

The logo consists of the letters 'FL' in a stylized, outlined font. The 'F' is white and the 'L' is orange. To the right of the 'L' is the word 'FIREFLIES' in a white, serif font, with a registered trademark symbol (®) to its upper right. Below 'FIREFLIES' is the word 'LEGAL LLP' in the same white, serif font.

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A Fact Business Entities should know

*“Law **I**n **I**tself **I**s a **P**rogressive **S**tep
Towards **Y**our **B**usiness **G**rowth”*

What we have covered in this PPT?

1. What do you mean by Commercial Transaction?
2. What You mean by Recovery of Dues?
3. What is a "Disputed Transaction" and "Undisputed Transaction" and how it affects your recovery and how to avoid?
4. What are the various Business Entities that are in operation in India?
5. What do you mean by "Debt" and "Legal Debt"?
6. What are the various methods of "Recovering the Dues in Indian Laws"?
7. Know the Pre-Litigation Strategy to be taken by Business Entities and its relevance
8. Is a Written Contract a mandatory requirement in Today's Business era?
9. What exactly is Written Contract?
10. Major Reasons as to why the Litigation happens in Commercial Transactions?
11. What is the best way to avoid small business litigation?
12. How to Choose Legal Advisor?
13. Whether Online Drafts makes Your Business Contract easier or there is a risk involved?

What we have covered in this PPT?

14. What are the common mistakes while ensuing the process of Recovery of Dues?
15. Whether transactions done through E-mail, whatsapp, phone are acceptable evidence in the Court of Law?
16. What is the status of Post Dated Cheques in Recovery Procedure?
17. What are the relief measures if a business is registered under MSME?
18. Can a Legal Suit be filed under Criminal Court for Recovery of Dues?
19. What are quick legal course of action available for Recovery of Business Dues?
20. Can there be a prosecution if cheques taken in advance get bounce
21. What are the rights of Legal Heir after the death of Principal Creditor?

Transactions Vs Commercial Transactions Vs Non-Commercial Transactions

Transactions means an act called as dealing between two parties and it can either be commercial transaction or non-commercial transactions and is not tested by Legal Forums

Commercial Transactions can be simply be termed as an interaction between two or more parties (of all kinds) in which goods, services or something of value is exchanged for some type of consideration. Do note that under Indian Contract Act, consideration plays a very important role in making an contract enforceable and unenforceable

Transactions which are not commercial in nature are **Non-Commercial**.

For ex., if a friend gives someone a loan (friendly loan) and the only document it has is a proof of payment and/or MOU and/or Undertaking and/or an acknowledgement of acceptance

Commercial or Non-Commercial can be recovered under Indian Laws, subject to certain restrictions under remedial part

What do you mean by Recovery of Dues?

The term "**Recovery of Dues**" in **Commercial Transactions** means

any dues which is not paid by the goods receiver/services availer which he/she/they is/are legally liable to pay but does not pay for reasons not known to recipient and since no payment is made the process is taken to call for outstanding dues and this process of taking steps to recover outstanding dues is most of times and infact is termed as "Recovery of Dues". The dues are termed as "Legal Debt" which has utmost significance in Recovery Laws"

Note: *The term "Recovery of Dues" basically also relates to the recovery proceedings taken by Banks, NBFC, Societies, etc but it may or not be the outcome of Commercial Transactions. Here, the Recovery of Dues is arising out of Commercial Transactions*

What is Disputed and Undisputed Transactions?

Definitions

“Disputed” in Transaction means either Breach of Contract by failing to perform as per requirement (if there is a written contract) or not as per market practice (if not in written form). Raising Dispute has become a fashion to avoid legal action against them and also act as disturbance for Supplier/Service Provider to claim the money under Laws at summary process. **“Non-Disputed”** means having proof of all compliance by Aggrieved Party and no dispute being raised or if raised can be proven at the earliest being bad in facts

How it affects your recovery of dues?

Reasons why You shall be serious on closing this dispute issues that if not taken this matter on time, this will stop You from availing the summary remedy for recovery in your business and the matter which can be closed in a year or less than that will take a good time and efforts and money to prove

How to avoid them?

- Be Vigilant
- Get into Written Contract
- Ensure regular correspondence of factual stand
- Ensure closure or clarification on any dispute raised, whether valid or not
- Take Legal opine and move ahead

Types of Business Entities

- ◆ Sole Proprietorship Firm
- ◆ Partnership Firm
- ◆ Company (Pvt or Public)
- ◆ One Person Company (OPC) Pvt Ltd
- ◆ Limited Liability Partnership
- ◆ Hindu Undivided Family (HUF)
- ◆ Individual Persons
- ◆ Body of Individuals
- ◆ Association of Persons
- ◆ Liaison Office of Foreign Company
- ◆ Joint Venture
- ◆ Consortium
- ◆ Trust (Pvt or Public)

Debt Vs Legal Debt



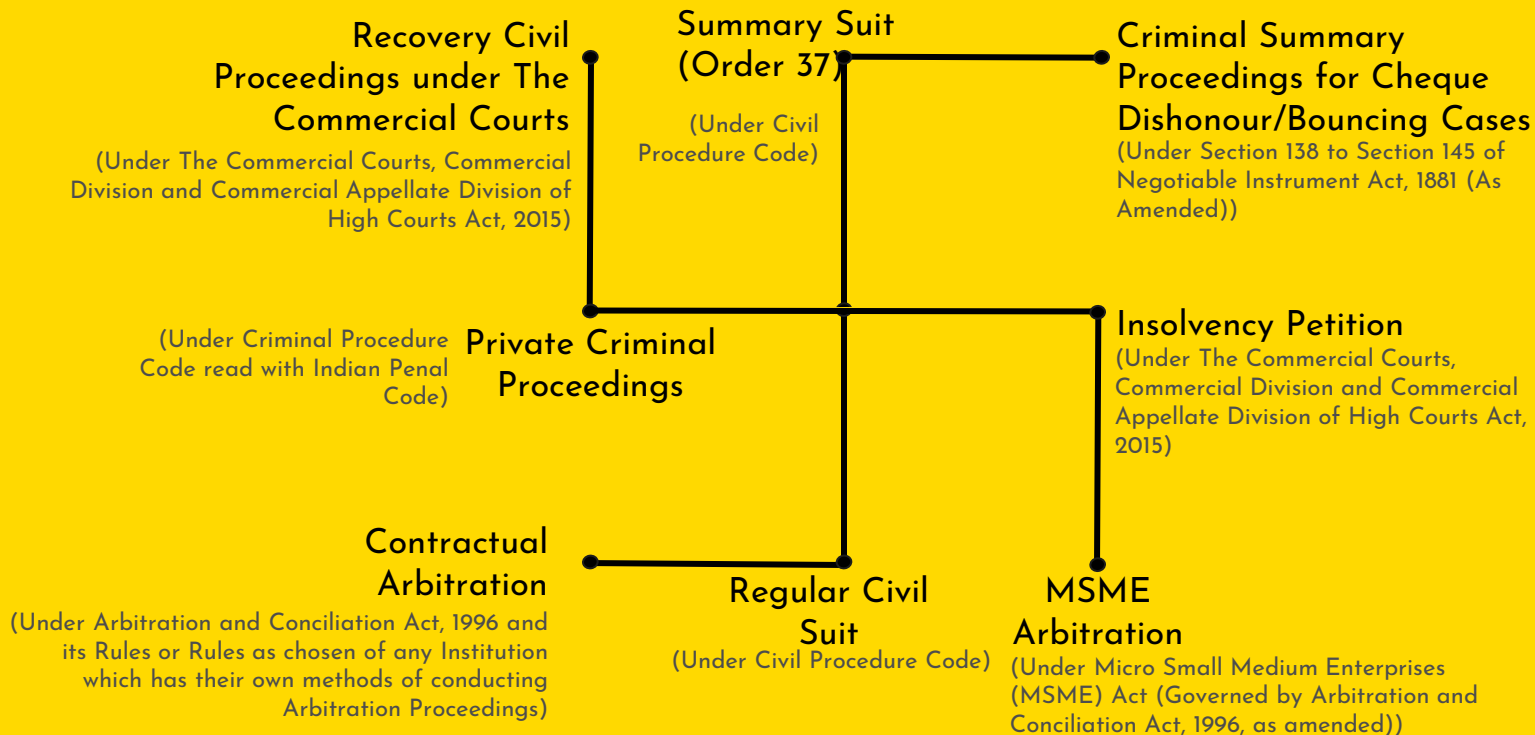
Any payment which is outstanding according to aggrieved party, whether arising out of written contract or not, and such aggrieved party, believes such outstanding as Debt without being tested under Law and put as Debt in its Balance sheet is a Debt.

Such Debt may be a Debt according to aggrieved party but it does not necessary be called as Legal Debt.

The Courts at various intervals have dismissed the recovery claims due to not finding the Debt being a Legal Debt. Debt even if outstanding but not prove-able before Court disqualifies for being a Legal Debt and since so, no recovery can be made.



Ways for Recovery of Dues in Law



Pre-Litigation Strategy to be taken by Business Entities



Keep your records clean



Maintain a chain of E-mail conversations with your Clients



Keep a record of the notices received or sent.

If possible maintain a set of Sample Drafted Documents in advance, duly audited and authroised by a Business Lawyer.



Written Contracts and their importance in a Business

What exactly is a Written Contract?

The term "Written Contract" shall not mean that the contract must be signed by the parties concerned. It means that the contract must be expressed and when its existence and enforceability can be traced to conduct of the parties to the contract, although the expressed contract may not be signed by the parties concerned.



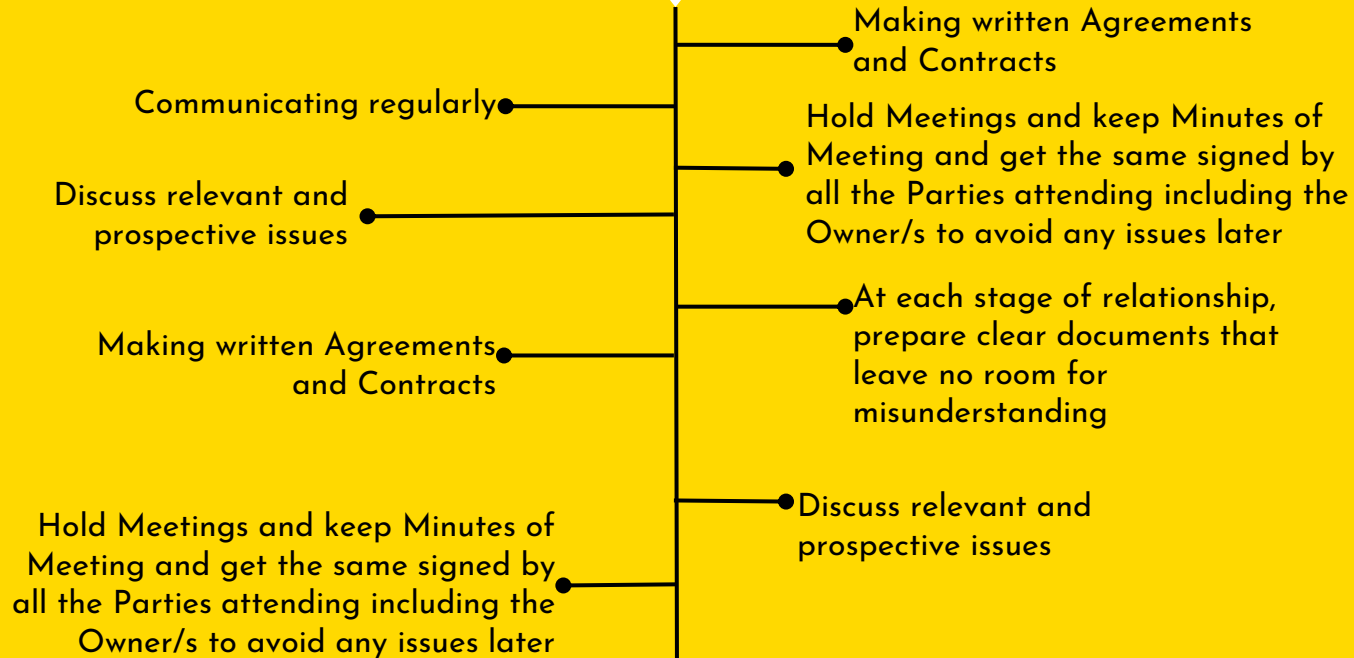
Why are Written Contracts so necessary?

There is no better alternative of having written contract and in fact written contracts are undisputed at any point of time. Having business on implied contract are not invalid but it is subject to argument and interpretation which actually takes a lot of time on resolving the cases and in fact having no contract will give less legal remedial measure to recover the money and hence the best strategy is to have a written contract.

Major reasons why Litigation happens in Commercial Transactions

- 1 Either of the Party does not play their role as per agreed terms
- 2 Miscommunication
- 3 Poorly drafted contractual document
- 4 Different Understandings and interpretation of the Parties as to the law
- 5 Ego, Greed or Revenge
- 6 Saving money by not hiring experience Legal Advisor and making contractual documents from the Internet

Ways to avoid litigation for a Small Business



How to choose a Legal Advisor?

Choosing Legal Advisor is as per one's Strategy. However, there are certain points which one can remember while selecting Legal Advisor. The Legal Advisor shall do the following:

1. Telling all remedies and suggesting the best one to go for

2. Not to Miss Dates/fail to turn up at Court dates

3. Avoiding needlessly seeking adjournments and allowing the case to drag on for years

4. Avoid Mis-report, confuse client with vagueness and half truths

5. Avoid Accepting unfavorable Consent Terms

(The term Consent Terms means mutually decided terms between two or more litigation parties or non-litigation parties to resolve any kind of disputes)

6. Avoid answering/returning client's calls, text messages and emails

Whether Online Drafts make your Business Contract easier or there is a risk involved?

You should consider these factors before deciding whether an online legal services company is your best choice

- They do not understand your Business Strategy and there is no understanding consensus meeting and hence they are not in a position to analyze what type of entity is best for you
- They do not discuss the Levels of Liability Protection available to you nor how to conduct your business for maximum protection
- The contracts you buy from them will be One-Size-Fits-All and it may contain the provisions which may not be appropriate for your requirements
- They will not advise you about the local regulations, such as trade license requirements, which may restrict your business operations or prohibit it altogether at the location you choose.
- In regard to IPR, they don't inform you what is the best way to protect your IPR
- The list goes on and on and on...

It is all about your safety and your security and one small mistake either in commercial agreement from legal aspects or formation; it may ruin your whole idea of business set-up

Common mistakes while ensuing the process of Recovery of Dues?



Taking it casually to recover the money



Waiting for the last month before Limitation ends to claim the money



Not going for the Best Legal option available at that time



Costing is important in Legal but having a good lawyer with business background is even more important than your costs

Whether transactions done through Email, WhatsApp, Phone are acceptable evidence in the Court of Law?



Emails - Yes, but with condition



WhatsApp - No, but it can be in certain cases



Phone - No

What is the status of Post Dated Cheques in Recovery Procedure?

Post Dated Cheques (PDC) plays an important role in recovery procedure and the result of PDC bouncing is Section 138 case. But there are ways to ensure your PDC results in legal debt and falls under Section 138 features else if not taken care, PDC will not bring any value to Section 138 proceedings.

What are the relief measures to a Business that is registered under MSME?

MSME is future and in fact Government by bring this MSME is already acting as savior to many MSME. There are many benefits from Legal Perspective such as:

- Defined Period of Credit Days
- Defined Period of raising dispute
- Defined period of MSME process
- MSME Samadhan
- Online and Arbitration mode
- Special Law prevailing over other remedy
- Defined interest rate to be claimed for
- Appeal only post deposit of 75% with Appellate Court



For Recovery of Dues

Can a Legal Suit be file under Criminal Court?

Practically no and in certain situation you can but that becomes part of your Legal Strategy

What are quick legal course of action available for Recovery of Dues?

Instead of knowing "Quick Legal Course of Action" let's understand the "Best Legal Course of Action". Best option depends on case to case and it purely depends on Legal Strategy and I always prefer Legal Strategy starts with Contracts but if you have missed then also given important to Legal Strategy at the time of you plan to take an action. Please note that being in Business market, our aim shall be to maintain good relations to do business but at same time to ensure recovery is done and hence this does call for pre-litigation strategy and strategy at later course when you plan to move ahead. Sharing option wise the best remedy but it depends:

- Contractual Arbitration
- MSME Arbitration
- Section 138 with any other remedy as available
- NCLT (if arrears are above Rs.1 Crore)
- Summary Commercial Suit
- Regular Civil Suit
- Private Criminal Case, depends on case to case and strategy wise



Can there be prosecution if cheques taken in advance gets bounce?

Yes, but laws to be complied with



What are the rights of the Legal Heirs after the death of Principal Creditor?

Legal Heir has **same right** to claim but no doubt with certain compliances



We hope that this information will be useful in upgrading your legal information

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