

INFORM: Infrastructure Projects & Finance

NOVEMBER 2024

We bring you the latest updates on the dynamic intersection of infrastructure projects with banking and finance. Join us to navigate the evolving landscape of infrastructure curated to empower you with strategic intelligence.

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2. SC Clarifies Tax Treatment of 'Broken Period Interest'
3. "Revenue" for Calculation in OMDA is Projected Revenue Not Gross Receipts
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>>> CASE LAWS



Calcutta High Court Reaffirms Authority's Discretion in Tender Rejections for Past Contractual Failures

In a recent ruling, the Hon'ble High Court of Calcutta in the case of M/s. Sharma Transport Agency and another vs. Damodar Valley Corporation and others, W.P.A. 18137 of 2024 dated October 7, 2024, upheld the Damodar Valley Corporation's (DVC) decision to reject the bid of M/s Sharma Transport Agency and another in a tender related to ash transportation from the Mejia Thermal Power Station (MTPS).

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SC Clarifies Tax Treatment of 'Broken Period Interest'

In a recent judgment of Bank of Rajasthan Ltd. v. Commissioner of Income Tax, 2024 SCC OnLine SC 2877, dated October 16, 2024, the Hon'ble Supreme Court of India, has allowed banks to claim tax deductions for broken period interest on Held to Maturity (HTM) government securities, provided they are classified as stock-in-trade.

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"Revenue" for Calculation in OMDA is Projected Revenue Not Gross Receipts

The recent ruling by the Hon'ble High Court of Delhi in the case of Airports Authority of India v. Delhi International Airport Ltd. and Mumbai International Airport Ltd., 2024 SCC OnLine Del 7284, dated October 18, 2024, sheds light on the complexities of revenue-sharing agreements in public-private partnerships.

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SC Clarifies the Limit of NCLAT's Inherent Powers in IBC Settlements

The Hon'ble Supreme Court of India, in the case of GLAS Trust Company LLC v. BYJU Raveendran & Ors., 2024 SCC OnLine SC 3032, dated October 23, 2024, recently set aside an order by the National Company Law Appellate Tribunal (NCLAT) that allowed ed-tech giant Byju's (Think and Learn Pvt Ltd) to withdraw from insolvency proceedings following a settlement with the Board of Control for Cricket in India (BCCI).

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SC Invalidates Bid Selection Process Over Procedural Arbitrary Favouritism in Tender

In a significant ruling, the Hon'ble Supreme Court of India in the case of Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Limited & Others, 2024 SCC OnLine SC 2700, dated October 4, 2024, addressed the procedural irregularities in government tenders. The court clarified the legal standing of a Power of Attorney (PoA) in the context of bid submissions.

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SC Reaffirms that Juristic Persons Such as Banks Do Not Have the Capacity to Possess Mens Rea

In a significant ruling, the Hon'ble Supreme Court of India in the case of HDFC Bank Ltd. v. State of Bihar & Ors., 2024 SCC OnLine SC 2995, dated October 22, 2024, underscored that corporate entities cannot inherently possess the criminal intent required for offenses under the Indian Penal Code (IPC).

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NOTIFICATIONS/CIRCULARS



RBI Issues Directions on Compounding of Contraventions under FEMA, 1999

The Foreign Exchange Management Act, 1999 (FEMA, 1999), regulates foreign exchange transactions in India, and its provisions aim to ensure compliance with the country's foreign exchange laws. Section 15 of FEMA, 1999, specifically enables the compounding of contraventions and empowers the Reserve Bank of India (RBI) to handle such matters, except those falling under Section 3(a).

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SEBI Revises Rules for Minimum Public Unitholding in Infrastructure Investment Trusts

The Securities and Exchange Board of India (SEBI), vide circular SEBI/HO/DDHS-PoD-2/P/CIR/2023/174 dated October 31, 2023, introduced significant changes to the methods for achieving minimum public unitholding requirements for Infrastructure Investment Trusts (InvITs), particularly affecting privately placed InvITs.

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SEBI Proposes Framework for Restricted Return InvITs to Enhance Investor Security

The Securities and Exchange Board of India (SEBI) has issued a consultation paper on a proposed regulatory framework for Restricted Return Infrastructure Investment Trusts (InvITs), dated October 30, 2024. In this model, returns can be structured with downside protection (a floor) and/or an upside cap, differentiating it from traditional InvITs where returns are directly tied to the full performance of the underlying infrastructure assets.

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Application of Whitetopping Technology for National Highway Rehabilitation and Strengthening

The Ministry of Road Transport & Highways (MoRTH) issued guidelines on the application of Whitetopping Technology (WT) for the rehabilitation and strengthening of National Highways, vide circular dated October 3, 2024. These guidelines recommended Thin Whitetopping (TWT) as the preferred pavement rehabilitation method, with implementation to begin immediately.

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MoRTH Revises Schedule H of EPC Contracts

The Ministry of Road Transport & Highways (MoRTH) vide circular F. No. COVID-19/RoadMap/JS(H)/2020, dated October 11, 2024, has issued an amendment to Schedule H of the Model EPC (Engineering, Procurement, and Construction) Contract Agreement, updating the payment structure and weightage allocation for National Highway projects.

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Draft Circular on Business Forms and Investments Released

In a significant step aimed at strengthening the regulatory landscape for Indian banks, the Reserve Bank of India (RBI) has issued a draft circular outlining amendments to the prudential regulation framework. The draft circular emphasizes stringent regulations for permissible business activities and investments to protect public interests and bolster banking stability.

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RBI Introduces Credit Information Reporting Mechanism for Entities with Cancelled Licenses

In a recent move to safeguard borrowers' credit histories, the Reserve Bank of India (RBI) issued a circular implementing a new credit information reporting mechanism following the cancellation of licenses or Certificates of Registration (CoR) for certain financial institutions.

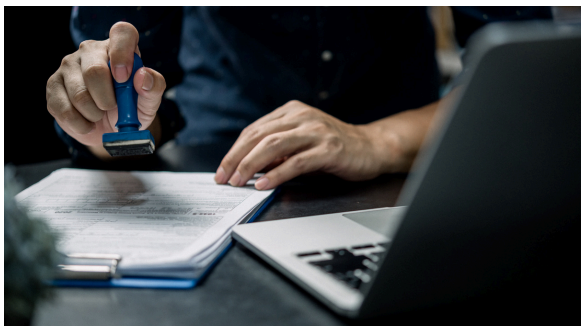
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Submission of information to Credit Information Companies (CICs) by ARCs

The Reserve Bank of India (RBI) has issued new guidelines requiring all Asset Reconstruction Companies (ARCs) to bolster their credit information reporting standards in line with those followed by banks and Non-Banking Financial Companies (NBFCs).

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Due Diligence Regarding Guarantees from NRIs by Resident Indians

The Reserve Bank of India (RBI) has issued a new circular emphasizing the prohibition of unauthorized guarantees from non-residents in favour of Indian residents.

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