direction in *Balaji Steel Re-rolling Mills v. Commissioner of Central Excise*, the court held that even if the appellant or their counsel is absent, the appellate tribunal is bound to deliberate based on available materials and issue a reasoned order, not merely dismiss the appeal.



**Siddharth Dewalwar**



### **President Wants Court's Opinion On Whether States Can File Article 32 Petitions Against Union : Solicitor General Tells Supreme Court**

The Supreme Court is examining a Presidential Reference on whether a State Government can file writ petitions against the Union under Article 32. Solicitor General Tushar Mehta, citing the President's directions, urged the Court to decide this issue, arguing that States do not have fundamental rights and disputes with the Union must be under Article 131, not Article 32. He also contended that writs under Article 226 cannot be issued against Governors. The bench, led by CJI BR Gavai, questioned whether Governors act as Union representatives, highlighting the constitutional role as a "link" between Centre and States. The Court is hearing arguments from opposing States after Union submissions concluded.

Link: <https://www.livelaw.in/top-stories/president-wants-courts-opinion-on-whether-states-can-file-article-32-petitions-against-union-solicitor-general-tells-supreme-court-302211>



**Siddharth Dewalwar**

## Indirect Tax

### IBC | Financial Creditor Can Submit Claim Even If There Is No Default Of Debt : Supreme Court

The Supreme Court in *China Development Bank v. Doha Bank* (2024 LiveLaw SC 1029) clarified that a default is not necessary for a debt to qualify as a “financial debt” under the Insolvency and Bankruptcy Code, 2016. The bench (Justices Abhay S. Oka and Augustine George Masih) held that under Section 5(7) IBC, any person to whom a financial debt is owed is a Financial Creditor, irrespective of default. The Court rejected arguments that absence of default under hypothecation deeds barred creditor status, ruling that once liability exists, it is a debt, and the creditor can submit claims on public announcement. The appeals were allowed.



**Siddharth Dewalwar**

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Quick Bites

**Supreme Court on IBC: Financial Creditor's Right**

- A “financial debt” exists once liability is owed.
- Default is not a precondition to creditor status.
- Creditors can file claims on public announcement under IBC.

**IBC Ensures Creditor Right Once Liability Exists.**

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### ITAT Delhi: Property Transfer Between Spouses Without Consideration Not Taxable as Capital Gains Case Title: Sunil Kumar v. Income Tax Officer

The New Delhi Bench of the Income Tax Appellate Tribunal (ITAT) has ruled that transfer of property between spouses without actual monetary consideration does not attract capital gains tax.

The case involved late Sunil Kumar, who had executed a conveyance deed transferring property to his wife, Bimila Devi, with a consideration value of ₹1.40 crore mentioned in the document. The Assessing Officer treated this as undisclosed income from capital gains, adding the amount to Kumar’s income in an ex-parte assessment.

The assessee, represented by his son after his demise, argued that no real consideration was paid. Bimila Devi, on affidavit, confirmed that no funds were exchanged, and her bank statement reflected no such transaction. Despite this, the Commissioner of Income-tax (Appeals), NFAC, Delhi upheld the assessment.

On further appeal, the ITAT bench comprising Accountant Member S. Rifaur Rahman and Judicial Member Anubhav Sharma observed that the wife could have received the property through family settlement or as a gift. In such cases, absence of actual payment makes it unjustified to presume concealment of income. The Tribunal held that the supposed consideration was only a sham entry and not taxable.

Accordingly, the ITAT set aside the addition of ₹1.40 crore and allowed the appeal in favour of the assessee.



**Shelley Singh**

## Indirect Tax

### Allahabad HC: Executing Court Can Grant Statutory Interest Beyond Arbitral Award

The Allahabad High Court (Justice Piyush Agrawal) has held that under Section 36 of the Arbitration and Conciliation Act, 1996, an executing court is empowered to grant statutory interest even if the arbitral award itself does not mention it.

Relying on the Delhi High Court's ruling in *Union of India v. Sudhir Tyagi*, the Court clarified that post-award interest under Section 31(7)(b) is mandatory. If the arbitral tribunal does not fix a rate, the statutory rate applies automatically.

In the case at hand, the State of U.P. challenged a Commercial Court order directing payment of 18% simple interest for 12 years (2010–2022) and attaching bank accounts of officials. The State argued that interest beyond the arbitral award period (2000–2007) could not be imposed.

The High Court disagreed, holding that the arbitral award had attained finality and that the executing court rightly computed statutory interest for the balance period, ensuring the award was given “full effect.”

The petition was dismissed.

Case Title: *State of U.P. and 2 Others v. M/S Satish Chandra Shiv Hare-Brothers*

Case No.: Matters Under Article 227 No. 11680 of 2023



**Siddharth Dewalwar**

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Quick Bites

### Allahabad High Court on Arbitration Awards

**Arbitration Award**

**+ Statutory Interest**

- Section 36 Empowers Executing Courts To Grant Statutory Interest.
- Post-Award Interest Under Section 31(7)(B) Is Mandatory.
- Awards Must Be Given Full Effect – Even When Tribunal Is Silent.

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## Indirect Tax

### **CESTAT Chennai: DRI Empowered to Issue Show Cause Notices in Drawback Cases**

Case Title: Manasa Impex Services v. Commissioner of Customs (Preventive)

The Chennai Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has held that the Directorate of Revenue Intelligence (DRI) has jurisdiction to issue show cause notices (SCNs) in drawback-related matters.

The case arose from alleged fraudulent exports by M/s. SSK Knit Apparels, Tirupur. The DRI issued SCNs to the Customs House Agent/ Customs Broker (CHA/CB) for filing shipping bills without verifying declarations, thereby facilitating wrongful drawback claims. The exporter's drawback was recovered with interest, while the CHA was penalized.

The assessee challenged the jurisdiction of DRI, arguing that SCNs under Section 75 of the Customs Act, 1962, read with Rule 16 and 16A of the Drawback Rules, 1995, could only be issued by "proper officers of Customs."

The Tribunal, however, comprising Judicial Member P. Dinesha and Technical Member M. Ajit Kumar, noted that DRI officers are appointed as "officers of Customs." Referring to Circular No. 24/2011-Cus., the bench clarified that such circulars apply to them as well and cannot override statutory appointments under the Act.

On penalty, the Tribunal ruled that Section 117 (general penalty) does not apply when the matter is governed by CHALR (special law), and since abetment was not proved, the penalty was set aside. The appeal was accordingly allowed.



**Shelley Singh**

### **GST Dept Can't Probe Misuse Of GSTIN By Third Party, Power Lies With Economic Offences Wing: Delhi High Court**

Case title: Samyak Jain v. Superintendent (Adjudication), Central Gst Delhi & Ors

The Delhi High Court has ruled that the GST Department cannot investigate allegations of misuse of a trader's GST Identification Number (GSTIN) by unknown third parties, directing that such cases fall within the jurisdiction of the Economic Offences Wing (EOW).

A division bench of Justices Prathiba M. Singh and Shail Jain clarified that while Section 132 of the CGST Act, 2017 empowers the GST Department to act on specified offences, cases of impersonation or fraudulent misuse of GST credentials must be probed by the police.

The case arose when M/s Samyak International, originally registered under VAT, was provisionally allotted a GSTIN after the GST regime's rollout. The proprietor claimed his business under this name had closed in July 2017 and that he later obtained a fresh GSTIN under M/s Samyak Fashion (India). Despite this, in 2018-19, he was informed that his provisional GSTIN had been misused, resulting in wrongful availment and passing of ITC worth ₹48 crore.

The EOW had forwarded the complaint back to the GST Department, citing lack of jurisdiction. The High Court clarified that the EOW must investigate the alleged fraud and take action as per law, as the transactions were not conducted by the petitioner.



**Shelley Singh**



## Indirect Tax

### **Supreme Court Directs DGFT & CBIC To Update Tech Systems To Ensure Genuine Exporters Don't Lose Benefits Over Clerical Errors**

Cause Title: M/S SHAH NANJI NAGSI EXPORTS PVT. LTD. Versus UNION OF INDIA AND ORS.

The Supreme Court has held that exporters cannot be denied benefits under government incentive schemes merely because of clerical errors later rectified through statutory processes.

A bench of Justices Aravind Kumar and NV Anjaria allowed an appeal by an exporter who was denied benefits under the Merchandise Exports from India Scheme (MEIS) because the shipping bills mistakenly marked “No” in the column indicating intent to claim MEIS, instead of “Yes.” The error occurred due to the customs broker’s oversight.

Though the bills were later amended under Section 149 of the Customs Act, 1962, the Directorate General of Foreign Trade (DGFT) refused to process the claim, citing “system limitations.” The Policy Relaxation Committee (PRC) rejected the application via a cryptic email without granting a hearing, a decision upheld by the Bombay High Court.

The Supreme Court, however, ruled that beneficial schemes must be construed liberally and that procedural lapses, once corrected, cannot defeat substantive rights. It criticized the DGFT’s stance and directed it to process the exporter’s claim within 12 weeks.

The Court also asked DGFT and CBIC to update systems and issue instructions to prevent genuine exporters from needless litigation over inadvertent errors.



**Shelley Singh**

### **Import Of Counterfeit iPhones Dilutes Brand Equity, Affects Consumer Welfare: Delhi High Court In Customs Fraud Case**

Case Title: M/s ECG Easy Connect Logistics Pvt. Ltd v. Commissioner of Customs

The Delhi High Court has raised concerns over counterfeit iPhone imports, noting that such activities harm both brand owners and consumers, as old or used devices may be rebranded and sold as new.

A division bench of Justices Prathiba M. Singh and Shail Jain observed that consumers could be misled into paying more for counterfeit products, while the goodwill of genuine manufacturers suffers.

The case involved M/s ECG Easy Connect Logistics Pvt. Ltd, a courier agency whose registration was revoked for alleged misdeclaration of imported goods. The Appellant was accused of declaring full iPhones as mere spare parts, with deliveries showing irregularities. Apple Inc. confirmed the goods were counterfeit.

While the Appellant argued that responsibility lay with importers, the Court noted evidence indicating complicity in the misdeclaration. It upheld the CESTAT order of 22nd March 2024, confirming guilt.

However, the Court termed the complete revocation of courier registration till 2031 as “disproportionate.” It modified the punishment, restricting the revocation period from 18th August 2023 to 1st September 2025.

Additionally, out of the ₹10 lakh security deposit, ₹5 lakh was forfeited while the balance remains as security. The ₹50,000 penalty imposed was upheld.



**Shelley Singh**

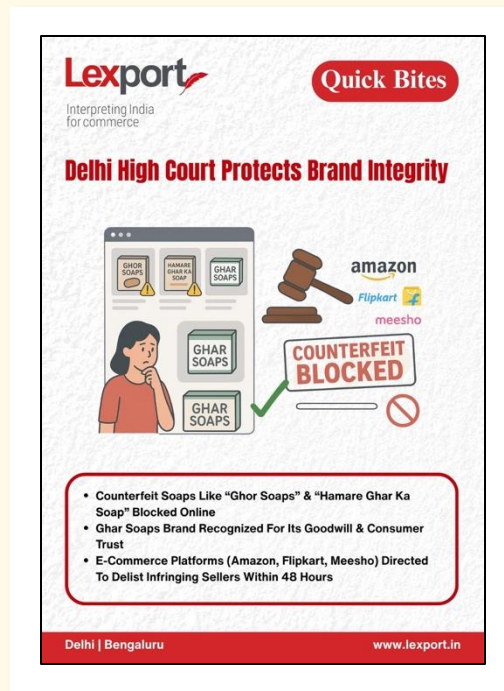
## Intellectual Property Rights

### Delhi High Court Restrains Sale of Counterfeit “Ghar Soaps” on E-Commerce Platforms

The Delhi High Court granted an ex parte interim injunction in favor of YMI Ghar Soaps Pvt. Ltd., restraining unidentified sellers from marketing counterfeit products under deceptively similar marks like “Ghor Soaps” and “Hamare Ghar Ka Soap.” Justice Manmeet Pritam Singh Arora directed Amazon, Flipkart, and Meesho to block infringing listings, delist rogue sellers, and act on takedown requests within 48 hours. The Court found that the plaintiff’s brand “Ghar Soaps” had acquired substantial goodwill through significant sales and marketing, and that the counterfeit goods were likely to cause consumer confusion and irreparable harm. Defendant No. 9 (Xelova) received partial relief, with the Court limiting directions to preventing its product from being algorithmically linked to “Ghar Soaps” searches. [YMI Ghar Soaps Pvt. Ltd. v. Ashok Kumar Trading as Bendist Export Hamare Ghar Ka Soaps & Ors., CS(COMM) 849/2025]



**Anushka Tripathi**



### Delhi High Court Orders Blocking of Sci-Hub and Sci-Net for Copyright Infringement

The Delhi High Court directed the Department of Telecommunications (DoT) and Ministry of Electronics and IT (MeitY) to block access to Sci-Hub and its mirror sites, along with Sci-Net, within 72 hours for violating an earlier undertaking not to upload copyrighted works of Elsevier and other publishers. Justice Manmeet Pritam Singh Arora held that Alexandra Elbakyan, founder of Sci-Hub, had wilfully breached her 2020 undertaking by uploading new articles post-2022 and redirecting users through Sci-Net. The Court classified both websites as “rogue websites” under the principles laid down in UTV Software v. 1337x.to, noting their blatant disregard for copyright and global blocking orders. ISPs were ordered to implement immediate blocking, with the directions to remain in force until further orders. [Elsevier Ltd. v. Alexandra Elbakyan, CS(COMM) 572/2020]



**Anushka Tripathi**

## Intellectual Property Rights

### AI Artist Challenges Copyright Office Denial of AI-Assisted Work

An AI artist has filed a motion for summary judgment against the U.S. Copyright Office, contesting its refusal to register a work created with AI assistance. The Copyright Office does not allege copying or infringement. The artist asserts substantial human creativity was involved. Denial was based solely on the presence of AI-generated content.

Defines “AI-assisted” works: The case asks whether human authorship survives when AI is used as a tool.

Policy impact: A ruling in favor could reshape copyright law for collaborative human-AI creations.

Precedent-setting: Clarifies how much human contribution is required.

Stakeholders in art, publishing, technology, and intellectual property are advised to follow this case, as the outcome may influence future copyright registrations for AI-assisted works.



**Swagita Pandey**



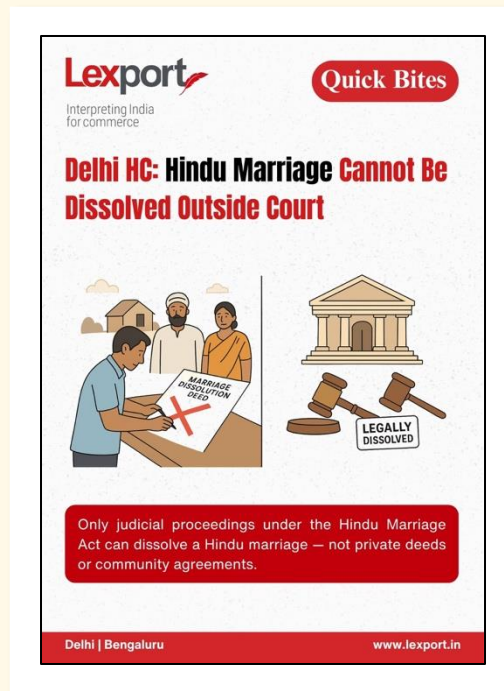
## Litigation

### ASHWANI KUMAR v. UNION OF INDIA & ANR (W.P.(C) 5048/2022)

The Delhi High Court has ruled that a Hindu marriage cannot be dissolved merely by signing a “marriage dissolution deed” before villagers or community members. A Division Bench of Justice C Hari Shankar and Justice Om Prakash Shukla made this observation while dismissing the petition of a CISF constable who was dismissed from service for contracting a second marriage during the subsistence of his first.

The petitioner contended that his first marriage had been dissolved through a deed dated 15 October 2017 executed in front of “social people and witnesses.” Rejecting this claim, the Court emphasized that no law recognizes such a method of dissolving a duly solemnized Hindu marriage, which can only be dissolved under the Hindu Marriage Act through judicial proceedings.

The Bench noted that since the first marriage was legally subsisting, the petitioner’s subsequent marriage clearly violated Rule 18 of the CISF Rules, 2001, which prohibits contracting a second marriage during service without lawful dissolution of the first.



**Ananya Jain**

### Jadeja Ravirajsinh Juvansinh Vs. Nuvoco Vistas Corporation Ltd. & Ors, Company Appeal (AT) (Insolvency) No.733 of 2025

The Hon’ble NCLAT held that any additional dues payable to employees, including provident fund, pension, or gratuity, must be paid out of the SFC payment in line with the Supreme Court’s judgment. It noted that provident fund dues were undisputed, while unpaid gratuity dues were to be settled from the payouts earmarked for employees under the Resolution Plan. The Plan admitted only 10% of employee claims, and gratuity dues were included within this amount, not over and above it. Clause 13 clarified that any further payments directed by courts would also be adjusted from the SFC payment. Relying on the RP’s confirmation, the Tribunal dismissed the appeal, finding no inconsistency in the Plan’s approval.



**Shyam Kishor Maurya**

## Litigation

**Article: Doctrine of Merger Under Scrutiny: Fraud Carves an Exception in Vishnu Vardhan @ Vishnu Pradhan V. State of U.P. (2025)**

This article examines the **Doctrine of Merger** and its re-evaluation by the Supreme Court in *Vishnu Vardhan @ Vishnu Pradhan v. State of U.P. (2025)*. The judgment addressed whether a fraudulent order, once affirmed by the Apex Court, could still be challenged despite the principle of finality. By holding that “fraud vitiates everything,” the Court clarified that the doctrine of merger, though vital for judicial hierarchy, is not absolute.

Authored by **Ananya Jain, Junior Associate at Lexport**, the article highlights how the Court carved out fraud as a key exception to merger, ensuring that equity and justice take precedence over procedural doctrines.

Click on the below link to read the article:

<https://shorturl.at/VDD4S>



**Ananya Jain**

## Corporate

### NCLT Chandigarh: Revival Under Section 252(3) Denied Without Substantial Investments Reflected In Balance Sheet

[S. 252(3) Of Companies Act] Company Cannot Be Revived In Absence Of Substantial Investment Reflected In Balance Sheet: NCLT Chandigarh

The National Company Law Tribunal (NCLT), Chandigarh Bench, comprising Hon'ble Mr. Hamam Singh Thakur (Judicial Member) and Hon'ble Mr. Shishir Agarwal (Technical Member), has clarified that a company cannot be restored under Section 252(3) of the Companies Act without substantial investments reflected in its balance sheet.

In *Gurmeet Singh v. RoC, Punjab & Chandigarh* (CP No.29/Chd/Pb/2024), the petitioner sought revival of a struck-off company, claiming investments in Stylam Industries Ltd. and invoking the Tribunal's "just and equitable" discretion. The petitioner also proposed filing pending statutory documents and paying additional fees if restoration was allowed.

The Tribunal rejected the petition, noting critical deficiencies: no valid balance sheet or financial records were submitted, late submission of the death certificate, absence of a succession certificate, and lack of board resolutions or director undertakings. Reliance on precedents like *Urvashi Infrastructure* and *Oriental Iron Casting Ltd.* was found insufficient without concrete financial proof.

The NCLT emphasized that mere claims of shareholding or ongoing business interests are inadequate. With no evidence of substantial investment or just and equitable grounds, the petition was disposed of, reinforcing that financial substantiation is essential for company revival under Section 252(3).



**Akshita Aggarwal**

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Quick Bites

### No Balance Sheet, No Revival

A company cannot be restored under Section 252(3) of the Companies Act without substantial investments reflected in its balance sheet.

**REVIVAL PETITION**

NO FINANCIAL EVIDENCE

**SUBSTANTIAL INVESTMENT**

**BALANCE SHEET**

- Mere petitions or claims of shareholding are not enough
- Company revival requires substantial investment proof in financial records
- NCLT Chandigarh: Regulatory discretion must rest on concrete evidence

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## Corporate

### **NCLT Mumbai Admits AGS Transact Technologies into CIRP under Section 9 of IBC Despite Solvency Plea**

[Section 9 of IBC] Corporate Insolvency Admitted Despite Solvency Claims: NCLT Mumbai Bench

The National Company Law Tribunal (NCLT), Mumbai Bench-VI, admitted AGS Transact Technologies Limited into Corporate Insolvency Resolution Process (CIRP) following a petition by Securitrans India Private Limited under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016. The Operational Creditor (OC) claimed Rs. 2.37 crore in unpaid invoices for cash management services provided under a longstanding Services Agreement, including extensions. Despite acknowledging the debt, the Corporate Debtor (CD) delayed payments, alleging service deficiencies and invoking an arbitration clause.

The Tribunal observed that the CD did not dispute the overall debt and failed to provide evidence of reconciliation or full payment. The OC submitted emails, approved invoices, and a NeSL Form-D recording default. The NCLT clarified that the existence of an arbitration clause does not bar proceedings under Section 9. Furthermore, the CD's claim of substantial assets and ongoing recovery efforts was irrelevant under IBC's cash-flow insolvency test.

Consequently, the CD was admitted into CIRP, a moratorium under Section 14 was declared, and Mr. Brijendra Kumar Mishra was appointed as Interim Resolution Professional. The Tribunal emphasized that the focus is on default, not balance-sheet solvency, ensuring operational debts are recoverable through the IBC framework.



**Akshita Aggarwal**

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Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website [www.lexport.in](http://www.lexport.in).

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