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Newsletter

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ALBA LAW OFFICES

MONTHLY ROUND-UP

Central Government notifies Consumer Protection (E-Commerce) (Amendment) Rules, 2026 with dark pattern audits, price transparency and search and sponsored listing safeguards

[Consumer Protection (E-Commerce) (Amendment) Rules, 2026, G.S.R. 789(E), notified September 9, 2026]

The Central Government, exercising powers under clause (zg) of sub-section (2) of Section 101 of the Consumer Protection Act, 2019, notified the Consumer Protection (E-Commerce) (Amendment) Rules, 2026 to amend the Consumer Protection (E-Commerce) Rules, 2020. The amendments will come into force from January 1, 2027 and seek strengthening transparency, accountability and consumer protection in the e-commerce sector.

The amendments introduce specific obligations concerning the presentation and ranking of information on e-commerce platforms. E-commerce entities are required to avoid manipulating search results in a manner that misleads users or adversely affects the relevance of results to their search queries, while sponsored listings must be distinctly identified through clear and prominent disclosures. Where a price reduction is announced, both the reduced price and the prior price must be displayed, with the prior price defined as the lowest price offered during the preceding thirty days. The amendments also require the seller's name on the invoice to be displayed in the same font size as the name of the e-commerce entity.

The amended framework further requires e-commerce entities to comply with the Guidelines for Prevention and Regulation of Dark Patterns, 2023, undertake a yearly self-audit to ensure that their platforms are free from dark patterns and prominently display a certificate to that effect. The rules also strengthen the grievance redressal framework by requiring e-commerce entities to provide complainants with a copy of the complaint as recorded by the grievance officer and provide for closer integration of e-commerce entities with the National Consumer Helpline. Marketplace-related obligations concerning seller and product disclosures and specified consumer information practices have also been strengthened.

Accordingly, the amended rules will introduce a more prescriptive compliance framework for e-commerce entities from January 1, 2027, with particular emphasis on transparent search and ranking practices, disclosure of sponsored listings, price comparison transparency, dark-pattern controls and grievance redressal.

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Delhi High Court blocks fake MG Motor dealership websites, orders bank lien on fraud proceeds

[JSW MG Motor India Private Limited & Anr. v. Anant Kumar Singh & Ors., CS(COMM) 962/2026]

The Delhi High Court has restrained operators of three websites from impersonating MG Motor and offering fake car dealerships to the public. While hearing a suit filed by JSW MG Motor India Pvt. Ltd. and SAIC Motor (collectively, "Plaintiffs"), the Court restrained those behind the websites from using Plaintiffs' trademarks and branding, or from claiming any association with the Plaintiffs, and directed the concerned domain registrars to suspend the three websites within 36 hours.

The suit identified three domains: (i) mgmotordealership.net, (ii) mgmotorco.in, and (iii) mgmotordealership.com, used in the scheme. People who responded to dealership advertisements on Facebook were redirected to application forms, with one customer allegedly paying Rs. 12,000 as advance dealership money to a bank account held with Indian Overseas Bank under the beneficiary name 'MG Motors.' While the first two domains hosted no independent content and were allegedly used purely to defraud applicants, the third, mgmotordealership.com, hosted a fully developed dealership portal reproducing Plaintiffs' stylised MG logo, Morris Garages branding, product photographs, and a "Become a Dealer" form, along with a copyright legend falsely attributed to MG Motor India Pvt. Ltd.

The Court, while granting an ex parte ad interim injunction, noted that the Plaintiffs had operated under the "MG" brand in India since 2017 with a legacy spanning over a century through its predecessors.

The three domain registrars were directed to suspend the respective websites within 36 hours and disclose registration and payment details, while Indian Overseas Bank was directed to freeze the relevant account to the extent of Rs. 14,55,700 and furnish its transaction history and KYC records. The Department of Telecommunications and Google LLC were similarly directed to disclose available details linked to phone numbers and an email address identified in the order.

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Gujarat High Court quashes Copyright FIR against shopkeeper, holds counterfeit Apple accessories case was a Trademark Dispute dressed up as Copyright Infringement

[Jitendrabhai Mohanbhai Kriplani v. State of Gujarat & Anr., R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 21846 of 2022]

The Gujarat High Court has quashed a copyright infringement FIR registered against a shopkeeper accused of selling counterfeit Apple accessories, holding that the allegations essentially concerned trademark misuse rather than copyright infringement. The Court, allowing a petition, filed by Jitendrabhai Mohanbhai Kiplani ("Kiplani"), quashed a copyright FIR and observed that seizure memo did not identify any specific literary or artistic work allegedly copied from Apple, and held that the dispute pertained to falsification of a registered trademark on commercial accessories, attracting the Trade Marks Act, 1999, ("Trade Marks Act") rather than the Copyright Act, 1957 ("Copyright Act").

The case arose from an FIR registered in October 2022 at Kalupur Police Station, Ahmedabad, invoking charges pertaining to copyright infringement against Kiplani, who ran a shop called Raj Cover House. The complaint was filed by a manager at Griffin Intellectual Property Service Pvt. Ltd. ("Complainant"), a company authorised by Apple Inc. Corporation to act against sellers of counterfeit Apple products. Acting on this complaint, police conducted a raid at the shop and seized AirPods, AirPods Pro, USB cables, power adapters, a smartwatch, and several Apple stickers and seals, together valued at over Rs. 15 lakh. Kiplani's counsel argued that these were commercial hardware products falling outside the categories protected under Section 13 of the Copyright Act (which defines the works in which copyright subsists i.e., literary, dramatic, musical and artistic works, among others), and that any grievance about unauthorised use of Apple's trademark ought to have been pursued under Sections 103 and 104 (which penalise falsifying a trademark and selling goods bearing a false trade mark or description) of the Trade Marks Act instead.

The Complainant's counsel countered that packaging, stickers, product literature and instruction manuals could independently qualify as copyright-protected literary or artistic works. The Court rejected this argument, noting that the FIR did not identify any specific work allegedly copied, and that no instruction manuals or user leaflets had actually been recovered from the shop, meaning the Complainant could not introduce this factual basis for the first time during oral arguments when it was absent from the police recovery memo. Having ruled out the copyright route, the Court also examined whether the case could survive under the Trade Marks Act, but found that the mandatory safeguards under Section 115(4) of the Trade Marks Act, which requires the police to obtain the Registrar of Trade Marks' opinion before any search and seizure, and mandates that the search be conducted by an officer not below the rank of Deputy Superintendent of Police, had not been followed.

Criticising the manner in which the case had been framed, the Court observed that the Complainant had deliberately dressed up a pure trademark dispute as a copyright infringement to bypass the procedural safeguards built into the Trade Marks Act, and held that courts cannot act as silent spectators to such circumvention. Having already found the trademark route procedurally non-compliant, the Court refused to allow the complainant to fall back on it after the copyright allegations failed, holding that doing so would defeat the very safeguards Section 115(4) of the Trade Marks Act was designed to protect. The petition was accordingly allowed, and the FIR along with all consequential proceedings against Kiplani were quashed.

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Delhi High Court Cancels 'LNK' Trademark over Similarity with Basant Lal's 'L&K' Sanitary Products Mark

[Basant Lal vs Shakti Hydraulic Engineers & Anr., C.O. (COMM.IPD-TM) 190/2024]

Basant Lal ("Petitioner") filed a petition under of the Trade Marks Act, 1999 ("the Act"), seeking cancellation of trade mark "LNK", held by Shakti Hydraulic Engineers ("Respondent No. 1"). The Petitioner, who is the registered proprietor of the device mark "L & K Waterman since 1948," has been manufacturing sanitary materials, taps, cocks and allied products since 1948, with its registration since 2005. Respondent No. 1 obtained registration for word mark "LNK" in 2016 for identical goods. The issue before the Delhi High Court was whether "LNK" was deceptively similar to the dominant part ("L&K") of Petitioner's earlier registered mark, warranting cancellation. under Section 11(1)(b) of the Act, which provides for grounds for refusal of registration when there is likelihood of confusion.

The Petitioner argued that "LNK" is visually and phonetically nearly identical/deceptively similar to "L&K," the dominant and distinctive part of its earlier registered device mark, and that use for identical goods was likely to cause consumer confusion, in violation of Section 11(1)(b) of the Act. The Registrar of Trade Marks (Respondent No. 2) contended that the Petitioner's mark, being a device mark, had to be assessed as a whole and that the Petitioner could not dissect it to claim a monopoly over the letters "L&K" alone since it held no separate word mark registration for the same.

The Court noted that Respondent No. 1's registration (2016) came decades after Petitioner's claimed use of the mark since 1948 and its registration since 2005. While marks must ordinarily be compared as a whole, the Court held the dominant mark test is not antithetical to the anti-dissection rule, relying on M/s South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr. (2014 SCC OnLine Del 1953) and Pernod Ricard India Private Limited and Another v. Karanveer Singh Chhabra (2025 SCC OnLine SC 1701). On perusal, the Court found "L&K" to be the dominant part appearing in every device mark of the Petitioner, and that "LNK" was deceptively similar to it both visually and phonetically, with the rival goods being identical, creating likelihood of confusion and association.

The Court allowed the petition and cancelled the registration for the mark “LNK”. The Registrar of Trade Marks was directed to remove the entry from the Register and rectify it.

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Madras High Court: Copyright infringement disputes can be referred to Arbitration despite civil remedy under Copyright Act

[Eros Technologies Digital FZE v. Ayngaran International Media Private Limited & Ors., OA No. 454 of 2026 and A No. 2680 of 2026 in C.S. (Comm. Div.) No. 140 of 2026]

The Madras High Court has held that a copyright infringement dispute can be resolved through arbitration where the parties have agreed to that mode of dispute resolution, ruling that the availability of a civil remedy under the Copyright Act, 1957 ("Copyright Act") does not preclude arbitration.

Eros Technologies Digital FZE ("Eros") claimed rights in certain cinematograph films through a series of assignments that began with a Deed of Assignment dated 23 March 2018, executed by Ayngaran International Limited on behalf of its group companies. Eros alleged that two Ayngaran group companies and their director had begun exploiting the assigned rights on social media platforms without authorisation and sought an interim injunction restraining further exploitation of the films.

The director, in turn, filed a separate application seeking reference of the dispute to arbitration. Eros opposed this, contending that neither it nor the director was a party to the original arbitration agreement, that its infringement claim could independently be pursued as a civil action under the Copyright Act, and that the multi-party dispute could not be split for arbitration since not all parties had agreed to the clause.

The Court found that Eros' rights traced back through successive assignments to the original agreement containing the arbitration clause, and that Eros could not resist arbitration on the ground of not being an original signatory, since its own claim to the copyrights depended on the validity of that very chain. The Court found no prima facie evidence that the arbitration agreement was null and void, inoperative, or incapable of being performed, reasoning that any such finding would equally undermine Eros' own claim to the copyrights. Holding that the parties could only be referred to arbitration under Section 45 of the Arbitration and Conciliation Act, 1996 (which mandates reference to arbitration in respect of matters covered by an arbitration agreement to which the dispute relates, unless the agreement is found to be null, void, inoperative or incapable of being performed), the Court allowed the director's application for arbitration.

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Kerala High Court holds trademark infringement suits cannot be instituted before courts below District Court irrespective of pecuniary value

[M/s Cutis International Cosmetics Clinic Ltd. & Ors. v. Cutis Institute of Medicine and Surgery Private Limited, CRP No. 284 of 2025; 2026:KER:6819]

The Kerala High Court considered a revision petition filed by M/s Cutis International Cosmetics Clinic Ltd. and Ors. ("Petitioners"). The Petitioners were the defendants in a suit filed by Cutis Institute of Medicine and Surgery Private Limited ("Respondent") seeking an injunction and damages for infringement of its registered trade mark. The suit was valued at ₹5,10,000, being ₹1,000 for the injunction and ₹5,00,000 towards damages. The Petitioners contended that although Section 134 of the Trade Marks Act, 1999 ("TM Act") required the suit to be instituted before a District Court, its pecuniary value meant that it could be tried by the Munsiff Court under Section 11(2) of the Kerala Civil Courts Act, 1957.

The Court examined the interaction between Section 134 of the TM Act, Sections 9 and 15 of the Code of Civil Procedure, 1908 ("CPC") and the ordinary pecuniary jurisdiction of civil courts. It held that Section 9 of the CPC does not itself create a distinction between the court before which a suit is instituted and the court competent to try it. Where a special statute prescribes the court before which a proceeding must be instituted, that statutory requirement governs. Section 134 expressly provides that a suit for infringement of a registered trademark shall not be instituted in a court inferior to a District Court having jurisdiction to try the suit. The Court therefore held that the District Court is the lowest grade of court before which such a suit can be instituted, notwithstanding its pecuniary value.

The Court further held that the expression “having jurisdiction” in Section 134 cannot be construed merely by reference to the ordinary pecuniary jurisdiction of the civil courts so as to defeat the special statutory prohibition against institution before a court inferior to the District Court. The suit could not be instituted before the District Court as a matter of formality and thereafter transferred to an inferior court only on the ground of pecuniary value. The Court also considered the notification designating District and Additional District Courts as Commercial Courts under the Commercial Courts Act, 2015, but found that such designation did not alter the statutory requirement under Section 134. Accordingly, the revision petition was dismissed and the objection that the suit could be tried by a court below the District Court solely on account of its pecuniary value was rejected.

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Delhi High Court holds comparative advertising campaign against Vim and Surf Excel prima facie crosses permissible limits

[Hindustan Unilever Limited v. Kwick Living (I) Private Limited, CS(COMM) 904/2026]

The Delhi High Court considered an application for an interim injunction filed by Hindustan Unilever Limited ("Plaintiff") against Kwick Living (I) Private Limited ("Defendant"). The application concerned the Defendant's "War on What's Hidden" advertising campaign. The Plaintiff alleged that the campaign amounted to targeted commercial disparagement, infringement of its trademarks, trade dress and copyright, passing off and unfair competition, concerning the Plaintiff's Vim and Surf Excel products. The campaign was disseminated through print advertisements, hoardings, social media, YouTube, the Defendant's website and influencer collaborations and included statements that Linear Alkylbenzene Sulfonate (LAS) and Benzisothiazolinone (BIT) could cause skin irritation and allergic reactions, coupled with the direction to "SWITCH TO BECO".

The Plaintiff contended that the campaign did not merely identify competing products but used the Plaintiff's marks, packaging, taglines and product imagery to leave consumers with a negative impression of the products themselves. The Defendant, in response, relied on the protection afforded to comparative advertising and commercial speech under Article 19(1)(a) of the Constitution of India and contended that the statements were factual. It asserted that Surf Excel Matic Liquid Top Load contained BIT and LAS, that Vim contained LAS, and that BECO products contained neither.

The Court held that an unfavourable comparison is not unlawful in itself. Comparative advertising may legitimately suggest that a rival's product is inferior. It becomes unlawful only when it relies on falsehood, misrepresentation or deception that causes, or is likely to cause, harm. The Court observed that, at the interim stage, a defendant relying on the defence of truth must at least demonstrate a prima facie credible and tenable basis for the impugned factual assertions, and that individual statements cannot be assessed in isolation from the overall message conveyed by the campaign to the average consumer.

Applying that test, the Court found that, even assuming that the underlying chemical information could ultimately be established through scientific evidence, the juxtaposition of the statements with the visual material, the narrative concerning “years of trust” and the exhortation to “SWITCH TO BECO” was capable of conveying to the average consumer that the Plaintiff’s products cause skin irritation, redness, itching or eczema. The Court therefore found that the campaign prima facie went beyond permissible comparative advertising and amounted to denigration of the Plaintiff’s products. The Court also noted that the scientific disputes regarding the underlying claims would require expert evidence and could not be conclusively determined at the interim stage.

Accordingly, the application was disposed of by directing the Defendant to forthwith pull down, remove and recall the impugned advertisements containing the offending statements within one week and to file a compliance affidavit within one week thereafter. The restraint was confined to the advertisements forming the subject matter of the proceedings and did not prevent the Defendant from undertaking comparative advertising within permissible legal limits.

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Delhi High Court refuses interim injunction against Xiaomi's "Find Device" feature, finds no prima facie infringement and notes nine-year delay

[Conqueror Innovations Private Limited & Anr. v. Xiaomi Technology India Private Limited, FAO(OS) (COMM) 147/2025]

The Delhi High Court, in appellate proceedings, considered a challenge by Conqueror Innovations Private Limited and Anr. ("Appellants") to the refusal of an interim injunction against Xiaomi Technology India Private Limited ("Respondent") in a patent infringement suit concerning Indian Patent No. 244963 titled "A Communication Device Finder System". The patent, which had been assigned to Appellant No. 1 by Appellant No. 2, covered a communication device finder system with, inter alia, a security activation element containing specified data, a trigger mechanism and a silent "auto-answer mode" through which an investigator could listen to the surroundings of the device. The Single Judge had declined interim relief, finding no prima facie infringement, noting the Respondent's long presence in the Indian market and the substantial delay in instituting the suit.

The Appellants confined the appeal to the case of direct infringement and did not press the alternative standard essential patent case. They contended that Xiaomi's "Find Device" feature corresponded to the claimed anti-theft system. The Respondent, however, demonstrated that the feature remotely rings, locks or erases the device but does not silently auto-answer an incoming call. The material on record also did not establish the other claimed features relating to the non-erasable message centre and associated data-reinstallation functionality.

The Division Bench held that the requirement of an "auto-answer mode" was correctly construed from the complete specification and the Appellants' own pleadings and that the Single Judge had not imported any unwarranted limitation into the claim. The Court found that the claim mapping relied upon by the Appellants did not satisfactorily establish the presence of the essential claim elements in Xiaomi's feature. It therefore upheld the finding that there was no prima facie infringement. The Court also considered the delay in bringing the action. Xiaomi had been selling its devices in India since 2014, while the suit was filed in 2023, and the Appellant's own Form-27 filings (annual statements a patentee must file with the Patent Office on how the patent is being used in India) indicated awareness of relevant technologies well before the institution of the suit. The Court held that the approximately nine-year delay was independently sufficient to weigh against grant of an interim injunction, particularly where monetary compensation remained available.

The Court further noted that the patent was due to expire on October 17, 2026, leaving less than two months of remaining patent term when the appeal was decided. All observations were expressly confined to the prima facie assessment at the interim stage and were not findings on the final merits of the infringement claim. Accordingly, the appeal was dismissed and the refusal of interim injunctive relief against the Respondent's "Find Device" feature was upheld. The pending applications were also dismissed.

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Madras High Court dismisses "Dr. WASH" infringement suit against "Dr. Bright" soap, holds rival packaging distinct.

[Ashique Exports Pvt. Ltd. v. Koyenco Soaps and Detergents Pvt. Ltd. & Anr., C.S. No. 687 of 2017 and (T)OP(TM) No. 340 of 2023]

The Madras High Court, in this case, considered a suit seeking a permanent injunction against the use of the trademark "**Dr. Bright**" on washing soap, alleging infringement and passing off of the Plaintiff's registered "**Dr. WASH**" trademark and associated trade dress. The Defendants also sought rectification of the Plaintiff's trademark registration under Section 57 of the Trade Marks Act, 1999 ("Trade Marks Act"). The Court accepted that the Plaintiff had used its "Dr. WASH" packaging well before the Defendants, relying on its advertising records from 2007. However, on comparing the two wrappers, it found that the Defendants' packaging, colours and wording (together, the "trade dress") were clearly different from the Plaintiff's, and that the Defendants had not copied its essential and distinctive features.

On the question of whether the mark was generic, the Court noted that the Plaintiff's label had been published with a disclaimer that Plaintiff would have no exclusive right over the "plus" sign or the words "Dr. WASH" on their own, and that "wash" is a commonly used word.

The Court, however, found no merit in the rectification petition, observing that the disclaimer related to the Dr. Wash label and not to the word mark "Dr. WASH", which had been registered and renewed separately. In view of its finding that the Defendants had not usurped the Plaintiff's trade dress, the Court held that the Plaintiff was not entitled to any relief and that it was unnecessary to decide the remaining issues, including the alleged poaching of employees, the alleged concealment of the disclaimer, and the reliefs of surrender of stock and rendition of accounts, as doing so would be a mere formality. Accordingly, the High Court dismissed both the suit and the rectification petition, with no order as to costs.

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Madras High Court dismisses RPG Enterprises' petition to cancel the "RPG Marble" trademark, holds that nearly fifteen years of inaction amounts to acquiescence under Section 33 of the Trade Marks Act, 1999

[RPG Enterprises Limited v. The Registrar of Trademarks & Ors.; (T)OP™ No. 482 of 2023]

The Madras High Court considered a rectification petition under Section 57 of the Trade Marks Act, 1999 ("TM Act") filed by RPG Enterprises Limited ("Petitioner") seeking removal of the trademark "RPG Marble Pvt. Ltd." from the Register of Trade Marks. The mark had been registered in Class 42 in favour of RPG Marble Pvt. Ltd. ("Respondent") in 2006. The Petitioner claimed to have used the "RPG" mark since 1979 and to hold several registrations built around the name, and argued that the Respondent's mark wholly reproduced its trademark and was likely to cause confusion. It said it learnt of the Respondent only in 2017 and acted at once.

The Respondent contended that "RPG" had been independently coined from the initials of its directors, and that the mark had been in honest and continuous use since 2000 in a business entirely unrelated to that of the Petitioner. It further argued that the Petitioner had sent it a legal notice in 2002 and then did nothing until 2017.

Relying on the Supreme Court's decision in Union of India v. N. Murugesan ((2022) 2 SCC 25), which describes acquiescence as a tacit or passive acceptance inferred from a party's knowledge coupled with its failure to object within a reasonable time, the Court held that the Petitioner had knowledge of the Respondent's mark in 2002, based on its witness's evasive answers and its subsidiary's annual report, and stayed inactive for nearly fifteen years. This, the Court held, amounted to acquiescence, and the petition was squarely barred under Section 33 of the TM Act, which bars a proprietor who has knowingly allowed the use of a registered mark for five years from challenging it. The Court observed that, on this finding alone, it did not need to examine the remaining issues in detail, such as dishonest adoption and well-known status.

Accordingly, the Court dismissed the petition and made no order as to costs.

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Calcutta High Court holds pre-dispute arbitration clause cannot replace post-dispute written waiver of arbitrator ineligibility

[Amal Krishna Dey v. Central Warehousing Corporation, AO-COM 35 of 2025, judgment dated July 29, 2026]

The Calcutta High Court, in the present matter, considered an appeal by a contractor, Amal Krishna Dey ("Appellant"), against an order setting aside an arbitral award passed in his favour against Central Warehousing Corporation ("Respondent"). The dispute arose from a contract for building a godown at Santragachi. Clause 25 of the contract gave the Respondent's Managing Director the sole power to appoint the arbitrator, and stated in advance that no objection could be raised if the arbitrator was an employee or retired employee of the Respondent. At the Appellant's request, the Managing Director appointed a retired employee of the Respondent, who awarded the Appellant ₹16,15,017 with interest.

The Commercial Court at Asansol set aside the award under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), holding that the unilateral appointment (an appointment made by one party alone) was barred by Section 12(5) read with the Seventh Schedule of the Arbitration Act, which make persons connected with a party ineligible to act as arbitrators. In appeal, the Appellant argued that the Respondent had raised no objection at the time of appointment or during the proceedings, and that since the arbitrator was a retired employee, there was no question of bias.

The Division Bench rejected these arguments. Section 12(5) of the Arbitration Act applies "notwithstanding any prior agreement to the contrary", so the "no objection" term in Clause 25, agreed long before the dispute arose, could not save the appointment. The ineligibility can be waived only by an express written agreement made after disputes arise, and simply taking part in the arbitration does not meet that requirement.

The Court also clarified that the case did not turn only on the arbitrator being a retired employee, though the Seventh Schedule of the Arbitration Act covers past as well as present relationships with a party. The more basic defect was that the Managing Director, being an officer of a party to the dispute, was himself ineligible to act as an arbitrator. Following the Supreme Court's decisions in *TRF Ltd. v. Energo Engineering Projects Ltd.* and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, a person who cannot act as an arbitrator cannot appoint one either. The appointment was therefore invalid from the very start, and the award had no legal effect. The appeal was dismissed.

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Supreme Court holds personal guarantor bound by arbitration clause in loan agreement forming part of composite transaction

[National Skill Development Corporation v. Surya Wires Private Limited & Ors., 2026 INSC 977]

The Supreme Court, in the present appeal, considered whether an arbitration clause in a loan agreement could bind a person who had signed only a personal guarantee with no arbitration clause of its own. National Skill Development Corporation ("Appellant") had extended loans to Surya Wires Private Limited ("Surya Wires") and others for setting up training centres under a government skill development scheme. Along with the loan agreements, the Managing Director of Surya Wires ("Guarantor") signed personal guarantees. When the loans went into default, the Appellant started arbitration against the borrowers and the Guarantor, among others.

The Guarantor objected that he had not signed the loan agreements in his personal capacity, and that his guarantees did not contain an arbitration clause. The Sole Arbitrator accepted the objection under Section 16 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") and removed him from the proceedings, and the Delhi High Court upheld this.

The Supreme Court reversed these orders. Under Section 7(5) of the Arbitration Act, an arbitration clause in one document becomes part of another only if the reference to it shows that the parties intended to adopt it; a general reference is not enough. Here, however, the loan agreements named the personal guarantees as part of the "Facility Agreements", stated that these were to be treated as part of the loan agreement as if written into it, and made the guarantees a condition for releasing the loan. Read together, these terms showed a single composite transaction, and the arbitration clause in the loan agreements extended to the guarantees.

The Court held that the Guarantor not having signed the loan agreements personally was not decisive. A guarantee tied to the loan for every other purpose, including the extent of liability, could not be separated from it only for resolving disputes. The orders removing the Guarantor were set aside, and the appeal was allowed.

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Supreme Court holds arbitral tribunal cannot award pre-reference interest where the contract bars interest on delayed payments

[North Eastern Electric Power Corporation Limited v. Astra Construction Private Limited, 2026 INSC 1036]

The Supreme Court examined whether a contractual clause barring claims for interest also prohibited an arbitral tribunal from awarding pre reference interest. The dispute arose from Clause 54 of the General Conditions of Contract ("GCC"), which provided that no claim for interest or damages would be entertained in respect of amounts lying with the North Eastern Electric Power Corporation Ltd. ("NEEPCO") due to disputes, as well as delays in making periodical or final payments. The Arbitral Tribunal had awarded pre reference interest at 12% per annum, but the Commercial Court set aside the interest component by relying on the Supreme Court's decision in Sayeed Ahmed & Co. v. State of U.P., while the High Court subsequently restored it by relying on State of U.P. v. Harish Chandra and Co. Before the Supreme Court, NEEPCO challenged only the restoration of pre-reference interest, so the interest awarded for the period of the arbitration was not in issue.

The Supreme Court distinguished the clause considered in Harish Chandra from Clause 54 of the GCC. It observed that, unlike the clause in Harish Chandra, Clause 54 of the GCC separately and expressly covered delay in making periodical or final payments, thereby extending the prohibition beyond amounts withheld due to a dispute. The Court held that under Section 31(7) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), party autonomy permits the parties to contractually exclude the arbitral tribunal's power to award interest, and an express contractual bar is sufficient for this purpose. It accordingly held that Clause 54 of the GCC constituted a complete bar on the award of pre reference interest and that the Arbitral Tribunal had exceeded its jurisdiction in granting such interest. The Court also rejected the contractor's argument that NEEPCO had given up this objection by not raising it before the Arbitral Tribunal, noting that the plea was taken in NEEPCO's statement of defence.

Accordingly, the Supreme Court set aside the High Court's judgment to the extent it restored pre-reference interest and allowed the appeal, with no order as to costs.

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Delhi High Court holds that delay in pronouncement of arbitral award, by itself, does not vitiate the award

[Unison Hotels Private Limited v. IFFCO Tokio General Insurance Company Limited (2026: DHC: 7875- DB)]

The Delhi High Court, in this matter, considered whether an arbitral award could be set aside solely because there was a delay of nearly two years between the conclusion of hearings and pronouncement of the award. Unison Hotels Private Limited ("UHPL") had obtained two insurance policies from IFFCO Tokio General Insurance Company Limited ("Insurance Company") covering its hotel, which suffered a fire in January 2008. The Insurance Company paid ₹50 crore and treated the claims as fully and finally settled in January 2012. UHPL said it had signed the discharge vouchers under financial pressure, and invoked arbitration for the balance. A three-member Arbitral Tribunal was constituted in 2012, reserved the award on March 6, 2021, and pronounced it on March 6, 2023, awarding approximately ₹65.13 crore to UHPL along with interest and costs. The Insurance Company challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), primarily contending that the delay in pronouncement had prejudiced the decision making process. The learned Single Judge accepted this contention and set aside the award, holding that the delay had affected the Tribunal's consideration of the Insurance Company's objection under Clause 13 of the policies, which allowed only disputes about the amount payable, and not about liability itself, to go to arbitration.

The Division Bench set aside the Single Judge's decision and held that delay in rendering an arbitral award is not, by itself, sufficient to invalidate the award. Relying on the principles laid down in *Lancor Holdings Limited v. Prem Kumar Menon* and *C. Velusamy v. K. Indhera*, the Court held that the delay must be unexplained and must be shown to have adversely affected the findings in the award. In the present case, the Court found that the delay was adequately explained, having regard to the COVID 19 pandemic, delays by the parties in filing written submissions and the need for a three member Tribunal to deliberate and arrive at a consensus.

The Court further noted that the award comprehensively dealt with the issues raised and that the Insurance Company could not identify any submission which had been overlooked due to the delay. The Court also rejected the contention that the Tribunal had failed to address the arbitrability issue under Clause 13 of the insurance policies, noting that the clause had not specifically been invoked in the Insurance Company's Statement of Defence and that the Tribunal had, in substance, dealt with the maintainability of the arbitration.

Accordingly, the Division Bench quashed the Single Judge's judgment and remanded the Section 34 of the Arbitration Act proceedings for fresh consideration, clarifying that its findings were confined to the question of whether the award could be set aside solely on the ground of delay.

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Supreme Court refuses to interfere with Delhi High Court ruling permitting enforcement of €9.71 million ICC arbitral award in favour of Amadeus IT Group against Ebix Cash

[Ebix Technologies Limited v. Amadeus IT Group S.A. (Spain); Diary No. 47784/2026]

The Supreme Court considered a Special Leave Petition filed by Ebix Technologies Limited ("Petitioner") against the Delhi High Court's judgment dated 1 July 2026, which allowed enforcement in India of an International Chamber of Commerce ("ICC") arbitral award in favour of Amadeus IT Group S.A. ("Respondent"). The dispute arose from a Global Distribution Agreement dated 1 October 2019, under which the Respondent gave Petitioner access to its travel distribution platform in the Asia Pacific region and paid an advance incentive of about USD 15 million. The Petitioner was required to acquire Yatra Online and achieve specified airline booking targets. After alleging failure to meet these conditions, the Respondent terminated the agreement and commenced ICC arbitration, and in February 2022 the tribunal awarded it over €13.26 million, of which €9.71 million remained outstanding in India after recoveries in the United States.

The High Court held that limitation began to run when the signed award was communicated by the ICC Secretariat, and not automatically on the date of the award, which made the enforcement petition just within time. It also held that the arrangement was a commercial one and not a factoring transaction since it did not involve any assignment of receivables, rejecting Petitioner's argument that enforcing the award would breach Indian public policy because the Respondent was not registered to carry out factoring.

The Supreme Court held that there was no ground to interfere with the High Court's judgment. The Special Leave Petition was accordingly dismissed, leaving the High Court's findings on limitation and public policy undisturbed. As the dismissal was by a short order without reasons, it is not a Supreme Court ruling on these points.

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Delhi High Court Division Bench upholds setting aside of ₹911.13 crore arbitral award against NHAI, holds that a contractual cap on termination payment must be given effect

[Kurukshetra Expressway Private Limited v. National Highways Authority of India; FAO(OS)(COMM) 211/2026]

A Division Bench of the Delhi High Court considered an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") filed by Kurukshetra Expressway Private Limited ("Appellant") against a Single Judge's decision setting aside an arbitral award of ₹911.13 crore in its favour against the National Highways Authority of India ("Respondent"). The Appellant had built and operated the Rohtak–Bawal section of NH 71 in Haryana under a concession agreement, recovering its investment through tolls. After toll collection was suspended for a long period, it ended the agreement citing force majeure and claimed the termination payment due under it, which broadly repays the operator's lenders and returns its own investment with a premium.

The agreement capped the project cost on which this payment is calculated at ₹650 crore. The Appellant had put its project cost at about ₹1,045 crore in a letter to the Respondent splitting that cost between debt and equity, and the arbitral tribunal calculated the payment on this higher figure. The Appellant argued that the termination payment clause was a separate, specific provision, that the Respondent had approved its financing, and that the tribunal's view was a plausible one which a court cannot replace. The Respondent argued that the tribunal had ignored the contractual cap and rewritten the bargain.

The Court held that the payment clause had to be read with the cap, since the agreement limited the payment to the debt and equity "which form part of the Total Project Cost". A letter from one party could not raise a limit agreed by both, and the Respondent's approval of the financing plan did not amend the agreement. The risk of costs exceeding the cap lay with the Appellant.

As the tribunal had rewritten the agreement rather than interpreted it, the Single Judge was right to treat the award as suffering from patent illegality (a ground for setting aside an award, including a reading of the contract that no reasonable person could adopt) under Section 34(2A) of the Arbitration Act. The appeal was dismissed, and the setting aside of the award and the interest on it was upheld.

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Supreme Court hold financiers cannot resort to forcible repossession of vehicles in violation of contractual safeguards.

[Hari Dutta Sharma v. State of UP & Ors., 2026 INSC 998]

The Supreme Court held that a financier's contractual right to repossess a hypothecated vehicle must be exercised in accordance with the loan agreement, applicable law and the Reserve Bank of India ("RBI") guidelines. The case arose after Cholamandalam Investment and Finance Company Limited ("Company") repossessed and subsequently sold the Appellant's commercial vehicle following defaults in loan repayments. The Appellant alleged that the vehicle had been taken without notice by breaking its steering lock during the night.

The Court held that while contractual repossession clauses are permissible, they cannot authorise forcible or arbitrary seizure. Examining the loan agreement and RBI guidelines, the Court found that the agreement's provisions allowing waiver of notice and leaving the manner of repossession substantially to the financier's discretion were inconsistent with the required safeguards. The Court further found that the Company had not issued the stipulated seven day notice before repossession and that the vehicle had been taken without following due process.

The Court accordingly set aside the Allahabad High Court's order and held that the repossession and sale were unauthorised and arbitrary. Since the vehicle had already been sold, the sale was not disturbed. The Company was directed to close the Appellant's loan accounts, refund the ₹4.5 lakh sale proceeds with 6% annual interest, and pay ₹10 lakh as compensation for mental agony and loss of livelihood. The RBI was also directed to take effective steps to ensure compliance with its recovery and repossession guidelines by NBFCs and Scheduled Commercial Banks.

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Calcutta High Court holds development agreement dispute involving commercial exploitation of immovable property is a commercial dispute.

[Aloke Satnaliwala v. Nirmala Devi Fatehpuria & Ors., APOT/137/2026; 2026 LLBiz HC (CAL) 210]

The Calcutta High Court heard an appeal by Aloke Satnaliwala ("Appellant") against an order of a Single Judge refusing him interim relief in a money recovery suit filed on the High Court's non-commercial side. The Appellant's case was that under an October 2020 Memorandum of Understanding for the development of an immovable property, he had advanced ₹2 crore to Nirmala Devi Fatehpuria and others ("Respondents"). The Respondents later agreed to repay the amount with interest, repaid ₹50 lakh in June 2023, and confirmed the balance in writing in January 2026, but did not pay it.

The Respondents argued that the suit was filed in the wrong forum. According to them, the Memorandum of Understanding was in substance a development agreement, which made the dispute a "commercial dispute" under the Commercial Courts Act, 2015 ("Commercial Courts Act"), to be heard only by the High Court's Commercial Division. The Appellant denied this, but asked in the alternative that, if the Court found the dispute to be commercial, he be allowed to take back his plaint and file it in the correct forum.

The Division Bench held that the dispute was commercial. Section 2(1)(c)(vii) of the Commercial Courts Act covers disputes arising from agreements relating to immovable property used exclusively in trade or commerce, and a development agreement, by its very nature, involves commercial exploitation of the property. The Court then held, relying on its earlier decision in Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd. and Rule 9(2) of the Calcutta High Court Commercial Courts Practice Directions, 2021, that a transfer to the Commercial Division under Section 15 of the Commercial Courts Act is available only for suits filed before the minimum claim value for commercial disputes was notified. A suit filed after that date, as this one was, must instead be returned to the plaintiff under Order VII Rule 10 of the Code of Civil Procedure, 1908 for filing in the proper forum.

The appeal was disposed of on that basis. The Court did not go into the merits or the request for interim relief, and kept all other issues open.

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Banks can invoke SARFAESI Act to recover debts assigned by non-notified NBFCs

[Kotak Mahindra Bank Limited v. Trupti Sanjay Mehta and others, Civil Appeal No. 8531 of 2015]

The Supreme Court has held that banks can invoke the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") to recover debts assigned to them by non-banking financial companies ("NBFC"), even where such NBFCs were not covered under the SARFAESI Act at the time the loan was originally created. The Supreme Court set aside a Bombay High Court judgment which had restricted Kotak Mahindra Bank Limited ("Kotak Mahindra Bank") from invoking the SARFAESI Act for recovery of debts it had acquired from an NBFC that was not a notified 'financial institution' under the SARFAESI Act when the loans were advanced.

The dispute arose from loan accounts originally advanced by City Financial Consumer Finance Limited ("CFCFL"), an NBFC that was not a notified financial institution under the SARFAESI Act at the relevant time, and was only notified as such in August 2018. Between 2012 and 2013, Kotak Mahindra Bank, which independently qualifies as a 'bank' under the SARFAESI Act, had acquired three sets of mortgage-secured loan accounts from CFCFL and subsequently invoked the SARFAESI Act to recover the outstanding dues. The borrowers challenged this, arguing that since the loans were created when CFCFL fell outside the SARFAESI Act's definition of a financial institution, they could not later become amenable to SARFAESI proceedings merely by being assigned to a bank. The Debt Recovery Tribunal, the Debt Recovery Appellate Tribunal, and the Bombay High Court all ruled in the borrowers' favour, prompting the Kotak Mahindra Bank's appeal to the Supreme Court.

Allowing the appeal, the Court rejected the borrowers' argument, holding that once a non-performing secured loan is acquired by a bank to which the SARFAESI Act already applies, the loan account immediately acquires the statutory attributes of a 'secured debt' under the SARFAESI Act, irrespective of the status of the entity that originally created it. The Court reasoned that accepting the borrowers' position would effectively reward those who borrow from non-notified NBFCs with greater latitude to default, since recovery would then be confined to slower civil remedies, while borrowers of notified institutions would face quicker enforcement, a distinction the Court found untenable given that default by any borrower, regardless of the lender's original status, has a broader adverse economic impact. Relying on its earlier rulings in M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd. ((2017) 16 SCC 741) and Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd. ((2018) 14 SCC 783), the Court clarified that it makes no difference whether the loan and the originating institution both fall within SARFAESI's ambit, or whether only the loan does so by virtue of being taken over by a bank already covered under the SARFAESI Act. In either case, SARFAESI remedies remain available. Accordingly, the Court allowed Kotak Mahindra Bank's appeal and directed restoration of the securitisation application before the Debt Recovery Tribunal.

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Housing project must match brochure promised to buyers: Supreme Court orders CBI probe into DLF Primus deviations

[Swarnpreet Kaur & Anr. v. State of Haryana and Others, Civil Appeal No. 8049/2023]

The Supreme Court has directed the Central Bureau of Investigation ("CBI") to conduct a preliminary enquiry into deviations in the construction of the DLF Primus project ("Project") in Gurugram, Haryana, after finding that the Project was not built in conformity with the plan and brochure originally shown to homebuyers. The Supreme Court held that a housing project must be delivered strictly as represented to buyers and flagged that the 24-metre-wide road promised in the Project plan does not exist as depicted.

The dispute arose when a road cutting across the Project was shown in the original brochure and plan given to consumers. The Court had earlier entrusted the fact-finding for the case to a CBI officer who submitted a status report on 03.08.2026. The report found that out of 147 metre stretch earmarked for the road in the Project plan, about 52 metres had been converted into a green patch, while another substantial area of nearly equivalent extent, though retaining the appearance of a road, was being used for parking by residents and visitors. Thus, nearly two-thirds of the stretch was not maintained as a road.

The Bench observed that the deviation from the brochure was not minor but substantial and said that it was at a loss to understand why the discrepancy had not been rectified despite repeated opportunities.

On the CBI officer's request for additional support to complete the enquiry within the stipulated two months, the Court directed the CBI Director to assign two additional inspectors to assist him. It further warned that if the Project is not brought into full compliance with the brochure by the next hearing, it would pass appropriate orders and cautioned the State that continued inaction would not be indulged.

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Delhi High Court holds that personal penalty under Section 122(1A) of the CGST Act can extend to persons who are not taxable persons, but only for acts or transactions on or after 1st January 2021

[Parag Garg v. Commissioner, Adjudication, CGST Delhi West & Anr. and batch; W.P.(C) 13883/2026]

A Division Bench of the Delhi High Court considered a batch of petitions challenging show cause notices and orders imposing personal penalties under Section 122(1A) of the Central Goods and Services Tax Act, 2017 ("CGST Act"). This provision, in force from 1 January 2021, penalises any person who keeps the benefit of fake GST transactions carried out at their instance. In the lead cases, the proceedings concerned Worlds Window Impex India Private Limited, against which the adjudicating authority had confirmed a demand on allegations of circular trading and wrongful availment of input tax credit through invoices allegedly issued without any actual supply of goods. Separate personal penalties were imposed on three petitioners under Section 122(1A) of the CGST Act on the grounds that they had been directors of the company at different times.

The petitioners argued that they had not benefited from the transactions, which pre-dated 1 January 2021. The tax department argued that the penalty, being civil, could apply to earlier conduct. The Court framed two questions: whether the penalty can be imposed on a person who is not a "taxable person", and whether it applies to transactions before 1 January 2021.

On the first question, the Court held that the expression "any person" in Section 122(1A) of the CGST Act is wider than "taxable person", and covers anyone, registered under GST or not, who meets those conditions.

On the second question, the Court held that Section 122(1A) of the CGST Act operates prospectively and applies only to acts or transactions committed on or after 1 January 2021, irrespective of when the show cause notice is issued. The Court reasoned that the penalty, though civil in form, is penal in its consequences, and that the same conduct can be prosecuted under Section 132 of the CGST Act only if committed after that date, and invoked Article 20(1) of the Constitution, under which a person cannot be penalised under a provision that was not in force when the act was committed. In doing so, the Court disagreed with an earlier Division Bench of the Delhi High Court in *Bhupender Kumar v. Additional Commissioner (Adjudication), CGST* and the Gauhati High Court in *Mayank Bansal v. Union of India*, which had allowed retrospective penalty where the notice was issued after the provision came into force, and agreed with the Bombay High Court's reasoning in *Amit Manilal Haria v. Joint Commissioner, CGST and Central Excise* on temporal applicability, while differing from that Court's view that "any person" is confined to a taxable person.

The petitioners were granted liberty to pursue their statutory appeals under Section 107 of the CGST Act, where the facts will be decided.

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Supreme Court: Homebuyers cannot be penalised for Builder's default in insolvency

The Authorised Representative for Granite Gate Properties Private Limited Rakesh Verma v. M/s New Okhla Industrial Development Authority and Ors., Civil Appeal No. 3132 of 2026

The Corporate Insolvency Resolution Process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 is the time-bound mechanism through which a financially distressed company ("Corporate Debtor") is either revived under a resolution plan or pushed towards liquidation, with its affairs during this period managed by a resolution professional under the oversight of a Committee of Creditors ("CoC").

In an appeal by the homebuyers of the Lotus Boulevard and Lotus Panache projects in Noida, the Supreme Court set aside a National Company Law Appellate Tribunal ("NCLAT") order classifying New Okhla Industrial Development Authority's ("NOIDA") time-extension charges as insolvency process costs in two delayed high-rise projects. The Court held that homebuyers and a resolution applicant cannot be forced to bear penalties arising from the original developer's default.

The dispute traced back to Granite Gate Properties Pvt. Ltd. ("Developer"), which had taken land from NOIDA on lease to build the two housing complexes. The Developer faced financial distress and was declared a Corporate Debtor. The CoC was constituted of the home buyers, who formed a class of financial creditors and a resolution plan was approved to be implemented through the Successful Resolution Applicant (SRA). During the process, homebuyers pooled their own funds under a CoC-approved arrangement to keep construction moving, yet NOIDA sealed three towers of Lotus Panache in October 2024 over unpaid time-extension charges, despite possession having originally been promised back in 2016.

NOIDA claimed these charges for the delay period from December 2016 up to the insolvency commencement date in January 2019. The NCLAT had accepted only the three-year claim as a CIRP cost, and the homebuyers' appeal challenged the inclusion of any such charges at all.

The Court held that such penalties, though meant to deter delay by a developer, cannot be transferred onto homebuyers or a resolution applicant once the original developer is out of the picture and the delayed project is being revived through the buyers' own pooled contributions. The bench observed that homebuyers and SRA were effectively being made to answer for the acts of the Developer, which could not be permitted, particularly given that NOIDA, as the penalty-imposing authority, was concerned with area development rather than insolvency resolution. The Court further clarified that the default charges, whether under the original lease deed or the newer policy, function as a percentage-based penalty meant to motivate timely completion and deter delay, a purpose that no longer applied once the defaulting developer had exited the process. Accordingly, the Court allowed the homebuyers' appeal, excluding the time-extension charges from CIRP costs and directed NOIDA to waive the penalty altogether.

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NCLAT extends Section 32A "clean slate" protection to buyers acquiring corporate debtor as a going concern during liquidation

[Amitkumar Rishi Kumar Bhabhda & Ors. v. Amit Chandrashekhar Poddar & Ors., Company Appeal (AT) (Insolvency) No. 221 of 2026; 2026 LLBiz NCLAT 349]

The National Company Law Appellate Tribunal ("NCLAT") heard the present appeal by the purchasers of Seam Industries Limited ("Corporate Debtor") against an order of the National Company Law Tribunal, Mumbai ("NCLT"). The purchasers ("Appellants") had bought the Corporate Debtor as a going concern, that is, as a running business, during its liquidation, which began on 30 June 2021. The sale certificate was issued on 7 August 2023. The Appellants then sought various reliefs from the NCLT, including protection under Section 32A of the Insolvency and Bankruptcy Code, 2016 ("IBC"), which shields a company and its new owners from action for offences committed before insolvency.

The NCLT granted partial relief. It held that the Corporate Debtor's past dues stood settled once the sale proceeds were distributed among creditors under Section 53 of the IBC, and that the Appellants were not liable for them. However, it refused to extend this to the liquidation period up to the date of sale. It also declined the Appellants' requests that all pending and future proceedings and investigations relating to the past be closed, and that authorities not act against the company for past non-compliance with law, including operating without required licences. In appeal, the Appellants argued, relying on earlier NCLAT decisions, that Section 32A of the IBC protection extends to the liquidation period as well.

The NCLAT agreed. It held that the "clean slate" principle laid down by the Supreme Court in Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, under which a buyer through the insolvency process takes the company free of past claims not raised in that process, applies equally to a going-concern sale in liquidation. Past liabilities not claimed during the insolvency or liquidation process cannot survive the sale. This, the NCLAT said, is not a waiver or concession, but the legal result of the sale itself.

The NCLAT therefore set aside the NCLT's order to the extent it refused relief on the two requests relating to past proceedings and past non-compliance and granted the Appellants the benefit of Section 32A of the IBC for them, subject to the conditions in that section. For any other waiver or concession, the Appellants must approach the authorities concerned.

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NCLT Mumbai holds that invocation of a bank guarantee during the CIRP moratorium is not barred by Section 14 of the IBC, as the guarantee falls within the exception for sureties under Section 14(3)(b)

[Jayanti Lal Jain, IRP of DK Infrastructure Pvt. Ltd. v. Arvind Mathur & Ors.; I.A. No. 4684 of 2024 in C.P. (IB) No. 644/MB/2020]

The National Company Law Tribunal, Mumbai Bench considered an application filed by the Resolution Professional ("Applicant") of DK Infrastructure Private Limited ("Corporate Debtor"), which was admitted into the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 ("IBC") on 17 April 2023. The Corporate Debtor had been awarded a work order by Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Ltd. ("Respondent") for the construction of 272 flats in 17 towers at Fatehnagar, Udaipur, and the Applicant kept the project running during the insolvency process. The Corporate Debtor had furnished a bank guarantee of ₹87,88,258 through Axis Bank, which the Respondent invoked on 18 July 2024 citing non-completion of the project, and which was encashed five days later.

The Applicant sought a refund, arguing that the guarantee had been invoked during the moratorium (the period during which the IBC bars recovery actions against a company in insolvency), and in bad faith, since the project was incomplete only because the Respondent had not released pending payments. The Respondent argued that the moratorium does not cover a bank guarantee, since the bank pays as a surety and not from the Corporate Debtor's assets.

The Tribunal noted that Section 14(1) of the IBC bars enforcement of a security interest created by the corporate debtor over its property, but that Section 14(3)(b) of the IBC carves out an exception for a surety in a contract of guarantee given for a corporate debtor. It also referred to the proviso to Section 3(31) of the IBC, which excludes a performance guarantee from the definition of "security interest".

The Tribunal held that the bank guarantee, being a contract of guarantee furnished by Axis Bank as surety on behalf of the Corporate Debtor, fell squarely within the exception, and that its invocation did not amount to enforcement against the assets of the Corporate Debtor. It relied on the decision of the National Company Law Appellate Tribunal in National Small Industries Corporation Ltd. v. Prabhakar Kumar, Liquidator and Anr., which held that an irrevocable and unconditional bank guarantee is not affected by the moratorium, since the assets of the surety are distinct from those of the corporate debtor.

Accordingly, the Tribunal held that the Applicant was not entitled to a refund of the amount realised, and the application was dismissed.

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