



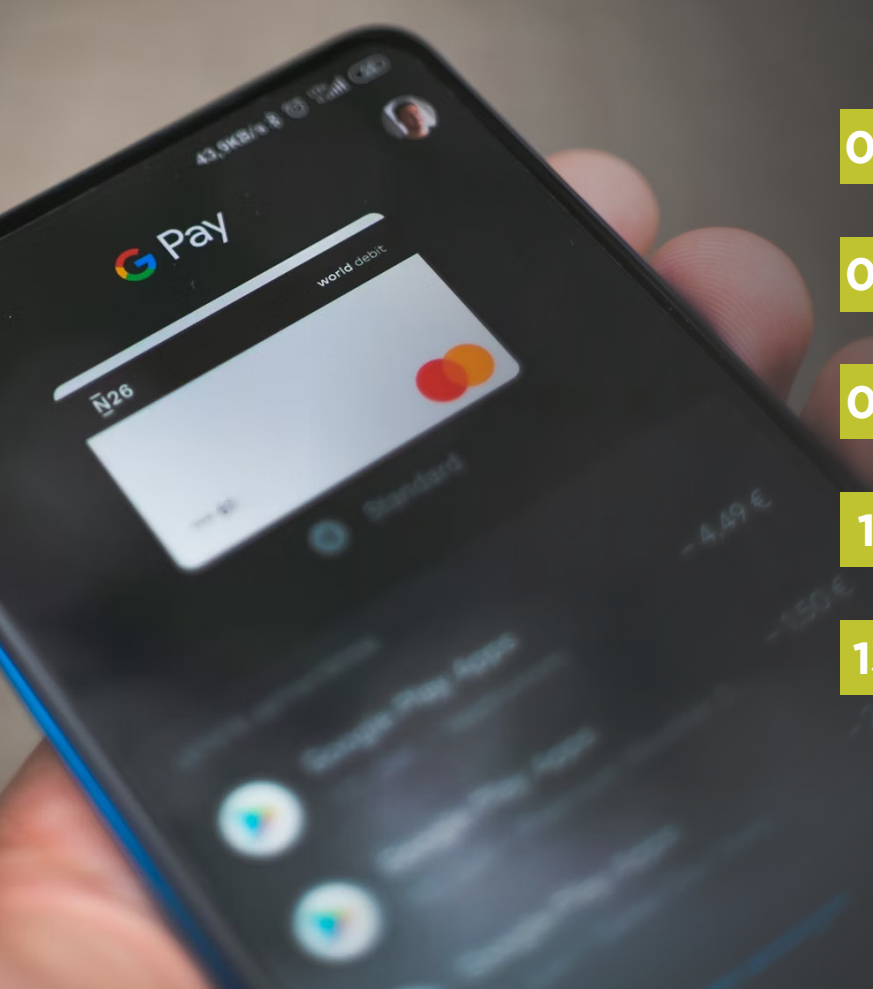
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THE DILEMMA SURROUNDING THE PAYMENT OF DUES TO STATUTORY AUTHORITIES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

by **MS. MANEESHA DHIR**, Managing Partner,
MS. VARSHA BANERJEE, Partner and
MS. UDITA SINGH, Associate

The treatment and position of statutory creditors having a statutory charge in insolvency proceedings gained criticality at the first instance upon passing of the judgment by the Hon'ble Supreme Court in the matter of **STATE TAX OFFICER (I) VERSUS RAINBOW PAPERS LTD. 2022 SCC ONLINE SC 1162** (Rainbow Papers Case). The issue before the Hon'ble Supreme Court was whether in terms of Section 48 of the Gujarat Value Added Tax Act, 2003, the State Government shall be treated as a "Secured creditor" of the company undergoing insolvency proceedings. It is to be noted that Section 48 of the GVAT Act which came up for interpretation before the Hon'ble Supreme Court in the said matter provides that any amount payable to the government shall constitute a first charge on the property of such dealer (company in this case).

After considering the provisions of the Insolvency and Bankruptcy Code and GVAT Act, the Hon'ble Supreme Court held the following:

1. The State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is created.

Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.

2. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State government under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

3. If the resolution plan excludes statutory dues payable to government or a government authority or legal authority, altogether, the NCLT is bound to reject such resolution plan.

4. The Committee of Creditors ("CoC"), which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

Therefore, as per the observations made by the Hon'ble Supreme Court in the matter of **Rainbow Papers (supra)**, the statutory authorities are to be treated at par with other secured lenders (like banks etc.) if such statutory authorities have a security interest

over the assets of the company, by virtue of any statutory provision.

The judgment in the matter of **Rainbow Papers (Supra)**, was thereafter, interpreted in the following judgments:

1. The Hon'ble Supreme Court, in the matter of **Paschim Anchal Vidyut Vitran Nigam Limited versus Raman Ispat Pvt. Ltd. 2023 SCC OnLine SC 842** held that the observations made in the matter of **Rainbow Papers (supra)** are to be confined to the facts of that case alone. The Hon'ble SC held that whilst the GVAT Act creates first charge in favour of the State, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other under the waterfall mechanism in Section 53 clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority.

2. In the matter of **State Tax versus Ashish Chhawchharia, Resolution Professional for Jet Airways**, it was held that the judgment of Rainbow Papers (Supra) cannot be applied to the dues to Department of State Tax (GST) since the Maharashtra GST Act, 2017 provides that the first charge on the property of taxable person (Company) is not applicable in case of initiation of Corporate Insolvency Resolution Process (CIRP) of such Company.

Conclusion

The analysis of Rainbow Papers Case, can thus be said to be applicable only in such cases where the statutory provision creates first charge in favour of the relevant government or statutory authority. Rainbow Papers Case does not per se be read in a manner to argue that all government dues

will be secured dues under all circumstances. Basis the Supreme Court's view in Rainbow Papers Case, the classification of government dues on a broader parameter will have to be undertaken in a two-pronged manner as follows:

Step 1: Examination of the provisions of the governing legislations (both Central and State) to ascertain whether or not a charge (Statutory in nature) is created in favour of the relevant government and statutory authority in respect of their claim. Recently, the Hon'ble Supreme Court in the matter of Greater Noida Industrial Development Authority v Prabhjit Singh Soni & Anr, Civil Appeal No.7590-7591 of 2023, order dated 12.02.2024 recognised Greater Noida Authority as the owner of land of real estate project as a secured creditor and sent back the approved Resolution Plan for appropriate treatment of the Authority.

Step 2: Whether or not the provisions of such governing legislation are expressly made subject to IBC or have a provision pursuant to which IBC is given primacy. If the concerned governing legislation creates a charge and is not subject to IBC (as was the case in the relevant statute which was the subject matter in Jet Airways), then such statutory authority will have to be classified as a "secured creditor" for the purposes of Section 53 and accordingly, will be eligible for distribution in terms of Section 53(1)(b) (ii) of the IBC.

The Resolution Professional, accordingly, are now required to analyse and review statutory claims and dues on a case to case basis to ascertain the position of such creditors in the waterfall mechanism as provided in the Code to ensure protection of stakes and rights of such statutory creditor.

FIRM IN THE NEWS



NEW DELHI | FRIDAY | MARCH 29, 2024

the pioneer

analysis 07

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Navigating the legal and ethical implications of AI

In a world increasingly shaped by Artificial Intelligence, the discourse shifts from its capabilities to the imperative question of its ethical boundaries

In an era increasingly defined by Artificial Intelligence (AI), the pivotal question shifts from what AI is capable of to what it should be allowed to do. This reflection critically examines AI's potential to reshape our lives within ethical and legal frameworks. As we explore the vast landscapes carved by AI, we must ensure that our technological advancements are matched with an equally profound commitment to ethical responsibility. The advent of AI is a testament to human ingenuity, offering transformative possibilities in virtually every aspect of our existence. Yet, alongside its potential, AI introduces a spectrum of legal complexities that require careful consideration. The evolution of legal



MANEESHA DHIR

jurisprudence in the face of AI's rapid development is a topic of paramount importance, dealing with issues ranging from privacy and data protection to intellectual property and employment. The Indian Government's embrace of AI through initiatives like "Digital India" and a National Strategy for Artificial Intelligence reflects a visionary stance on harnessing technology for societal benefit.

However, the journey toward realising AI's full promise is fraught with challenges that demand vigilant oversight and a principled approach to regulation and ethics. On a global scale, AI raises questions that transcend national boundaries, presenting legal and ethical dilemmas that must be addressed comprehensively. The capacity of AI to analyse and utilise vast amounts of personal data has challenged existing privacy laws, sparking a worldwide reassessment of how we protect individual rights in the digital age. Countries are adopting comprehensive data protection regulations, such as the European Union's General Data Protection Regulation and India's Digital Personal Data Protection Act 2023, to



safeguard personal information while fostering digital innovation. The implications of AI on the job market also warrant serious consideration. The potential for automation to displace jobs creates a pressing need for legal frameworks that can mitigate adverse effects and prepare the workforce for an AI-driven future. Similarly, the intersection of AI with intellectual property rights challenges

conventional notions of creativity and authorship, calling for legal innovations that recognise and protect the contributions of all stakeholders, including those of AI. The issues of bias and discrimination in AI highlight the critical need for our technological systems to be as impartial and inclusive as possible. The development and deployment of AI must be guided by anti-discrimination laws adapted to

the digital age, ensuring fairness and equity in the application of AI. Internationally, the regulatory approach to AI varies significantly, with entities like the European Union adopting comprehensive frameworks while others pursue more sector-specific guidelines. This diversity reflects the complex interplay of legal, cultural, and societal factors that influence AI governance, emphasising the need for a globally coordinated dialogue on AI ethics and regulation. Integrating AI into the legal profession offers a glimpse into the future, showcasing AI's potential to enhance legal analysis, predict outcomes, and even assist in judicial decision-making. However, these advancements under-

score the imperative for stringent ethical standards to uphold the integrity of the legal system. As AI continues to evolve rapidly, it becomes crucial for societies, especially within the diverse context of India, to engage in proactive discourse. We must anticipate future developments and craft legal frameworks that are flexible enough to adapt to the unpredictable technological landscape. This includes ensuring that the benefits of AI extend to all and democratising access to services like healthcare and education. In conclusion, as we chart the course of AI within the legal domain, our focus must steadfastly remain on enacting and refining laws that protect human rights and dignity. Achieving harmony between emerging technology and legal norms requires a culture of continuous learning and adaptation, where laws are designed not just to respond to the challenges posed by AI but to foresee and embrace its vast possibilities. With India at the forefront of AI innovation, buoyed by progressive policies and a wealth of intellectual capital, we stand on the brink of leading the global conversation on ethical AI. As we venture deeper into this new frontier, our collective aim should be a future where technology amplifies the noblest goals of law and justice, and in return, legal frameworks foster the responsible growth of Artificial Intelligence. *(The author is a legal expert. Views expressed are personal)*

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Navigating the Legal Labyrinth: Unpacking the Supreme Court's Verdict in Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni

BRAND CONNECT | MARCH 20, 2024 | 12:38 PM IST

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Maneesha Dhir, Managing Partner, Dhir & Dhir Associates

In a groundbreaking decision that is set to reshape the contours of India's insolvency proceedings, the Supreme Court recently pronounced a landmark judgment on 12th February 2024 in the case of Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni & Anr. This judgment is expected to have far-reaching implications for insolvency proceedings in India, particularly in terms of how claims are handled during the Corporate Insolvency Resolution Process (CIRP).

Background of the Case

The case revolved around the treatment of the claim submitted by the Greater Noida Industrial Development Authority (GNIDA) in the insolvency proceedings of M/s. JNC Construction (P) Ltd (the Corporate Debtor). GNIDA, which had allocated a plot to the Corporate Debtor for a residential project through a 90-year lease, found itself at odds with the resolution process when its substantial claim was significantly reduced in the resolution plan. This treatment of GNIDA's claim underscored the procedural ambiguities and the necessity for a judicious interpretation of the Insolvency and Bankruptcy Code (IBC), 2016, and its accompanying regulations.

INDIA NETWORK

Quarterly E-Newsletter (January- March 2024)

Ms. Maneesha Dhir appointed as Asia Networks Director of IWIRC International

Ms. Maneesha Dhir, Managing Partner at Dhir & Dhir Associates has been appointed as Asia Networks Director of IWIRC International for 2024. With this appointment, she is now a member of the Management Committee of the Board of Directors of IWIRC and shall generally be responsible to support and mentor the existing Asia networks. Ms. Dhir's role as the Co-Chair of IWIRC India Network since 2017 has been pivotal in establishing IWIRC's presence in India, contributing significantly to its growth and influence. We congratulate her on this achievement and wish her the best in this new role.

Dilemma Surrounding The Resolution Of Go Air by Varsha Banerjee <https://www.outlookindia.com/hub4business/dilemma-surrounding-the-resolution-of-go-air>

Decoding BRSR Disclosures For FY 23-24 Onwards by Sonal Verma, Partner and Anshita Agarwal, Associate <https://www.mondaq.com/india/human-rights/1461460/decoding-brsr-disclosures-for-fy-23-24-onwards>

Ms. Maneesha Dhir receives the Managing Partner of the Year (Female) by The Economic Times <https://legal.economictimes.indiatimes.com/news/industry/winners-of-the-1st-edition-of-et-legal-awards-2023/105726384>

Our Founder & Managing Partner Alok Dhir shared his views with MINT HT Media Ltd. in a story titled New hope for bankrupt Go Air as Ajay Singh, Sky One submit bids for the airline. Have an interesting read through: <https://lnkd.in/gV3BF6ar>

Dhir & Dhir's Partner Varsha Banerjee's views on Dilemma Surrounding The Resolution Of Go Air is published in Outlook India <https://www.outlookindia.com/business-spotlight/supreme-court-upholds-nclat-order-wrt-counting-of-votes-of-real-estate-allottees>

Supreme Court Upholds NCLAT Order wrt counting of Votes of Real Estate Allottees <https://www.republicworld.com/initiatives/supreme-court-upholds-nclat-order-wrt-counting-of-votes-of-real-estate-allottees/>

Navigating the Legal Labyrinth: Unpacking the Supreme Court's Verdict in Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni <https://www.moneycontrol.com/news/brand-connect/navigating-the-legal-labyrinth-unpacking-the-supreme-courts-verdict-in-greater-noida-industrial-development-authority-vs-prabhjit-singh-soni-12489401.html>

Navigating the legal and ethical implications of AI <https://www.dailypioneer.com/2024/columnists/navigating-the-legal-and-ethical-implications-of-ai.html#:~:text=The%20issues%20of%20bias%20and,in%20the%20application%20of%20AI>

"AI For Good: India And Beyond" - A Book Navigating The Legal Landscape Of AI by Maneesha Dhir and Sonal Verma <https://www.outlookindia.com/hub4business/ai-for-good-india-and-beyond-a-book-navigating-the-legal-landscape-of-ai>

<https://www.livelaw.in/book-reviews/ai-intellectual-property-rights-rmlnlu-eu-ai-act-258379>



AWARDS & ACCOLADES

4th May, 2024 - Maneesha Dhir, Managing Partner, has been honoured with the Lawyer of the Year Award for Insolvency & Restructuring at the **13th Annual Legal Era Awards 2023-2024!**



12th May, 2024 - Dhir & Dhir Associates won ESG Law Firm of the Year at the **5th Annual BW Legal Leader Awards**



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BEST ESG LAW FIRM OF THE YEAR

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Jury Chair: Justice Dipak Misra, Former Chief Justice of India, **Jury Co-Chair:** Dr. Lalit Bhasin, Managing Partner, Bhasin & Co.
Jury Members: Dr. Anurag Batra, Chairman & Editor-in-Chief, BW BusinessWorld & Founder, ExchangeMedia; Christopher Krishnamoorthy, Group General Counsel, InterGlobe Enterprises; Geeta Luthra, Senior Advocate, Supreme Court of India; K Satish Kumar, Group Chief Legal Officer, Intellic Design Arena; Mayer Vasani, Legal Director, Southern Rail; Komal Pooji Sahgal Mahant, General Counsel, Adia Service Centers & Company Secretaries; Sun Life; Prasad Mehta, Director, Legal, Freshfields; Roop Loomba, Legal Head- India, Alconobol; Shagorfa Rashid Khan, Group General Counsel & Head Corporate Affairs, National Investment and Infrastructure Fund; Sharayu Jadhav, General Counsel, Acko; Noor Fatima Warsa, Group Editorial Director, BW BusinessWorld; Ashima Ohi, Managing Editor, BW Legal World



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MAY 12, 2024

Ms. Maneesha Dhir, has been honored with the prestigious The Economic Times Legal Award for Managing Partner of the Year 2023 (Female). This esteemed accolade was bestowed at the Economic Times 'Global Legal Conventional' in Mumbai. <https://legal.economictimes.indiatimes.com/news/industry/winners-of-the-1st-edition-of-et-legal-awards-2023/105726384>



THE PODIUM

23rd March, 2024 - Sonal Verma, BA, LL.M (UK), Partner & Global Leader (Markets & Strategy) Dhir & Dhir Associates graced the prestigious G20 Conclave, jointly organized by the American Bar Association, Harvard Law School Center on the Legal Profession and Jindal Global Law School (JGLS) & Jindal Global Centre for G20 Studies on the theme "Role of Lawyers and the Legal Profession in the Economic Development of G20 Countries".



20th Feb, 2024 - Managing Partner, Maneesha Dhir spoke at a Webinar titled INSOL Focus Webinar: Navigating cross-border insolvency recognition in Asia - Current Landscape and Future perspective organized by INSOL International. The webinar was Moderated by Veronica Chan, Tanner De Witt, Hong Kong PRC and other esteemed panellists including Meiyen Tan, Ascendant Legal/Norton Rose Fulbright, Singapore, Lingqi Wang, Fangda Partners, PRC and Tiffany Wong, Alvarez & Marsal, Hong Kong PRC.



19th March, 2024 - Guest lecture by Ms. Maneesha Dhir, on Artificial Intelligence at Dr. Ram Manohar Lohiya National Law University campus, Lucknow



19th Feb, 2024 - Sonal Verma, Partner - ESG Advisory shared his views with other eminent speakers over an enriching and insightful round table discussion hosted at the prestigious Hotel Taj Mahal, New Delhi, marking a significant milestone in the dialogue around Corporate and ESG (Environmental, Social, and Governance) practices. This event was a collaborative effort between OP Jindal University and Pace University, USA, bringing together the brightest minds from academia, law, and business sectors.



17th Feb, 2024 - At Dhir & Dhir Associates Environment, Social and Governance (ESG) remains a major commitment. Sonal Verma, Partner - ESG Advisory addressed The Institute of Company Secretaries of India, Navi Mumbai Chapter of WIRC audience recently.



9th Feb, 2024 - Ms. Naveli Reshamwalla, Associate Partner at Dhir & Dhir Associates, graced the stage as a panellist at the prestigious MANTHAN 9.0. This annual event was organized by the Internship and Placement Committee (IPC) of Dr. Ram Manohar Lohiya National Law University, Lucknow.



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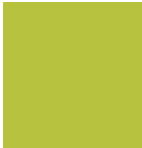
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PODCASTS - ESG DECIBELS



**ESG Decibels
Season 3 Ep 3**

EU Leading the ESG Policy Landscape

Welcome back to another engaging episode of the ESG Decibel Podcast Series! In this installment, we are thrilled to host Mr. Richard Howitt, a distinguished Strategic Advisor on Corporate Responsibility and Sustainability, as well as Business and Human Rights. With a wealth of experience as a former Member of the European Parliament for an impressive 22 years, Mr. Howitt brings unparalleled insights into the realm of ESG (Environmental, Social, and Governance) issues. Currently serving as a member of various advisory councils and boards, including Amfori and EIRIS Foundation, Mr. Howitt continues to be a prominent voice in driving responsible business practices and advocating for sustainability across diverse sectors. Join us as we delve into his extensive expertise and glean valuable insights into the ever-evolving landscape of ESG and corporate sustainability.



RICHARD HOWITT
Strategic Advisor on Corporate Responsibility and Sustainability,
Business and Human Rights
(Former Member of European Parliament and Former CEO of
International Integrated Reporting Council)



SONAL VERMA
Partner
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**ESG Decibels
Season 3 Ep 2**

Amplifying ESG: Navigating the Global Landscape for Sustainable Impact

Welcome back yet again to another episode of the ESG Decibel series! This time, get ready for something big and different as we welcome a true leader in the field, Ms. Mardi McBrien. With an impressive portfolio, Mardi currently serves as the Chief of Strategic Affairs & Capacity Building at the IFRS (International Financial Reporting Standards) Foundation. As a member of the xBRL International Board of Directors and the Sustainability Committee at the ICAEW (Institute of Chartered Accountants in England and Wales), Mardi brings a wealth of expertise to the table. She is also a trusted executive and Board Member at the Trusted Executive Fellowship (TEFB3) and contributes to the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce). Join us as Mardi shares insights and perspectives on ESG (Environmental, Social, and Governance) and sustainability, navigating the complexities and driving positive change in the global landscape.



MARDI MCBRIAN
Chief of Strategic Affairs &
Capacity Building International Financial
Reporting Standards Foundation



SONAL VERMA
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