

ALBA LAW OFFICES

Newsletter | January 2026

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HIGHLIGHTS OF THE MONTH

○ **Delhi High Court Orders Destruction of Infringing Nutella Lookalike Jars**

[Mr. Abhimanyu Prakash & Ors. v. Ferrero S.P.A. & Ors.(RFA(OS)(COMM) 1/2026)]

The Delhi High Court upheld the Single Judge’s finding that the defendants’ manufacture and sale of empty jars imitating Ferrero’s registered NUTELLA jar amounted to trademark infringement and warranted the statutory remedy of delivery-up. It was noted that the defendants were rightly held to be “knowing infringers” and this finding could not be re-agitated in an appeal confined only to the direction regarding release of the seized goods.

The Court observed that once infringement is established, the Trade Marks Act, 1999 (the “Act”) contemplates delivery-up of infringing goods as a form of final relief i.e., a direction for surrender of infringing articles for destruction as part of the remedies provided under Section 135(1) of the Act. The Court, thus, sustained the previous direction of delivery-up, but modified it to clarify that the jars were to be handed over only for destruction and not for any other use, recording Ferrero’s undertaking and permitting the defendants’ representative to remain present at the destruction process.

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○ **Taj Hotels secures statutory protection for its sound trademark**

The Indian Hotels Company Limited (IHCL), which owns and operates the renowned Taj Hotels brand, has secured trademark registration for its distinctive sound mark, marking a significant development in the recognition of non-traditional trademarks in India. The registered sound mark consists of a musical sequence of notes D E E G A E in D Major, with a 4/4 time signature and a tempo of 130 beats per minute. The sound functions as a sonic signature for the Taj brand across physical and digital platforms.

The application was filed under the Trade Marks Act, 1999, and was granted registration on January 07, 2026, with effect from the application dated April 17, 2025. The sound mark was successfully registered for a period of ten

years from the application date with the option of renewal for successive ten-year terms. The registration grants IHCL exclusive rights over its sonic identifier in relation to hospitality, advertising, and digital services. The mark has been registered across Classes 9, 35, and 43, covering software and mobile applications, advertising and promotion, customer loyalty programs, and hospitality and accommodation services. It also highlights the growing importance of sonic branding in experience-driven sectors such as hospitality, where consumer engagement extends beyond visual identity.

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○ **Delhi High Court holds ‘TIGER’ to be Generic and denies interim relief to Mayank Jain**

[Mayank Jain, Proprietor of Mahaveer Udyog v. M/s Atulya Discs Pvt. Ltd. & Ors.]

The Delhi High Court declined to grant an interim injunction in a trademark dispute concerning the use of the mark “TIGER” for agricultural implements. The Plaintiff (Mayank Jain, trading as Mahaveer Udyog), owner of the registered device mark “TIGER GOLD BRAND”, alleged trademark infringement, passing off, copyright infringement and unfair competition, substantial goodwill and deceptive similarity against the Defendant’s i.e., M/s Atulya Discs Pvt. Ltd. & Ors. use of the mark “TIGER PREMIUM BRAND”. However, the Defendants argued that the words “TIGER” and “BRAND” are generic words, common to trade and publici juris.

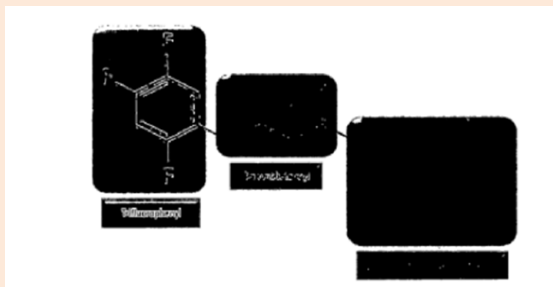
The Court accepted the Defendants’ position and held that the expression “TIGER” has been extensively used across industries and does not uniquely identify the Plaintiff’s goods. There is a widespread use of the mark ‘TIGER’ for various goods and services across India, hence, ‘TIGER’ is publici juris and common to trade and the Plaintiff does not have the exclusive right to use the word ‘TIGER’. Furthermore, by applying the Anti-Dissection rule under Section 17 of the Trademark Act, 1999, and relying on the Pernod Ricard India, the Court compared the marks as a whole and found no deceptive similarity in appearance, structure, or overall commercial impression. It further held that there was no prima facie evidence of misrepresentation or damage, which are essential to sustain a passing-off claim. Consequently, no case for infringement or passing off was made out, and the application for interim injunction was dismissed.

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○	The Delhi High Court upholds interim injunction in "DASAPRAKASH" trademark dispute. <i>[Dasaprakash Restaurant and Ice Cream Parlour Pvt Ltd & Anr V. Mysore Dasaprakash And Ors. (FAO(OS) (IPD) 1/2023)]</i> The Delhi High Court recently dismissed appeals filed by Dasaprakash Restaurant and Ice Cream Parlour Pvt Ltd (“Appellants”), upholding an interim injunction that restrains them from using the DASAPRAKASH mark. The Court found that the Appellants’ right to use the mark, which they claimed through a Memorandum of Understanding (“MOU”) and subsequent agreement with a family member of the original founder, was legally unsustainable. The Court’s decision centred on the invalidity of the transfer of trademark rights to the Appellants based on several critical observations. K. Balakrishna Rao, the family member who entered into the agreements with the Appellants, had been adjudged insolvent by the High Court of Madras on March 22, 2001. Consequently, the agreement dated November 11, 2001, was deemed void ab initio as he was legally incompetent to enter into contracts while the insolvency order was in force. Furthermore, a 1989 Family Arrangement permitted family members to use the "Dasaprakash" name through outside undertakings only if they remained a major shareholder, director, or partner. The Court held K. Balakrishna Rao held only a 10% share in the Appellant company, failing to meet the "major shareholder" requirement or the 40% shareholding envisaged in the original MOU. Additionally, the trademark was identified as a family mark jointly owned by the legal heirs of the originator, Sitarama Rao, meaning one proprietor could not unilaterally transfer rights to a third party. Accordingly, the Court confirmed the interim injunction restraining the Appellants from using the mark DASAPRAKASH or any mark deceptively similar thereto in respect of ice creams, restaurants, or allied goods and services pending the disposal of the suit. The Court emphasized that a prima facie case of infringement resulting in a likelihood of confusion had been established. Read Here
○	The Delhi High Court decrees patent infringement suit in favour of Merck Sharp & Dohme Corp.

[Merck Sharp & Dohme Corp. & Anr. V. Ranvir Kumar Bindeshwari Singh & Ors. (CS(Comm) 1075/2018)]

The Delhi High Court recently decreed a suit in favour of Merck Sharp & Dohme Corp. and Sun Pharmaceutical Industries Ltd. (“Plaintiffs”), holding that Ranvir Kumar Bindeshwari Singh and others (“Defendants”) had infringed the Plaintiffs' registered patent no. 209816 for the molecule SITAGLIPTIN.



The Court’s decision was based on the un rebutted evidence provided by the Plaintiffs regarding the Defendants' manufacturing and export activities. Investigation revealed that the Defendants were advertising and selling infringing tablets under the brand name ‘SEPAMET-XR’ on various e-pharmacy websites. Despite an ex-parte ad interim injunction granted in August 2018, the Defendants continued to advertise the product for sale as late as 2021.

Noting the Defendants' eventual failure to participate in the proceedings after being proceeded ex-parte on March 7, 2024, the Court treated the Plaintiffs' evidence and computation of damages as unchallenged. The Court observed that the Defendants' conduct, including the manufacture of sub-standard medicines, posed a serious risk to public health and warranted strict judicial intervention.

Accordingly, the Court granted a decree for damages and costs to be paid by the Defendants jointly and severally. This amount includes compensatory damages based on estimated illegal profits, exemplary damages for wilful disobedience of the injunction, and legal costs amounting.

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- **Madras High Court observes that “Vapo” is a Descriptive Term and therefore Cannot be Monopolised**

[The Procter and Gamble Company Vs IPI India Private Limited, O.P.(TM) Nos. 48, 49 and 50 of 2024]

The Madras High Court held that the term “VAPO” is publici juris, i.e., it belongs to the public at large and is generic in nature. The court observed that no entity can claim exclusive right to use any abbreviation, which has become publici juris.

The present petition was filed by Procter & Gamble Company (P&G) (“Petitioner”), the proprietor of the mark “VICKS VAPORUB”, seeking to restrain IPI India Private Limited (“Respondent”) from using the marks “VAPORIN”, “VAPORIN COLD RUB”, and allied device marks under Classes 3 and 5 of the Trade Marks Act, 1999, (“Act”) alleging infringement.

The Petitioner asserted that Vicks was launched internationally in 1890 and in 1964 in India, and its trademarks enjoy extensive reputation and goodwill. Petitioner further alleged that the Respondents possess dishonest intentions. On the other hand, the Respondents opposed the petition by pointing to various third-party products using the prefix of Vapo and relied on its long-standing use, registrations and advertisement since 2013.

The court examined the principles of deceptive similarity, phonetic and structural resemblance, trade dress, and consumer perception, and held that an average consumer of ordinary intelligence and imperfect recollection would not associate the Respondent’s product with that of the Petitioner, as the marks are phonetically distinct and the visual presentation of the products is materially different, thereby negating any possibility of deception.

The Court dismissed the petitions and held that “Vapo” is merely an abbreviated form of “vapour” and is widely used to describe vapour-based medicinal products. The rival marks are distinct, and commonly used expressions such as “Vapo” cannot be monopolised.

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- **Supreme Court Rules Lack of Section 21 Notice Not Fatal to Valid Arbitrable Claims. High Court Division Bench reinstates trademark suit, upholds territorial jurisdiction**

[M/s Bhagheeratha Engineering Ltd. v. State of Kerala 2026 INSC 4]

In the present appeal, the Supreme Court set aside the judgement of the Kerala High Court and restored an arbitral award in its entirety, holding that the arbitral tribunal had not exceeded its jurisdiction by adjudicating multiple disputes in the absence of separate notices under Section 21 of the Arbitration and Conciliation Act, 1996 (the “Act”).

The Court held that where an arbitration clause is broadly worded to cover “any dispute arising out of or in connection with the contract,” the scope of arbitration cannot be artificially confined to a single dispute merely because the notice invoking arbitration referred to one claim. The Court clarified that Section 21 serves a procedural purpose, namely, to determine the commencement of arbitral proceedings for the purpose of limitation, and does not operate as a jurisdictional bar.

The Court expressly held that non-issuance of a separate Section 21 notice for each claim is not fatal to arbitral proceedings, provided the disputes fall within the arbitration agreement and are otherwise arbitrable. It was observed that Section 21 is not a mandatory precondition for the tribunal’s jurisdiction, and procedural non-compliance cannot invalidate an award in the absence of demonstrable prejudice. Therefore, the failure to issue such notice does not bar arbitration if the claims are otherwise valid and the disputes are arbitrable. Importantly, the court also highlighted the principle that no party can take advantage of its own wrong. In the present matter, the Respondent’s conduct, including its application to declare the entire Adjudicator’s decision null and void, clearly indicated an intention to reopen all four disputes, thereby waiving any procedural prerequisites.

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○ **Special Statutory Jurisdiction Does Not Automatically Defeat Arbitration Clauses**

[Motilal Oswal Financial Services Ltd. v. Santosh Cordeiro [2026 INSC 5]]

The Supreme Court of India in this case rejected the civil appeal challenging the Bombay High Court’s decision of appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (the “Arbitration Act”). The dispute arose from a commercial leave and license arrangement concerning office premises in Mumbai, under which the licensor invoked the arbitration clause to pursue claims relating to unpaid license fees after the premises were vacated. The appellant argued that the dispute was not amenable to arbitration in view of Section 41 of the Presidency Small Causes Courts Act, 1882, which, according to it, conferred exclusive jurisdiction on the Small Causes Court.

Affirming the High Court’s approach, the Supreme Court held that at the stage of considering an application filed under Section 11 (6A) of the Arbitration Act, the court’s scrutiny is limited to a prima facie determination of the existence of an arbitration agreement, without undertaking an in-depth analysis of arbitrability or statutory jurisdiction bars. The court further

observed that Section 41 of the Presidency Small Cause Courts Act, 1882 merely confers jurisdiction on a special court and does not, by its own force, extinguish or nullify an arbitration agreement, especially when the dispute is purely monetary, and possession has already been handed over. Accordingly, the appeal was dismissed, and the arbitral proceedings were allowed to continue.

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○ **The Supreme Court emphasizes limited Judicial Intervention under the Arbitration Act.**

[Jan De Nul Dredging India Pvt. Ltd. v. Tuticorin Port Trust [2026 INSC 34]]

The Supreme Court in this case has once again affirmed the limited scope for judicial intervention in arbitration under Arbitration and Conciliation Act, 1996 (the “Act”). The Court held that arbitral awards should not be disturbed unless the award is patently illegal or against public policy. The dispute stemmed from an appeal filed by Jan De Nul Dredging India Pvt. Ltd. (“Appellant”) challenging the order passed in 2021 by the Division Bench of Madras High Court under Section 37 of the Act, whereby the High Court interfered with the Arbitral Award that had earlier been upheld by the Single Judge under Section 34 of the Act.

The parties had entered into a License Agreement for deepening of the channel and basin to accommodate larger vessels, within a specified time schedule. The said agreement provided that any disputes arising from this agreement shall be resolved by arbitration under the Act. During the term of this agreement, a dispute arose between the parties relating to alleged non-payment and under-payment of dues including compensation for the idling time as raised under the final bill. By invoking the arbitration clause, appellant recovered the compensation for the idling time of one of the dredgers deployed by the Appellant. While this award was upheld by the Single Bench of Madras High court, the division bench overruled it by giving the reasoning that Backhoe Dredger (BHD) is not a major dredger and compensation only applies to Major one.

The Supreme Court held that the division bench exceeded its jurisdiction under Section 37 of the Act by interpreting the arbitral award and interfering with the established award under Section 34 of the Act. The court emphasized that Section 37 appellate powers are strictly limited to the grounds under Section 34 of the Act and cannot involve a fresh merits-based review. It highlighted that excessive judicial intervention undermines the Act’s

	objective of speedy and efficient dispute resolution. Hence, Arbitral awards should be respected unless patently illegal or against public policy. Read Here
○	Notice Invoking Arbitration Marks Commencement of Proceedings under Section 21 <i>[Regenta Hotels Pvt. Ltd. v. M/s Hotel Grand Centre Point and others 2026 INSC 32]</i> The Supreme Court in this matter challenging the Karnataka High Court’s judgment, held that arbitral proceedings commence upon receipt of a valid notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 (the “Act”), and not upon the filing of a petition under Section 11. The Court ruled that interim protection granted under Section 9 of the Act cannot be automatically vacated merely because a Section 11 petition has not been filed within a stipulated period. The Court clarified that statutory framework draws a clear distinction between the commencement of arbitral proceedings and the procedural step of seeking court assistance for appointment of an arbitrator. Interpreting Section 21, the Bench held that arbitration “commences” on the date the respondent receives a notice invoking arbitration, which is determinative for assessing compliance with the timelines contemplated under Section 9(2) of the Act. Rejecting the contrary view adopted by the High Court, the Supreme Court observed that equating the commencement of arbitration with the filing of a Section 11 petition would undermine the legislative intent and render Section 21 otiose. The Court further explained that the expression “initiated” used in Rule 9(4) of the Arbitration (Proceedings Before the Courts) Rules, 2001 must be read consistently with Section 21, and therefore signifies commencement upon receipt of the arbitration notice. The Court held that where a party has issued a valid notice invoking arbitration within the prescribed time, the requirement under Section 9(2) stands satisfied, and interim relief cannot be vacated on the sole ground that a Section 11 petition was filed subsequently. Read Here

○ **Supreme Court upholds arbitral award granting 24% Interest and clarifies limits of Public Policy review**

[Sri Lakshmi Hotel Pvt. Limited & Anr. v. Sriram City Union Finance Ltd. & Anr]

The Hon'ble Supreme Court dismissed an appeal arising from the order passed by the Division Bench of High Court of Madras dated January 07, 2020, challenging an Arbitral Award that directed payment of over ₹2.21 crore with interest at 24% p.a., thereby affirming the decisions of the Madras High Court under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 ("the Act").

The dispute arose from two loan agreements executed in 2006 between Sri Lakshmi Hotels Pvt. Limited ("the Appellants") and Sriram City Union Finance Ltd ("the Respondents"), with an interest of 24% per annum. However, the default of payment by the Appellants took place, and following that, arbitration was invoked by the Respondents, and the award was passed in favour of the Respondents.

In order to challenge the arbitral award, the Appellants argued that the interest rate was unconscionable, violated RBI guidelines, offended public policy, and attracted the Usurious Loans Act, 1918. Allegations of fraud in fixing the interest rate were also raised. Rejecting these submissions, the Supreme Court held that pre-award interest under Section 31(7)(a) of the Act is governed by party autonomy where the contract expressly stipulates the rate of interest. In the present case, the loan agreements clearly provided for interest at 24% per annum, and the arbitral tribunal had merely enforced the contractual terms. The Court held that the award did not suffer from patent illegality. With respect of post award interest under Section 31(7)(b) of the Act, the Court held that the arbitrator's discretion to award interest is statutory and not subject to contractual exclusion, and the award of 24% interest was a valid exercise of such discretion. Relying on precedents, after the 2015 amendment in Section 34 (2)(b)(ii) and Section 48(2)(b) of the Act, and the use of the word 'fundamental' before the phrase "in conflict with public policy" must be understood and interpreted to give a restricted meaning. High interest rates in commercial transactions are not, per se, immoral or illegal. The Court further rejected the Appellants' reliance on RBI Fair Practice Guidelines and the Usurious Loans Act, 1918, holding that RBI Guidelines cannot override the contractual terms in arbitral proceedings and the usury law made in the colonial era cannot dilute the modern arbitration framework under the Act.

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○	Delhi High Court reaffirms strict waiver requirement for Unilateral Arbitrator Appointments <i>[M.V. Omni Projects (India) Ltd. v. Union of India through DY Chief Engg Northern Railway & Anr.]</i> The Delhi High Court has recently ruled that a unilateral appointment of an arbitrator is not validated by consent, conduct, participation in arbitral proceedings, or procedural steps taken before a court, unless the parties expressly waive the statutory bar through a written agreement under the Arbitration and Conciliation Act, 1996 (“the Act”). The dispute arose from terminated railway construction contracts where the Respondents constituted an arbitral tribunal consisting solely serving railway officers in terms of Clause 64 of the General Conditions of Contract (“GCC”). The GCC is a standard form contract prescribed by Indian Railways, governing construction and infrastructure works. The contractor/ Appellant i.e., M.V. Omni Projects (India) Ltd. challenged the tribunal’s order under Section 14 of the Act. The Respondents argued that the Appellant had waived the applicability of Section 12(5) of the Act, through a written waiver executed prior to the constitution of the arbitral tribunal. The court rejected the contention of the Respondents and held that valid waiver under Section 12(5) of the Act must be express, in writing and executed after the disputes arises, with full knowledge of the identities and ineligibility of the arbitrators. The Court reiterated that unilateral appointment of arbitrators by a public authority undermines neutrality and violates Article 14 of the Constitution of India. Accordingly, the arbitral tribunal was set aside, and the parties were directed to mutually agree on a neutral arbitrator. Read Here
○	Supreme Court seeks Centre’s response on Delay in Constituting Arbitration Council of India <i>[Anil Kalyandas Thanvi v. Union of India]</i> The Supreme Court has issued notice to the Union Government in a writ petition by giving directions to constitute Arbitration Council of India (“ACI”) under the Arbitration and Conciliation Act, 1996 (“Act”). The bench has sought the Union Government response, returnable in six weeks. The petition challenges the continuous failure of the Union Government to constitute the ACI despite being the statutory provisions under Section 43A and 43B of the Act and multiple amendments introduced since 2019. This prolonged regulatory inconsistency has resulted in an unregulated arbitration

ecosystem and undermines party autonomy. The plea specifically highlights the Cotton Association of India (“CAI”), alleging that its internal arbitration rules override the party agreements and statutory laws under the Act. It claims that mandatory arbitration clauses are imposed as a precondition for trading, which the petitioner argues is an "unreasonable restriction" on the freedom to trade under Article 19(1)(g). This petition seeks to declare the CAI’s Arbitration Rules dated April 26, 2024, unconstitutional. It contends that trade bodies impose unfair procedures, biased appointment mechanisms and internal appellate processes that conflict with the Act. Moreover, the plea emphasizes that functional ACI is urgently needed to frame uniform policies, qualify arbitrators, and grade arbitral institutions.

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- **Delhi High Court Reaffirms Limited Scope of Section 34 of the Arbitration and Conciliation Act, 1996; Upholds Arbitral Award for Failure to Prove Actual Damages**

[S and S Construction Co v. Union of India Through E EBFDI in (O.M.P. (COMM) 337/2023)]

The Delhi High Court dismissed a petition filed by S and S Construction Co. (“Petitioner”) under Section 34 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”), challenging an arbitral award dated 18.04.2023 which had rejected the Petitioner’s claims against the Union of India.

The Court upheld the Arbitrator's decision to reject the Petitioner's claims for damages due to price escalation and overheads, noting that the Petitioner failed to prove "actual damage suffered," which is a sine qua non for claiming damages under Section 73 of the Indian Contract Act, 1872. The Court observed that mere head-wise calculations submitted by the Petitioner were insufficient to discharge the onus of proof, relying on the Supreme Court's ruling in Unibros v. All India Radio in SLP (Civil) No. 8791 of 2020.

Regarding the claims for withheld amounts and interest, the Court found that the Arbitrator correctly applied the General Conditions of Contract (“GCC”).

Emphasizing the limited scope of interference under Section 34 of the Arbitration Act, the Court reiterated that it does not sit in appeal over an arbitral award and cannot re-appreciate evidence. The Court held that the Arbitrator's view was plausible and not vitiated by patent illegality or perversity, thereby dismissing the petition.

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○ **Delay and Third-Party Rights Defeat Section 9 of the Arbitration and Conciliation Act, 1996 Relief: Bombay High Court Refuses to Restrain Competing Exhibitions**

[Messe Frankfurt Trade Fairs India Pvt. Ltd. v. Netlink Solutions India Limited and Others in (Commercial Arbitration Petition (L) No. 40115 of 2025)]

The Bombay High Court dismissed a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“Act”) by Messe Frankfurt Trade Fairs India Pvt. Ltd. (“Petitioner”) which sought to restrain the holding of two upcoming exhibitions scheduled for January 2026.

The Petitioner contended that its joint venture partners violated non-compete and confidentiality clauses of their Shareholders Agreement by organizing these rival exhibitions using the Petitioner's proprietary database. The Petitioner sought interim measures to stop the exhibitions, arguing they were essentially a rebranding of the Joint Venture's own events.

The Court rejected the petition primarily on the grounds of delay and laches. It observed that the Petitioner had been aware of the impugned exhibitions as early as January 2025 but chose to file the petition only in December 2025/January 2026, mere days before the events were scheduled to commence. The Court held that such a lack of alacrity disentitled the Petitioner to urgent equitable relief.

Furthermore, the Court noted that the exhibitions were being organized by Respondent No. 6 (India Exposition Mart Limited), a third party who was not a signatory to the arbitration agreement. The Court ruled that interim measures under Section 9 of the Act cannot easily be directed against a third party unless they are holding property that is the subject matter of the dispute. The Court found that the exhibition itself could not be termed as "property" in this context.

Concluding that the balance of convenience lay in allowing the exhibitions to proceed, considering the third-party rights of exhibitors and visitors, the Court held that if the Petitioner eventually proves a breach of contract, they can be adequately compensated through damages in the arbitration proceedings.

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○	Supreme Court Clarifies BOCW Cess Liability: Enforceability, Not Enactment, Determines “Subsequent Legislation” <i>[Prakash Atlanta (JV) vs. NHAI in Civil Appeal No. 4513 of 2025]</i> The Supreme Court, while deciding a batch of appeals arising from arbitral awards between NHAI (“Respondent”) and its contractors, examined whether the Building and Other Construction Workers Act, 1996 and the BOCW Welfare Cess Act, 1996 could be treated as “subsequent legislation” for the purpose of reimbursement of 1% cess under the Respondent contracts. The dispute arose from the Respondent’s deduction of cess from contractors’ bills, which the contractors challenged on the ground that the statutory machinery for levy and collection was not in place when the contracts were executed. The Court observed that although the aforesaid Acts were enacted in 1995–96, they remained largely unimplemented for years due to the absence of Welfare Boards, assessing authorities, and State Rules. It held that the cess is inseparably linked to the existence of Welfare Boards, and in their absence, levy and collection of cess would be impracticable and constitutionally suspected. Rejecting the Respondent’s argument that the enactment dates were determinative, the Court held that effective enforceability arose only upon subsequent State notifications and rules activating the statutory regime. These State actions, having occurred after the bid reference dates, rightly fell within the ambit of “subsequent legislation” under the contracts. Emphasizing the limited scope of interference with arbitral awards, the Court found the arbitral interpretation to be a plausible view and upheld the awards directing reimbursement of the cess. Consequently, the appeals were dismissed, and the contractors’ claims were sustained. Read Here
○	Delhi High Court dismisses cross-appeals; affirms power to partially set aside severable parts of Arbitral Award <i>[Prasar Bharati v. Stracon India Ltd & Anr. and Stracon India Ltd v. Prasar Bharati in (FAO(OS) (COMM) 132/2020)]</i> The Division Bench Delhi High Court dismissed cross-appeals filed by Prasar Bharati and Stracon India Ltd., upholding the Single Judge's order which had partially set aside an Arbitral Award. The Division Bench reaffirmed that a court exercising jurisdiction under Section 34 of the Arbitration and

Conciliation Act, 1996 (“Act”) has the power to set aside a distinct and severable part of an award while allowing the remainder to stand.

The Court rejected the contention that the Court enforcing the award must either set aside the award in its entirety or uphold it fully. Relying on the Supreme Court's decision in *NHAI v. Trichy Thanjavur Expressway Ltd.* in O.M.P. (COMM) 95/2023, the Court held that the doctrine of severability applies to Section 34 of the Act. Consequently, if an offending portion of the award (such as a specific claim for damages) is distinct and severable from the rest, it can be annulled without invalidating the valid portions of the award.

The Division Bench upheld the Single Judge's finding, noting that the Arbitrator had granted these damages based on "ipse dixit" (mere assertion) without any substantive evidence to prove actual loss. The Court ruled that awarding damages without proof constitutes "patent illegality," justifying interference under Section 34 of the Act.

The Court emphasized that the scope of interference under Section 37 of the Act is extremely narrow and does not permit a re-appreciation of evidence or the merits of the dispute. Accordingly, the Court dismissed both appeals, maintaining the Single Judge's order which had segregated the valid claims from the invalid ones.

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- **Supreme Court observed that Section 42 of the Arbitration and Conciliation Act, 1996, is not triggered merely because an application under Section 11 of the Arbitration and Conciliation Act, 1996, was filed before a High Court**

[Jagdeep Chowgule Vs Sheela Chowgule, SLP (C) NO(S).10944-10945 OF 2025]

The Supreme Court has held that the application for the extension of time to conclude the arbitration proceedings under Section 29A of the Arbitration and Conciliation Act, 1996 (“Act”) must be filed before the civil court or the court of first instance having original jurisdiction even if the appointment of arbitrator was made by the High Court under Section 11 of the Act.

The Court observed that once the Arbitrator has been appointed through the judicial process, the Courts become functus officio (no longer having official authority) and applications seeking extension of mandate under Section 29A

of the Act are to be filed before the Court as defined in Section 2(1)(e) of the Act.

In the present petition, Appellant challenged the order passed by the Bombay High Court, contending that the Commercial Court alone is the appropriate Court under Section 29A read with Section 2(1)(e) of the Act. The dispute arose out of a Memorandum of Family Settlement pursuant to which differences emerged between the parties, leading to the invocation of arbitration.

However, after the resignation of the presiding arbitrator, the High Court appointed a new arbitrator under Section 11 of the Act. Meanwhile, the Application under Section 29A was allowed by the Commercial Civil Court, which was later on set aside by the Bombay High Court on the ground that only the court that had appointed the arbitrator under Section 11 of the Act possessed the jurisdiction to extend the arbitral timeline.

The Supreme Court, while rejecting the observations made by the High Court, held that the High Court does not possess the power to control the arbitration merely because it had appointed the arbitrator. Moreover, the Supreme Court also rejected the view that if a civil court entertains the application under Section 29A of the Act, it would lead to hierarchical difficulties, conflict of power and jurisdictional anomaly.

The Supreme Court ruled that the expression ‘Court’ under Section 29A of the Act shall be the Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction under Section 2(1)(e) of the Act, and shall not be the High Court or the Supreme Court under Section 11(6) of the Act.

Additionally, the Supreme Court held that Section 42 of the Act, which provides for exclusive jurisdiction in the court where the first application is filed, is not triggered merely because an application under Section 11 of the Act was filed before a High Court.

Hence, the present petition is allowed by setting aside the order of the Bombay High Court and restoring the order of the Commercial Civil Court.

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- **No Tax Without Authority of Law: Supreme Court Clarifies Limits on Customs Duty, SEZs and Delegated Legislation**
[Adani Power Ltd. v. Union of India (2026 INSC 1)]
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In a long-running dispute over customs duty on electricity supplied from the Mundra Special Economic Zone (SEZ) to Domestic Tariff Area (DTA), the Gujarat High Court in its judgment dated July 15, 2015 struck down Notification No. 25/2010-Cus. (27 February 2010) insofar as it retrospectively imposed duty from 26 June 2009. It was held by the Gujarat High Court that such retrospective levy of customs duty through a subordinate legislation was without authority of law and is violative of Article 265 of the Constitution of India. However, by judgment dated 28 June 2019, the High Court declined to extend relief in respect of subsequent notifications that restructured the levy on a per-unit basis, effectively refusing the refund claim for the later period. The Supreme Court has now overturned the 2019 ruling, reiterating that the 2015 judgment identified a fundamental absence of the taxable event and that merely altering the rate or form of an invalid impost through later notifications cannot supply legislative authority or sustain the levy.

The Supreme Court reaffirmed Gujarat High Court's earlier decision (2015), holding that customs duty under Section 12 of the Customs Act, 1962 ("Customs Act") is attracted only on goods "imported into India", and electricity generated within the Mundra SEZ and supplied to the DTA does not constitute an import. Under the Special Economic Zones Act, 2005 ("SEZ Act"), goods moved from an SEZ into the DTA are chargeable to customs duties "as if such goods had been imported into India" under Section 30 of the SEZ Act. Previously electricity supplied from an SEZ to DTA attracted a nil rate of customs duty, however, the Central Government by its notification dated 27 February 2010 imposed customs duty at 16% on electrical energy supplied from an SEZ to the DTA, with retrospective effect from 26.06.2009.

The Court observed that earlier judgement rightly identified "the absence of a taxable event", "the misuse of the exemption power", and "the inherent arbitrariness of the scheme" in levying of customs duty under Section 12 of the Customs Act and the exemption power under Section 25 of the Customs Act could not be used to impose a levy. However, Supreme Court set aside the 2019 judgement which denied the refund asked by the Appellant. Moreover, the court condemned the Respondent's use of exemption notification under Section 25 of the Customs Act. The function of an exemption notification is, therefore, to relax or remit a duty already otherwise attracted by law. The power to exempt is not a power to tax. It was noted that that altering the rate or form of an invalid levy does not cure the underlying lack of authority. If the levy itself is ultra vires, all derivative notifications fall with it.

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○	International Tax Treaties Must Operate in Harmony With Domestic Law and the Constitution <i>[The Authority for Advance Rulings (Income Tax) and others v. Tiger Global International II Holdings]</i> The Supreme Court set aside the Delhi High Court’s judgment and upheld the challenge raised by the Income Tax Department of India (“the Revenue”) in the Tiger Global - Flipkart transaction, holding that treaty benefits under the India - Mauritius Double Taxation Avoidance Agreement (“DTAA”) are unavailable where the arrangement is found to be an impermissible tax avoidance structure lacking commercial substance. Reaffirming settled principles, the Court observed that while tax treaties allocate taxing rights between contracting states, they do not shield abusive or colourable arrangements, and treaty interpretation must operate in harmony with domestic anti-abuse principles and India’s constitutional tax sovereignty. The appeals arose from a judgment dated August 28, 2024, passed by the Delhi High Court in favour of the Revenue, which had granted capital gains tax exemption to the Appellants, Tiger Global International II Holdings and related entities under Article 13(4) of the DTAA in connection with the transaction related to sale of shares in Flipkart to Walmart. Setting aside that decision of Delhi High Court, the Supreme Court reaffirmed that India’s tax sovereignty cannot be diluted through international tax treaties or abusive arrangements. The Apex Court held that tax treaties do not operate independently of domestic law and do not confer an overriding right to exemption. Where a transaction is found to be colourable, impermissible, or structured primarily for tax avoidance, treaty benefits must be denied, even if formal requirements such as a tax residency certificate are satisfied. The Apex Court cautioned that the treatise must not become tools for legitimizing tax abuse or eroding the national tax. Moreover, tax sovereignty is an essential component of national sovereignty, and international treaties must align with constitutional principles, domestic tax legislation, and national interest, and should remain open to review, renegotiation, or exit where misuse is detected. Read Here
○	Subordinate legislation enforceable only upon Gazette publication and not from the date of its issuance, upload, or circulation by executive authorities: Supreme Court

[Viraj Impex Pvt. Ltd. v. Union of India & Anr. Civil Appeal arising out of Diary No. 2376/2019]

Viraj Impex Pvt. Ltd. (“Petitioner”) challenged the enforcement of a government notification affecting the import policy, arguing that although the notification was stated to have been issued on an earlier date, it was published in the Official Gazette only later. The Union of India and the concerned authorities (“Defendants”) attempted to enforce the notification from the earlier issuance date.

The Court rejected this contention and reaffirmed a settled principle of law: where the parent statute expressly requires publication in the Official Gazette as the mode of bringing a notification into force, the notification has no legal effect until such publication actually takes place. Mere issuance of the notification, internal circulation, website uploads, or administrative communications cannot substitute for statutory Gazette publication.

The Court emphasized that individuals and businesses cannot be expected to comply with obligations or restrictions that were not legally brought into the public domain. Enforcing a notification retrospectively, before its Gazette publication, would offend principles of legal certainty, fairness, and the rule of law.

Accordingly, the Court held that the notification could operate only prospectively from the date of its publication in the Official Gazette and not from the earlier date mentioned by the authorities.

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- **Supreme Court rules overtime wages must include HRA and Transport Allowance, dismissing Union of India's appeal against Factory Workers**
[Union of India & Others v. Heavy Vehicles Factory Employees' Union and Another in (Civil Appeal Nos. 5185-5192 of 2016)]

The Supreme Court of India dismissed the appeals filed by the Union of India, thereby affirming the judgment of the Madras High Court which had set aside the order of the Central Administrative Tribunal (“CAT”). The Court ruled that for the purpose of calculating overtime wages under Section 59 of the Factories Act, 1948 (“Factories Act”), the "ordinary rate of wages" must include compensatory allowances such as House Rent Allowance (HRA) and Transport Allowance, in addition to basic wages.

The Court held that Section 59(2) of the Factories Act explicitly defines "ordinary rate of wages" as basic wages plus "such allowances" to which the worker is entitled, with the only specific statutory exclusions being "bonus" and "wages for overtime work".

Observing the inconsistency, the Court noted that while the Ministry of Defence sought to exclude these allowances, the Ministry of Railways included them for its employees. The Court asserted that different Ministries cannot assign different meanings to the same provision of a Parliament Act. Furthermore, the Court declared that the Factories Act is a beneficial social welfare legislation intended to protect workers, and executive instructions cannot override statutory mandates to curtail benefits available to them.

Accordingly, the Court dismissed the appeals, confirming that the employees are entitled to higher overtime wages calculated on their full wage structure. In doing so, the Court also explicitly overruled the contrary judgment of the Kerala High Court in *V.E. Jossie v. Flag Officers Commanding in OP (CAT) No. 2154 of 2011* in Chief Headquarters, holding that it did not lay down the correct law.

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- **Delhi High Court Observes that Blanket Freezing of Bank Accounts of Non-Accused Entities is Arbitrary and Unconstitutional**
[Malabar Gold and Diamond Limited v. Union of India, W.P.(C) 4198/2025 & CM APPL. 19454/2025]

In the landmark ruling, the Delhi High Court has decisively clarified the legal boundaries governing the freezing of bank accounts during cybercrime investigations. The Court directed the immediate defreezing of bank accounts belonging to Malabar Gold and Diamond Limited (“the Petitioner”), holding that freezing actions taken without establishing the account holder's complicity in alleged cyber fraud violates fundamental rights under Articles 19(1)(g) and 21 of the Constitution. The Court emphasised that such action impermissibly infringes the right to carry on trade and business and the right to livelihood, and must strictly comply with Section 107 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* (“BNSS”) and require prior judicial approval.

The petition arose after Petitioner’s bank accounts were frozen pursuant to communications issued to the bank, following the allegations of cyber fraud against one of its customers, Dallas E-com Infotech Pvt. Limited. There were normal commercial transactions that took place between the Petitioner and the customer, no FIR, complaint, or investigation was initiated against the

Petitioner itself. Despite this, law enforcement agencies directed the freezing of the petitioner's accounts without recording any finding of complicity.

The Court ruled that a third party's accounts cannot be unilaterally frozen, merely because a customer is alleged to have committed offences. It clarified that Section 106 of BNSS empowers the police only to seize property for evidentiary purposes and does not confer any authority to attach or debit-freeze bank accounts. Attachment or freezing of bank accounts, being measures directed at securing alleged proceeds of crime, can be undertaken only under Section 107 of the BNSS and strictly upon orders of a competent Magistrate, after following the prescribed procedural safeguards. Such indiscriminate debit freezing, without any finding of complicity, has the inevitable effect of paralysing the day-to-day business operations of an otherwise entity, resulting in loss of commercial goodwill and financial consequences, thereby subjecting a non-complicit account holder to punitive consequences. Hence, the Court directed the defreezing of the accounts, while leaving liberty to authorities to proceed lawfully if any investigation is initiated.

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○ **Supreme Court Rules Industrial Court as Proper Forum for Contract Labour Disputes**

[M/s Premium Transmission Private Limited v. The State of Maharashtra and others.]

The Supreme Court has upheld the validity of a reference of an industrial dispute under the Industrial Disputes Act, 1947 ("ID Act") without a prior demand notice to the employer and reaffirmed that disputes concerning the alleged sham or camouflaged nature of contract labour arrangements must be adjudicated by the Industrial Court. The appeal arose from a challenge to a reference made by the Deputy Labour Commissioner, Aurangabad, relating to demands raised by contract labourers, represented by Aurangabad Mazdoor Union, seeking permanent absorption, equal wages, and a declaration that labour supply contracts were sham and designed to deny statutory benefits.

The Premium Transmission Private Limited ("the Appellant") contended that no industrial dispute existed under Section 2(k) of the ID Act as the Union had approached the Conciliation Officer directly without first serving a charter of demands on the employer, and further argued that the workers were not "employees" of the Management and that the contracts were compliant with the Contract Labour (Regulation & Abolition) Act, 1970. Rejecting

these submissions, the Court held that a prior written or oral demand followed by rejection is not an essential condition for the existence of an industrial dispute, except in the case of public utility services. The Court observed that the denial of an employer-employee relationship itself evidences a dispute and that issues relating to sham or nominal contracts involve disputed questions of fact incapable of resolution at the conciliation or writ stage. Upholding the Bombay High Court's decision, the Court emphasised that such disputes must proceed to adjudication before the Industrial Court, and cautioned against employers using preliminary objections to delay resolution on merits. The appeal was accordingly dismissed.

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○ **The Supreme Court upholds validity of Registered Sale Deed, reversing High Court's 'sham transaction' ruling**

[Hemalatha (D) By Lrs. v. Tukaram (D) By Lrs. & Ors. in (Civil Appeal No. 6640 of 2010)]

The Supreme Court held that a registered Sale Deed carries a strong presumption of validity and genuineness. Such a document cannot be declared sham lightly, unless supported by clear and convincing evidence. In this case, the Respondent failed to discharge the heavy burden required to rebut that presumption.

The Court further clarified that the transaction could not be treated as a mortgage by conditional sale under Section 58(c) of the Transfer of Property Act, 1882, since there was no condition for reconveyance recorded in the sale deed itself.

Significantly, the Court noted the Respondent's conduct in this regard. In 1974, the Respondent had admitted his liability to pay rent in reply to a legal notice and did not claim at that stage that the sale deed was sham. The Court found that the later suit was based on "clever drafting" meant to create an appearance of a cause of action, without meeting the strict pleading standards required to allege fraud or a sham transaction.

On these findings, the Supreme Court dismissed the Respondent's suit with costs. It emphasized that upholding the sanctity of registered documents is crucial for certainty of title and maintaining public confidence in property transactions.

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○	Supreme Court holds NGT lacks jurisdiction over building plan violations; stays environmental compensation against Ambience Developers <i>[Raj Singh Gehlot & Ors. v. Amitabha Sen & Ors. With (Civil Appeal @ SLP (C) No(s).11480/2020 & connected matters)]</i> The Supreme Court of India recently allowed the appeals filed by Ambience Developers, holding that the National Green Tribunal (“NGT”) lacked the jurisdiction to entertain disputes regarding alleged deviations from sanctioned building plans, as such matters do not constitute a “substantial question relating to environment” under the National Green Tribunal Act, 2010 (“NGT Act”). The Court observed that the core grievance before the NGT, specifically the alleged reduction of green/open spaces due to commercial construction, was intrinsically connected to the validity of the layout plans, a matter already under adjudication before the High Court. The Court held that the NGT was not justified in interfering with issues concerning violations of building plans, as these were essentially disputes regarding land utilization and town planning rather than environmental protection. To invoke the NGT's jurisdiction, there must be a direct violation of a specific statutory environmental obligation arising from the enactments specified in Schedule I of the NGT Act. The Court found that the alleged non-adherence to building plans for open spaces did not meet this threshold. Accordingly, the Court stayed the operation of the NGT’s orders, including the direction to constitute a Joint Expert Committee and the recommendation to impose a fine of INR 138.83 crores and environmental compensation, ruling that the proceedings before the Tribunal must remain in abeyance until the High Court decides the validity of the planning permissions. Read Here
○	Supreme Court Rules that Illegality Against Few Does Not Affect Lawful Entitlements of Others <i>[Niraj Jain v. Competent Authority-cum-Additional Collector, Jagdalpur & Ors., Special Leave Petition (C) No.7061 of 2025]</i> The Supreme Court has held that setting aside compensation awarded to certain landowners on grounds of illegality, collusion, or unjust enrichment does not automatically invalidate the entire land acquisition award, which is affecting all beneficiaries.

The present matter arose from land acquisition proceedings in the State of Chhattisgarh for a special railway project, where an inquiry revealed that a few landowners had received compensation far in excess of market value in collusion with revenue officials. FIRs were lodged against those officials and specific beneficiaries.

The Appellant, who was not named in the inquiry or criminal proceedings, had sought enhancement of his compensation before the arbitrator under the Land Acquisition (Special Railway Projects) Rules, 2016, which was granted. However, the High Court later set aside both the original and enhanced compensation, treating the entire process as tainted.

The Supreme Court held this approach to be legally unsustainable. The Court held that illegality cannot be presumed or extended to unaffected parties. It further noted that neither the competent authority nor the arbitrator under the Railways Act, 1989 possesses the power of review once an award is passed.

Accordingly, the Appellant's original compensation and arbitral enhancement were restored.

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○ **No Corporate Guarantee Without a Clear Promise, Supreme Court Affirms NCLAT Ruling**

[UV Asset Reconstruction Company Limited v. Electrosteel Castings Limited 2026 INSC 14]

The Supreme Court has held that a promoter's undertaking to arrange funds for a borrower does not, by itself, constitute a contract of guarantee under Section 126 of the Indian Contract Act, 1872, and consequently cannot form the basis for initiation of insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). Applying this principle, the Court dismissed the appeal and upheld the rejection of insolvency proceedings against Electrosteel Castings Limited (ECL).

The dispute arose from a Deed of Undertaking executed by ECL, the promoter of Electrosteel Steels Limited (ESL), in connection with loans availed by ESL. While the appellant contended that the undertaking rendered ECL a corporate guarantor liable for ESL's debts, the Court examined the language of the undertaking and the surrounding contractual documents to determine whether it satisfied the legal requirements of a guarantee.

The Supreme Court held that the Deed of Undertaking did not contain any clear or unequivocal promise by ECL to discharge the debt of ESL upon default. Instead, the clause merely obligated ECL to arrange or facilitate the infusion of funds to enable ESL to meet its financial covenants. Such an arrangement, the Court clarified, falls short of a guarantee, which under Section 126 of the Indian Contract Act, 1872, requires a direct commitment to pay the creditor in the event of default by the principal debtor.

The Court further noted that the contemporaneous documentation did not reflect any intention of the parties to create a contract of guarantee. In the absence of both a promise to pay and an intention to guarantee, ECL could not be treated as a financial debtor for the purposes of Section 7 of the IBC.

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○ **Supreme Court limits intervention rights of RWAs in Section 7 IBC Proceedings**

[Elegna Co-op. Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Limited]

In a key decision on insolvency rights under the Insolvency and Bankruptcy Code, 2016 (“IBC”), the Supreme Court clarified that a homebuyers’ association or residents’ welfare association (RWA) cannot intervene in proceedings initiated under Section 7 of the IBC unless it independently qualifies as a creditor in its own right or is formally recognised as an authorised representative in accordance with the IBC. The appeals filed by the Appellant, Elegna Co-operative Housing and Commercial Society Ltd., a society representing homebuyers, arose from a dispute over the insolvency petition filed by the Respondent, Edelweiss Asset Reconstruction Company Ltd. (“EARCL”), against the Corporate Debtor, Takshashila Heights India Private Ltd., a real estate developer responsible for the “Takshashila Elegna” residential and commercial project in Ahmedabad. EARCL had advanced financial assistance of ₹70 crore, which became non-performing, and after failed restructuring efforts, invoked Section 7 of the IBC, seeking commencement of the corporate insolvency resolution process (“CIRP”). The National Company Law Tribunal (“NCLT”) initially dismissed the Section 7 petition on the ground that insolvency proceedings were being used as a recovery mechanism rather than for genuine resolution and noted the project’s viability and substantial completion. On appeal, the National Company Law Appellate Tribunal (“NCLAT”) reversed the NCLT decision, holding that once the existence of debt and default is established, admission under Section 7 of the IBC is mandatory. The NCLAT accordingly admitted

the Corporate Debtor into CIRP and rejected the Appellant’s application for intervention on the ground that it lacked locus standi.

On further appeal, the Supreme Court upheld the NCLAT’s decision and reiterated that the IBC is a self-contained statute with defined statutory categories for participation: only financial creditors, operational creditors, and persons recognised as authorised representatives of allottees can participate in insolvency proceedings at the admission stage. A society representing homebuyers (such as the Appellant), which itself has not disbursed funds or otherwise provided financial credit to the Corporate Debtor, does not qualify as a financial creditor and therefore does not have an automatic right to intervene. The Court noted that homebuyers, as financial creditors, are protected and may participate through an authorised representative after admission of the CIRP, but prior to that stage, IBC does not permit associative or ad-hoc intervention by societies.

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○ **Supreme Court Limits NCLT’s Jurisdiction: Trademark Title Disputes Cannot be Finally Decided Within CIRP**

[Gloster Limited v. Gloster Cables Limited & Ors. In C.A No. 2996 of 2024]

The Supreme Court, while deciding appeals arising from a judgment of the NCLAT, examined whether the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 (“IBC”) could determine title to the trademark “Gloster” while dealing with an application filed under Section 60(5) of the IBC during an ongoing Corporate Insolvency Resolution Process (“CIRP”). The dispute arose after the Respondents claimed exclusive ownership of the trademark on the basis of assignment agreements executed prior to CIRP, while Gloster Limited being the Successful Resolution Applicant (“Appellant”) contended that the trademark formed part of the Corporate Debtor’s (“CD”) assets.

The Court noted that the approved resolution plan itself acknowledged rival claims over the trademark and merely recorded the Appellant’s belief that the assignment in favor of the Respondent was illegal. It held that, in the absence of any avoidance application filed by the Resolution Professional (“RP”) on behalf of the CD under Sections 43, 45 or related provisions of the IBC, the Adjudicating Authority could not, on the strength of a third-party application alone, render a conclusive declaration of title in favor of the Appellant. The Court emphasized that jurisdiction under Section 60 (5) of the IBC the is wide but not plenary, and can be exercised only where the dispute arises out of or

is directly related to the insolvency resolution process, and not to finally adjudicate independent property or trademark title disputes.

Relying on earlier precedents, the Court held that while NCLT/NCLAT may incidentally examine issues touching upon third-party rights, they cannot usurp the jurisdiction of competent civil or commercial courts to conclusively decide title disputes that exist independently of the insolvency process. Consequently, the Court upheld the NCLAT's view that the Adjudicating Authority exceeded its jurisdiction in declaring the trademark to be an asset of the CD while affirming that such disputes must be resolved in appropriate proceedings.

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○ **High Court of Jammu & Kashmir Held that Exclusion Clauses in Insurance Contracts must be clearly disclosed to be enforceable**

[National Insurance Company Limited v. Mala Bashir and Others, FAO(D) No. 13/2024]

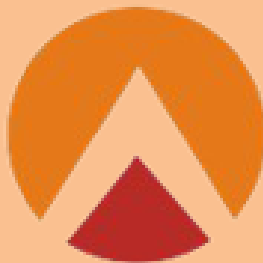
The High Court of Jammu & Kashmir, while reaffirming the principle of utmost good faith in insurance contracts, has held that while the insured owes a duty to disclose material facts, the insurer also owes a reciprocal duty to disclose the terms and conditions of the policy to be issued. The insurers cannot rely on the undisclosed exclusion clauses to repudiate the consumer claims.

The present dispute arose from the Standard Fire and Special Perils Policy under which the insurer repudiated the claim by invoking an endorsement excluding STFI (Storm, Tempest, Flood and Inundation) perils. The Court noted that although the policy carried such an exclusion, the insurer failed to prove that it was ever clearly disclosed or explained to the insured. Crucially, the insurer could not produce the proposal form nor examine the insurance agent to establish informed consent. The Court observed that insurance contracts must be governed by the principle of full disclosure.

The onus was upon the appellants to prove that the exclusion of STFI coverage was duly explained to the insured and that he was fully aware of its implications. In the absence of the proposal form and any corroborative evidence, the appellants cannot assert that they discharged their burden of proving exclusion.

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