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**NEWSLETTER**

**ANA/NL/December 2016**

**Two-Tier Arbitration Permissible In India**

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| <p><b>Appellant:</b> M/s Centrotrade Minerals &amp; Metal Inc.<br/><b>Respondent:</b> Hindustan Copper Ltd.</p> | <p><b>Court:</b> Supreme Court of India<br/><b>Date of Judgment:</b> 15.12.2016<br/><b>Case No.:</b> Civil Appeal No. 2562 of 2006</p> |
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The Supreme Court in this landmark judgment accepted the notion of 'two-tier system' while holding that a Party's autonomy is virtually the backbone of arbitrations. The Court observed that two-tier arbitrations are valid, permissible and are not violative of public policy of India. In the instant case, the arbitration clause of the agreement stated that any disputes or differences shall be settled by arbitration in India and if either party is in disagreement they have right to appeal to a second arbitration in London in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Supreme Court held that the parties are bound by the Agreement and there is nothing in the Arbitration and Conciliation Act that prohibits the contracting parties from agreeing upon a second instance or appellate arbitration – either explicitly or implicitly

## Provisions of Special Law to prevail over General Law

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| <b>Appellant:</b> Sharat Babu Digumarti<br><b>Respondent:</b> Govt. of NCT of Delhi | <b>Court:</b> Supreme Court of India<br><b>Date of Judgment:</b> 14.12.2016<br><b>Case No.:</b> Criminal Appeal No. 1222 of 2016 |
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In this case, the Supreme Court observed that the Section 67 of the Information Technology Act prescribes the punishment for publishing obscene material in electronic form while the Section 292 of Indian Penal Code makes offence sale, etc. of obscene books, pamphlet etc. The High Court had earlier set aside the charges under Section 67 of the IT Act against the Appellant holding that even though no charge could be made out against Appellant under section 67 of the IT Act, still he can be proceeded under section 292 of the Indian Penal Code. The Supreme Court, however, noted that electronic form of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws.

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## No legal right of a son whether married or unmarried, to live in the self-acquired house of the parents

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| <b>Appellant:</b> Sachin and Ors<br><b>Respondent:</b> Jhabbu Lal and Ors. | <b>Court:</b> Delhi High Court<br><b>Date of Judgment:</b> 24.11.2016<br><b>Case No.:</b> CM No. 19123 of 2016 |
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The Delhi High Court in this case held that where the house is self-acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents up to the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life.

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## **Gratuity cannot be denied where there is no termination on Account of misconduct**

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| <b>Appellant:</b> Jorsingh Govind Vanjari<br><b>Respondent:</b> Divisional Controller<br>Maharashtra, State Transport<br>Corporation | <b>Court:</b> Supreme Court of India<br><b>Date of Judgment:</b> 06.12.2016<br><b>Case No.:</b> Civil Appeal No. 11087 of<br>2016 |
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The Supreme Court in this case observed that in order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry, but there must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude. If there is no termination on account of alleged misconduct employee cannot be denied for gratuity.

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## **Part-Payment of cheque not to defeat cheque dishonor complaint**

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| <b>Appellant:</b> Hazi Jahangir Molla<br><b>Respondent:</b> Md. Alim Mallick & Otr. | <b>Court:</b> Calcutta High Court<br><b>Date of Judgment:</b> 06.12.2016<br><b>Case No.:</b> CRAN 1728 of 2016 |
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The Calcutta High Court recently in the above decision has held that when part payment is made by Accused after issuance of statutory notice in a cheque dishonor case, it will not defeat the entire cause of action under Section 138 of the Negotiable Instruments Act. In this case, the Accused made payment of Rs. 1 Lac to the holder of cheque after having received the statutory notice. The Court specifically observed that part payment is not enough to take away the right of the holder of the cheque to enforce the cause of action regarding non-payment of the residue amount.

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## Legal Update:

- The Ministry of Labor and Employment vide its Notification dated 22.12.2016 has increased the existing wage ceiling from Rs. 15,000/- to Rs. 21,000/- effective 1st January 2017. Click [here](#) to read and download the said Notification.
  - The Ministry of Finance vide its Notification dated 25.11.2016 has appointed 1.12.2016 as the date on which provisions of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 ("SICA Repeal Act") and Section 4(b) of the SICA Repeal Act shall come into effect; and accordingly, the Sick Industrial Companies (Special Provisions) Act, 1985 is repealed. As per provisions of the Section SICA Repeal Act the Board for Industrial and Financial Reconstruction ("BIFR") and the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR") shall stand dissolved. Accordingly, from 1.12.2016, any appeal, reference, enquiry pending before the BIFR or AAIFR shall stand abated and a fresh reference can be made before the National Company Law Tribunal under the provisions of Insolvency and Bankruptcy Code, 2016 within 180 days from commencement of Insolvency and Bankruptcy Code, 2016 (-Section 4(b) of the SICA Repeal Act as amended by the Section 252 of the Insolvency and Bankruptcy Code, 2016). Click [here](#) said notification of the Ministry of Finance.
  - The Ministry of Corporate Affairs vide notification dated 30th November 2016 declared Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 effective from 1<sup>st</sup> December 2016. Click [here](#) said notification of the Ministry of Corporate Affairs.
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