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SNG Newsletter

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Editor's Letter

Dear Readers,

May 2025 witnessed a multitude of regulatory developments from the RBI and SEBI, as well as important judicial pronouncements spanning various fields, including Insolvency and Bankruptcy, Arbitration, CCI, and Real Estate. Many of those that may interest our readers have been covered in this edition.

In the Kalyani Transco judgment, the Apex Court, while holding that the NCLAT is not a mere rubber stamp for CoC decisions and it must conduct a limited judicial review of the resolution plan to protect the interests of all stakeholders, has unwittingly unsettled the established position in law that a corporate debtor would stand discharged from offences alleged to have been committed before CIRP and the attached properties shall be free of attachment. This has created shock waves and ripples not only in the Indian financial space but also overseas, as it has put the authenticity and finality of the entire CIRP process in doubt. Though for the time being this judgment has been stayed but if not modified in review petitions will serve a severe setback to the government's efforts to establish a robust, transparent, and quick insolvency mechanism in India. An article critically examining this judgment features in this edition.

The current edition also pens down an article addressing the intricate distinction between "advance money" and "earnest money," as well as the validity of forfeiture of advance payments in property sale transactions. This article exhaustively analyses a recent judgment of the Apex Court, which elucidates and examines the right and extent of forfeiture of such payments upon breach of contract.

On the judicial front, the courts have tried to balance the revival of a corporate debtor while protecting the rights of its employees and have held that revival of a failing company cannot be at the cost of employees' security in the form of provident fund savings.

In the realm of Arbitration, while hearing the challenges against an award, courts may exercise limited power to modify the award, such as separating the invalid portion of the award, correcting any clerical or typographical errors, or modifying post-award interest. This will pave the way for faster delivery of justice to a litigant, as the litigant will not have to approach the arbitral tribunal again after spending substantial time in courts challenging the award. Also, execution of a full & final settlement receipt or discharge voucher will not bar initiation of arbitration proceedings when the validity thereof is under challenge on the grounds of fraud, coercion, or undue influence. Further, an arbitral tribunal can now implead a person as a party in the arbitral proceedings even if notice invoking Section 21 of the Arbitration and Conciliation Act was not issued to him.

The banks have learned a lesson the hard way that their responsibility is not only to lend but also to ensure that the money lent is used for the purpose it is lent and cannot take poor homebuyers to ransom. The Supreme Court has rightly directed CBI to examine systematic failure of statutory and governmental authorities to discharge their functions, circumvention of regulatory framework by banks and housing financial corporations, and the resultant illicit benefits alleged to have been drawn by builders/developers at the cost of the homebuyers.

On the regulatory front, the RBI, to increase foreign inflows, has relaxed FPI rules on corporate bonds. Further to boost borrowers' confidence in the digital lending ecosystem, the RBI has issued the Digital Lending Direction to regulate engagement of third parties, mis-selling, breach of data privacy, unfair business conduct, charging of exorbitant interest rates, and unethical recovery practices. Further to enhance cybersecurity and prevent fraud associated with digital payments, banks have been asked to migrate their digital infrastructure to the '.bank.in' domain. Further, REITs can't delay filling up vacancies of independent directors, and shall follow stringent disclosure relating to audited financial statements.

Warm regards,

Navneet Gupta

Mr. Navneet Gupta, Partner

SNG & Partners

A ARTICLE I - "Time Is Of The Essence – Words Are Too"

Two carefully framed issues, a classic adversarial contention, and an authoritative, reportable decision.

Author – Samreen Imran Paloba, Associate Partner

Author – Virti Dhanki, Associate

The Supreme Court of India, in its judgment dated 2nd May 2025, delivered in ***K.R. Suresh v. R. Poornima & Ors. (Civil Appeal No. 5822 of 2025)***, addressed the intricate issue of the validity of forfeiture of advance payments in property sale transactions. The Court elucidated the distinction between "advance money" and "earnest money," and examined the permissible extent of forfeiture of such payments upon breach of contract. Furthermore, the Court clarified the legal framework governing the alternative remedy of refund of earnest money under Section 22 of the Specific Relief Act, 1963, providing clarity on the interplay between contractual obligations and equitable relief.

BRIEF FACTS:

One R. Poornima (Respondent No.1) acquired all right, title, and interest in the property bearing Site No.307, situated at Kengeri Satellite, Bangalore ("suit property") by an unregistered Will dated 12.11.2002. An Agreement for Sale dated 25.07.2007 ("Agreement") was executed for the sale of suit property by R. Poornima and in favour of Mr. K.R. Suresh (the Appellant therein) for a total consideration of Rs.55,50,000/- (Rupees Fifty-Five Lakhs and Fifty Thousand) ("total consideration"). Out of the total consideration, the Appellant paid Rs. 20,00,000 (Rupees Twenty Lakhs) ("Advance Amount") as part payment towards the total consideration and the same was duly acknowledged by Respondent No. 1. The terms and conditions of the Agreement explicitly stipulated that the Appellant shall make the balance amount of Rs. 35,50,000/- (Rupees Thirty-Five Lakhs Fifty Thousand) within 4 (four) months from the date of the Agreement to the Respondent No.1, pursuant to which Sale Deed shall be executed. In the event, the Appellant fails to make payment of such balance amount within a period of 4 months from the date of Agreement, the Respondent No.1 will forfeit the advance amount and terminate the Agreement.

The Appellant failed to make payment of the balance amount of Rs. 35,50,000/- (Rupees Thirty-Five Lakhs Fifty Thousand) within the stipulated period, accordingly the Respondent No.1 forfeited the Advance

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Amount of Rs. 20,00,000 (Rupees Twenty Lakhs) and terminated the Agreement. Aggrieved by the foregoing, the Appellant filed original suit being O.S. No. 3559 of 2008 before the Additional City Civil and Sessions Judge at Bengaluru City (Trial Court), seeking inter alia specific performance of the Agreement. The Trial Court dismissed the aforesaid Suit, holding that i)the time being the essence of the contract the Appellant was duty bound to complete the transaction within the stipulate period in the Agreement, ii) the Appellant had failed to establish his readiness and willingness to perform the contract, iii) Will need not be registered and lack of such registration does not impute its authenticity, thus making the procurement of probate unnecessary and there was no obligation on part of the Respondent to furnish a probate/documents to the Bank, under the Agreement iv) Advance Amount being security for performance was rightfully forfeited by the Respondent No.1 due to the Appellant's failure to perform his contractual obligations.

The Appellant preferred an appeal before the Karnataka High Court, which was subsequently dismissed thereby affirming the Trial Court's findings. Aggrieved by the same, the Appellant challenged the judgement of the Karnataka High Court before the Supreme Court. The plaintiff then approached the Supreme Court by way of a Special Leave Petition (Civil) No. 5630 of 2023, which was subsequently converted into Civil Appeal No. 5822 of 2025. The Supreme Court limited its consideration to the issue of refund of the advance amount and ultimately affirmed the lower courts' decisions, holding that the forfeiture of advance money was legally valid and furthered framed issued on whether the Appellant was entitled to relief under Section 22 of the Specific Relief Act ("SRA") without an express prayer to that effect.

ISSUE:

Basis the materials on record, the Apex Court interalia restricted itself in considering the issue solely related to refund of earnest money and framed the question as under,

Whether the appellant (original plaintiff) is entitled to the refund of the amount of Rs.20,00,000/- purportedly paid as "advance money"?

The analysis to answer the question was catered by considering two aspects, which are mentioned below:

VALIDITY OF FORFEITURE OF ADVANCE MONEY

i. The Supreme Court, relying on P. Ramanatha Aiyar's "Advanced Law Lexicon," 7th Edition, interpreted the terms "advance" and "earnest money" as follows: "advance" means money in whole or in part,

forming the consideration of an agreement paid before the same is completely payable. On the other hand, the word "earnest" stands for a sum of money given to bind a contract, which is forfeited if the contract does not go off and adjusted in price if the contract goes through- in other words it means that the term "advance" refers to money, either in full or in part, that is paid upfront as part of the consideration for an agreement, before the entire amount becomes due. In contrast, "earnest" denotes a sum of money given as a token to bind a contract; this amount is forfeited if the contract is not fulfilled, but is adjusted towards the final price, if the contract is successfully completed.

ii. The Supreme Court has further relied on settled jurisprudence and distinguished between "earnest money" and "advance money". The principles governing the scope of "earnest money" are as follows: a) it must be provided at the time the contract is concluded, b)it serves as a guarantee for the fulfilment of a contract, in other words, "earnest" money is given to bind the parties to the contract, c) it forms part of the purchase price when the transaction is completed, d) upon failure or default on part of the purchaser, the amount is forfeited, and e) Unless the contract specifies otherwise, if the purchaser defaults, the seller is entitled to forfeit the earnest money.

iii. While assessing the difference between "advance" and "earnest", the court held that the words alone used in the agreement cannot determine the true nature of the amount advanced, rather the intention of the parties and surrounding circumstances serves as appropriate indicators. It was held that it is only the "earnest money" paid as a pledge for the due performance of the contract, that can be forfeited by the seller on account of the buyer's default. In the same vein, earnest money can also be doubled and paid back to the buyer if the contract falls through due to the seller's default. An amount which is in nature of an "advance" or serves as part-payment of the purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract.

iv. The forfeiture of "advance money" as part of earnest money can only be justified if the terms of the contract are clear and explicit to that effect. The present contract explicitly sets out the intention of the parties to treat the advance amount as a guarantee for due performance of the contract, the amount shall in essence be treated as 'earnest money' and the forfeiture clause, hence applies.

v. Another aspect pondered by the Apex Court was the permissible extent of such forfeiture. While the Apex Court agreed that the forfeiture was lawful, another point for consideration was to determine whether the respondents were entitled to forfeit entire Advance Amount. The Apex Court also engaged with the relevant provisions of the Indian Contract Act, 1872, delving into the statutory

principles governing the forfeiture of advance payments and the legal implications arising from a breach of contract. Section 74 of the Indian Contract Act, 1872, provides for compensation for breach of contract where penalty stipulated for, which has been discussed in detail in the light of forfeiture clauses in the case of Fateh Chand v. Balkishan Das wherein the Court settled the difference between "earnest money" and "penalty" and in so far held that forfeiture of earnest money is concerned then Sec. 74 of the 1872 Act, will not apply.

vi. The Apex Court has referred to various judgements and has taken into consideration the views taken by the Court over the instrumentality of whether forfeiture acts as a penal clause. A clause for forfeiture of earnest money, only intended as a deterrent to ensure due performance of the contractual obligations, will not be deemed penal in the ordinary sense. The Court has also held that a forfeiture clause, if found to be unfair and unreasonable, cannot be enforced by the Apex Court. Thus, considering the contractual terms of the present agreement, the question of forfeiture of the entire Advance Amount was answered in favor of the Respondents.

Law on the Alternative Relief of Refund of Earnest Money under Section 22 of the 1963 Act

The Supreme Court noted that the High Court was indeed correct in refusing the appellant's request for a refund of the advance money, as the appellant had not specifically sought this relief in the original suit, following Section 22(2) of the Specific Relief Act. Citing its earlier decision in Desh Raj v. Rohtash Singh, the Court emphasized that although courts have considerable discretion to permit amendments to a plaint—even at a later stage—to include alternative relief such as the refund of earnest money, such relief cannot be granted unless it has been expressly requested. The Court made it clear that a specific prayer for refund is an essential prerequisite for obtaining this remedy.

The Bench clarified that while Section 22 allows for a claim of refund as an alternative remedy when specific performance is refused, this relief is available only if it has been expressly sought. In the present matter, the Appellant neither sought to amend the plaint before the Trial Court nor during the appeal before the High Court to include such a claim. Since the Appellant did not assert this right at any stage, the Court observed that "the law assists those who are vigilant, not those who neglect their rights. "Accordingly, the Supreme Court found that the Respondents were entitled to forfeit the advance money and that the High Court's decision was neither perverse nor unlawful. As a result, the appeal was dismissed.

CONCLUSION

Based on the foregoing legal principles, it is abundantly clear that, the aforesaid Advance Amount of Rs. 20,00,000 (Rupees Twenty Lakhs) in the Agreement is in its substance "earnest money", since it served as a guarantee for due performance of contractual obligation. Thus, the most critical imperative in drafting such agreements is to precisely ascertain and reflect the parties' true intent, thereby fortifying both the legal and commercial integrity of the transaction. In the present case, the cautious and nuanced use of terminology has effectively recharacterized the nature of the payment, from a simple act of remittance to a legal consequence of forfeiture, thereby engendering a significant and consequential shift in the legal and financial standing of the parties, as compared to their original positions at the inception of the transaction.

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B ARTICLE - Successful Resolution Applicant Can't Be Given Flexibility To Modify The Resolution Plan Post-Approval From NCLT

Author – Navneet Gupta, Partner

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The Supreme Court in case of ***Kalyani Transco vs Bhushan Steel and Power Ltd [Civil Appeal No. 1808 of 2022 dated May 02, 2025]*** while setting aside the order of NCLT approving the Resolution Plan submitted by JSW Steel for Bhushan Steel and Power Ltd, the Supreme Court flagged non-compliance of mandatory provisions, procedural non-compliances done by the Resolution Professional and lack of commercial wisdom exercised by the Committee of Creditors (CoC). The Hon'ble Supreme Court has also set aside order of the National Company Law Appellate Tribunal (NCLAT) against the provisional attachment order passed against the assets of Bhushan Steel and Power Ltd under the Prevention of Money Laundering Act (PMLA), and emphatically stated that the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) cannot review the actions taken by statutory authorities under other laws, as neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law.

Factual background:

The CIRP proceedings were triggered by the Kalyani Transco (Operational creditor) against the Bhushan Power and Steel Limited (BPSL – Corporate debtor) in 2017. JSW Steel's resolution plan for acquiring BPSL involved a total payment of Rs.19,700 crore. This comprised Rs.19,350 crore allocated to financial creditors and Rs.350 crore to operational creditors, against their claims of Rs.733 crore. Even though the NCLT has approved the resolution plan proposed by the Successful Resolution Applicant ("JSW/SRA") - JSW on September 05, 3019, it made certain modifications and imposed certain conditions upon the SRA. These conditions were then challenged by SRA in an appeal before NCLAT. Appeals were also filed by creditors/ erstwhile directors, including 'Sanjay Singhal', 'Kalyani Transco', 'Jaldhi Overseas', 'Medi Carrier', 'CJ Darcl Logistics', and 'State of Odisha & Others'. The NCLAT approved the order and judgment passed by the NCLT, subject to

the modifications/clarifications. The NCLAT thus allowed the appeal by JSW and dismissed other company appeals. It made changes to the earlier conditions set by the NCLT order. Hence, present appeal before the Supreme Court had been filed by promoters of the corporate debtor and its creditors.

Decision:

After hearing detailed arguments of the concerned parties, the Hon'ble Supreme Court has rejected the Resolution Plan submitted by JSW and ordered for liquidation of Bhushan Power and Steel Ltd. ("**BPSL/Corporate Debtor/CD**") for, *interalia*, the following reasons:

i) The Hon'ble Supreme Court held that NCLT and NCLAT which are creatures of the Companies Act, 2013 and not under IBC, their jurisdiction and powers are prescribed under Section 31, 60 and 61 of IBC, as applicable. However, these powers do not empower them to judicially review the decisions taken by the Govt. of India or statutory authorities in relation to the matters which are in the realm of public law. The NCLAT in its impugned order could not have held that the Enforcement Directorate (ED) / investigating agencies do not have the powers to attach the assets of the CD once the Resolution Plan stood approved and that the criminal investigation against the CD would stand abated. The NCLT also declared that attachment of the assets of CD by ED was illegal and without jurisdiction. The Hon'ble Supreme Court was also perturbed by the fact that NCLAT gave the aforesaid finding despite the fact that investigation by ED was the subject matter of challenge before it on account of filing of SLP by the COC and the same was stayed by the Hon'ble Supreme Court vide order dated 18.12.2019. Therefore, when the said issue was pending before the Hon'ble Supreme Court, NCLAT should not have decided the said issue.

ii) The Hon'ble Supreme Court also noted that Equity Commitment as per Clause 2.3 and 3.1 of the Resolution Plan was not fulfilled within the timeframe. The Supreme Court was not impressed with the submission that though JSW initially infused only Rs.100 Crores as share capital towards Equity contribution commitments, subsequently pending the present Appeals, the reconstituted Board in its meeting held on 26.03.2021 has approved the issuance of Compulsory Convertible Debentures to Piombino Steel Limited (group entity of SRA-JSW which was to be merged into BPSL) having value of Rs.8,450 Crores, and thus requirement of infusion of Rs.8,550 Crores was complied with. The Hon'ble Supreme Court also held that though the aforesaid clauses permitted extension of 'Effective Date', the Effective Date was surreptitiously extended by some lenders which had no authority to do so and thus, equity infusion made pursuant to such extended Effective Date cannot be upheld by the court.

iii) The Hon'ble Supreme Court also held that approval of the Resolution Plan by NCLT under Section 31 of IBC on 14.02.2019 was clearly after the expiry of 270 days from the date of initiation of CIRP. The Hon'ble Supreme Court observed that since the CIRP of the CD was commenced on 26.07.2017, Section 12 as it stood prior to its amendment on 16.08.2019, is to be considered. Section 12 prior to its amendment did not have second and third proviso and, therefore, the timeline for completion of entire insolvency resolution process being 180 days along with one extension of 90 days, should have been completed in 270 days. The Hon'ble Supreme Court held that NCLT overlooked this aspect. The RP apparently justified the delay in filing the Section 31 application for approval of the Resolution Plan on the ground that one Appeal being No. 198/2018 filed by Tata Steel, one of the prospective Resolution Applicants was pending before NCLAT and NCLAT has reserved the judgement on 28.12.2018 and pronounced the judgement on 04.02.2019. However, the Hon'ble Supreme Court noted that order dated 12.07.2018 passed by NCLAT in Tata Steel appeal, permitted COC to examine and approve the Resolution Plan, RP was permitted to place the same before NCLT for appropriate orders and NCLT was also permitted to pass orders thereon. So, the Hon'ble Supreme Court held that there was no impediment against COC and RP from approving the Resolution Plan and file the same for approval within the statutory timeline of 270 days which was however not done. The Hon'ble Supreme Court observed that even NCLT has also failed to verify as to whether the application for approval of the Resolution Plan was within the timeline prescribed under Section 12 of IBC or not and thus, NCLT had committed error in approving the same vide its order dated 05.09.2019.

iv) The Hon'ble Supreme Court further held that there was no provision either in the IBC or in RFRP published by RP for the Resolution Plan submitted by JSW which permitted / authorised the Monitoring Committee or financial creditors or COC to enter into negotiations with JSW post approval of the Resolution Plan. However, negotiations had taken place between the Core Committee comprising of Small Group of Lenders and the Resolution Applicant JSW only, pursuant to which the Consolidated Resolution Plan was submitted by JSW on 03.10.2018 and number of objections were raised by the representatives of the Financial Creditors/the Operational Creditors as regards the manner in which the proceedings were being conducted, permitting JSW only to submit and amend the plan submitted earlier. However, none of these objections were heeded to.

v) The Hon'ble Supreme Court noted that initially COC was raising allegation against JSW on account of lack of implementation of the

Resolution Plan and seeking compensation for not paying the upfront amount, however, surprisingly, the COC, all of a sudden, changed its stand and accepted Rs. 19,350.00 crore at the very belated stage without any objection which raises doubt on commercial wisdom of COC. The Hon'ble Supreme Court held that the commercial wisdom denotes a well-considered decision by COC after taking into consideration the mandatory requirement of the Code and regulations etc. with the object of maximisation of valuation of the assets of the CD in a timebound manner. The Hon'ble Supreme Court further held that there was no provision either in the IBC or in RFRP published by RP for the Resolution Plan submitted by JSW which permitted / authorised the Monitoring Committee or financial creditors or COC to enter into negotiations with JSW post approval of the Resolution Plan. The court was thus of the opinion that COC has played a very dubious role in the entire CIRP.

vi) Even after passing of the Impugned Order by NCLAT approving the Resolution Plan, the Resolution Plan was not implemented by JSW under the guise of pendency of present appeals though there was no stay granted by the Hon'ble Supreme Court against implementation of the Resolution Plan. The counsel for COC had recorded his statement in the order dated 06.03.2020 that in case the COC receives the money, the said money will be returned to JSW within two months if the present appeal succeed. Despite the recording of such statement of counsel of COC, the Resolution Plan was not implemented forthwith and it took about 2 years after passing of the Impugned Order by NCLAT, when the Resolution Plan was implemented. The upfront payment and equity commitment given by JSW was the main criteria on which JSW scored the highest in evaluation matrix determined by the COC, however, JSW did not honour such commitment within the timeframe and complied with these conditions after much delay. The court held that merely because IBC is silent with regard to implementation of phases of the Resolution Plan by successful Resolution Applicant, neither the Tribunal nor the IBC should give excessive leeway to a successful Resolution Applicant to act in flagrant violation of the terms of the Resolution Plan.

vii) There are violations of mandatory provisions of the IBC both at pre-approval and post-approval stages of Resolution Plan of JSW. Compliance certificate as per form H of the CIRP Regulations 2016 seeking approval of the plan as per section 31(1) r/w section 30(6) was not submitted by the resolution professional along with the company application seeking approval of resolution plan of JSW. Resolution Professional failed to confirm that the Resolution Plan of JSW complies with the requirements under Section 30(2) with regard to non-contravention of any provision of law and the payment of debts to the Operational Creditors in priority. The Supreme Court noted that in the

Resolution Plan, the dues of Financial Creditors were given priority over the dues of the Operational Creditors.

Critique:

1. The decision of the Apex Court in setting aside the findings of the NCLAT, as it has given a leeway to SRA, is justified as the NCLAT is not a mere rubber stamp for CoC decisions. It has a duty to conduct a limited judicial review of the resolution plan to ensure it complies with the IBC and protects the interests of all stakeholders. Since the CoC is responsible for making decisions about the resolution plan, and its decisions should be based on sound commercial judgment, in case the CoC's decisions are flawed or lack a reasonable basis, the NCLAT should not approve the plan.

2. As recently it is held by the NCLAT, New Delhi in case of Findoc Finvest Private Limited Registered Office vs Surendera Raj Gang [Company Appeal (AT) (Insolvency) No.249 of 2025 dated March 18, 2025], that Regulation 39A(1) of the Corporate Insolvency Resolution Process (CIRP) Regulations, 2016 is an enabling Regulation and does not cast any obligation to permit modification of a Resolution Plan. Thus, after submission of the final revised Resolution Plan and its approval, the Resolution Applicant cannot be permitted to modify it.

3. However, as far as the observation of the Apex Court that the PMLA being a Public Law, NCLAT has any power or jurisdiction to review the decision of the Statutory Authority under PMLA, appears to be blurred. IBC has specific object, which is to consolidate and amend laws relating to reorganisation and insolvency resolution in a time-bound manner for maximization of value of assets and to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues.

4. Thus, in essence, the Hon’ble Supreme Court has unsettled the position with respect to attachment of assets by ED which was being considered as settled pursuant to decision in the WP No. 9943/2023 titled Shiv Charan Vs Adjudicating Authority under PMLA by the Hon’ble High Court of Bombay in which it was held that NCLT will be well within its jurisdiction in declaring that CD would stand discharged from offences alleged to have been committed prior to

CIRP and that the attached properties shall be free of attachment from the time of approval of the Resolution Plan eligible for benefit under Section 32A of IBC.

5. Passing of this order by the Hon'ble Supreme Court and consequent liquidation of BPSL has created shock waves and ripples not only in the Indian financial space but also overseas, as it has put the authenticity and finality of the entire CIRP process in doubts. Any proposed Resolution Applicant would now hesitate to submit the Resolution Plan if it is not sure that the Resolution Plan considered by the COC in its commercial wisdom and approved by NCLT, would be upheld by the higher courts. Any Resolution Applicant would apprehend that the Resolution Plan can be set aside, despite complete revival of the CD, on account of certain technicalities, that too after many years from the effective date of implementation of the Resolution Plan. This judgement will not only impact BPSL but also other approved resolution plans presently under implementation where on account of certain reasons, timelines for implementation of the Resolution Plan could not be met. Thus, in our opinion, resolution of the CDs in coming future would be going to be tough and difficult.

6. Besides, while there is no doubt that there have been various deficiencies in the entire CIRP as noted by the Hon'ble Supreme Court in the aforesaid judgement, however, this has also to be kept in mind that this was one of the very few cases identified by the Govt. of India in early 2016 for resolution under the aegis of IBC. At that time, IBC was at very nascent stage and was evolving by each passing day. Neither the RP nor the Banks forming part of COC nor the Tribunals or courts were aware of nitty-gritties of the procedural formalities which were to be complied with within the strictest timeline prescribed under the IBC, which in itself was a humongous task in view of the legal system of our country. The situation got further complicated on account of sheer volume of outstanding dues payable by the CD, the size of business operations of the CD, lodging of claims by various financial creditors, operational creditors, statutory authorities, employees etc. etc. So, any flip in the procedural aspects could have been viewed leniently and condoned under Article 142 of the Constitution of India.

7. At times, when the financial creditors were actively taking the IBC route for resolution of their stressed loan accounts, the decision of the Hon'ble Supreme Court has brought them to a crossroad where they may think adopting measures other than resolution under the IBC, which will be a severe setback to the Government intent to

streamline the resolution of stressed assets. Similar situation was also created when the judgement in the matter of States Tax Officer vs Rainbow Papers Ltd. was passed by the Hon'ble Supreme Court, giving priority to the crown debt as against the debt of the financial creditors, and even review thereof was dismissed. The uncertainty created by the said judgement was later on settled by the Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd. & Ors (2023 INSC 625)* by holding that the decision of States Tax Officer vs Rainbow Papers Ltd. has to be confined to the facts of that case alone.

8. Now, in our opinion, in the present case as well, either this judgment is required to be reviewed or some other mechanism be brought in place so as to ensure that the trust of the financial creditors in the IBC is not eroded and is re-established. Since the judgment of the Apex Court has wider ramifications, as BSPL has been put to liquidation four years after its corporate insolvency process was over, the prospective resolution applicants may shy away from going aggressive in picking up stressed assets from the insolvency court, fearing uncertainty.

Note: The Supreme Court has stayed the liquidation proceedings of Bhushan Power and Steel Ltd, allowing JSW Steel to file a review petition against a previous ruling that invalidated its Rs.19,300 crore resolution plan. The NCLT has been directed to keep the matter pending until the court decides.

C Reserve Bank of India ["RBI"]

1. RBI Basel III: LCR Review of HQLA Haircuts and Deposit Run-off Rates

The RBI vide its ***Notification RBI/2025-26/27 DOR.LRG.REC. 18/03.10.001/2025-26 dated April 21, 2025***, has revised its guidelines on liquidity standards, specifically the Liquidity Coverage Ratio (LCR), based on stakeholder feedback.

The changes, effective April 1, 2026, include an increased run-off factor of 2.5 percent for retail deposits with internet and mobile banking, treating unsecured wholesale funding from non-financial small businesses similar to retail deposits, and valuing Level 1 High Quality Liquid Assets (HQLA) based on current market value with haircuts aligned to LAF/MSF margin requirements.

Additionally, deposits contractually pledged as collateral will be considered callable for LCR. The RBI has also reclassified certain entities; deposits from non-financial entities like trusts and partnerships will now attract a lower run-off rate of 40 percent, instead of 100 percent, unless categorized as small business customers.

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2. RBI Guidelines: Opening of & operation in deposit accounts of minors

The RBI vide its ***Notification RBI/2025-26/26 DOR.MCS.REC. 17/01.01.003/2025-26 dated April 21, 2025***, has rationalized and harmonized its guidelines regarding the opening and operation of deposit accounts for minors.

Effective July 1, 2025, minors of any age can open savings and term deposit accounts through their natural or legal guardian, including their mother. Minors above 10 years can independently open and operate such accounts within limits set by individual banks based on their risk management policies.

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Upon reaching majority, account holders must provide fresh operating instructions and specimen signatures, and balances in guardian-operated accounts will need confirmation.

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3. RBI mandates banks to complete '.bank.in' migration by October 31, 2025

The RBI vide its ***Notification RBI/2025-26/28 CO.DIT.DCD. No.S81/01-71-110/2025-26 dated April 22, 2025***, has issued a directive instructing all commercial banks, urban cooperative banks, state cooperative banks, and district central cooperative banks to begin migrating their digital infrastructure to the new '.bank.in' domain. The initiative aims to bolster cybersecurity and reduce instances of fraud associated with digital payments.

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4. RBI eases FPI rules on corporate bonds to boost foreign inflows

The RBI vide its Notification ***RBI/2025-26/35 FMRD.FMD. No.01/14.01.006/2025-26 dated May 08, 2025***, has relaxed norms for foreign portfolio investors (FPIs) investing in corporate debt securities through the general route, and as such, Foreign Portfolio Investors (FPIs) in corporate debt securities will no longer be required to adhere to the short-term investment and concentration limits.

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5. Reserve Bank of India (Digital Lending) Directions, 2025 – Digital lending gets a regulatory overhaul mandating app directory & loan transparency

The RBI vide its ***Notification RBI/2025-26/36 DOR.STR.REC. 19/21.07.001/2025-26 dated May 8, 2025***, has issued a new framework mandating the Regulated Entities ("REs") to submit details of their Digital Lending Apps ("DLA") through RBI's Centralised Information Management System (CIMS) portal. The RBI clarified that the public directory is intended solely to help consumers verify whether a particular DLA is legitimately associated with a regulated lender.

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6. RBI revises Bank Rate & Penal Interest Rates on shortfalls in reserve requirements

The RBI vide its ***Circular RBI/2025-26/23 DoR.RET.REC. 16/12.01.001/2025-26 dated April 9, 2025***, has reduced the bank rate by 25 basis points from 6.50% to 6.25%, effective immediately.

Resultantly, the penal rate for shortfalls in reserve requirements now stands at Bank Rate plus 3.0 percentage points (9.25%) or Bank Rate plus 5.0 percentage points (11.25%), depending on the duration of the shortfall.

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D Securities and Exchange Board of India [SEBI]

1. SEBI Revises Cut-Off Timings for NAV in Overnight Mutual Fund Schemes

The SEBI vide its ***Circular No. SEBI/HO/IMD/PoD2/P/CIR /2025/56 dated April 22, 2025***, has modified the cut-off timings for determining the applicable Net Asset Value (NAV) for repurchase or redemption of units in mutual fund overnight schemes. Now, for overnight funds, applications received up to 3:00 PM will be processed using the NAV of the immediately preceding business day, while applications received after 3:00 PM will be processed using the next business day's NAV.

Read more

2. SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2025

The SEBI vide its amendment in the (Real Estate Investment Trusts) Regulations, 2014, had modified the definition of "cash equivalent" and addressed the filling vacancies for independent directors, specified trustee responsibilities, and detailed conditions for transferring locked-in units held by sponsors. Furthermore, the amendments outlined eligible investments for REITs, including property management companies, liquid mutual funds, and interest rate derivatives, subject to certain conditions.

Read more

3. SEBI Clarifies ESG Rating Norms for ERPs

The SEBI vide its ***Circular No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2025/59 dated April 29, 2025***, has clarified that for subscriber-pays ESG Rating Providers (ERPs), ratings can be withdrawn if no subscribers exist, except for bundled ratings (e.g., indices like Nifty 50), and may also be withdrawn if the issuer lacks a Business Responsibility and Sustainability Report. Whereas, for issuer-pays ERPs, ratings of securities may be withdrawn after three

years or half the tenure of the security (whichever is higher), with NOC from 75% of bondholders; issuer/entity ratings may be withdrawn after three years.

Read more

4. SEBI Extends Deadline for Optional T+0 Settlement for QSBs to Nov 1, 2025

The SEBI vide its ***Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2025/58 dated April 29, 2025***, has relaxed the period for implementation timeline for the optional T+0 rolling settlement cycle to November 1, 2025.

Read more

5. SEBI Updates Disclosure Norms for REITs

The SEBI vide its ***Circular No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2025/64 dated May 07, 2025***, has revised Chapters 3 and 4 of its Master Circular for Real Estate Investment Trusts (REITs), originally issued on May 15, 2024, as per which, the REITs issuing offer documents or follow-on offers must disclose audit audited financial statements for the last three financial years and a stub period, in case the latest audited financials are older than six months from the date of filing.

Additionally, for initial offers, audited combined financial statements of the REIT shall be disclosed in the offer document/placement memorandum. Also, REITs must report their unit holding pattern one day before listing, quarterly within 21 days, and within 10 days of any capital restructuring leading to a change exceeding two per cent in the total outstanding units.

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E Insolvency and Bankruptcy Code, 2016 [IBC]

1. Once the resolution plan stands approved by NCLT u/s 31(1) of the IBC, any claim that is not part of the plan stands extinguished and can't be pursued further

The Supreme Court in the case of ***Electrosteel Steel Limited (Now M/S ESL Steel Limited) vs Ispat Carrier Private Limited [Civil Appeal No. 2896 of 2024 dated April 21, 2025]***, reiterated that once a resolution plan is approved by the National Company Law Tribunal (NCLT) under Section 31(1) of the Insolvency and Bankruptcy Code (IBC), 2016, any claim that is not part of the plan stands extinguished and cannot be pursued further.

In case of *Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta [(2020) 8 SCC 531]*, it was categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up, which would throw into uncertainty the amount payable by the resolution applicant. Although the resolution professional, the committee of creditors, and the NCLT had taken note of the arbitration proceedings involving Ispat Carrier, the claim was not included among the top 30 operational creditors whose claims were settled at nil value. Therefore, its claim could not be placed higher. The resolution plan clearly stated that all claims under pending litigations and arbitrations would be settled at nil.

The Supreme Court thus concluded that the award passed by the Facilitation Council was without jurisdiction and hence could be challenged in execution proceedings under Section 47 CPC. The lifting of the moratorium did not revive extinguished claims, and the MSEFC lacked jurisdiction to proceed once the plan was approved. The Apex Court thus allowed the appeal challenging the enforcement of an arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) against Electrosteel Steels Ltd., holding that the award was non-executable in view of the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code (IBC), 2016.

Read more

2. Even if homebuyers have obtained recovery certificates from RERA, they remain financial creditors u/s 5(8)(f) of the IBC

The National Company Law Appellate Tribunal (NCLAT) in case of ***Shailendra Agarwal Versus Asit Upadhyaya [Company Appeal (AT) (Insolvency) No. 327 of 2025 dated April 23, 2025]***, held that whether or not homebuyers have obtained recovery certificates from the Real Estate Regulatory Authority (RERA), they remain financial creditors under Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016 (IBC).

The NCLAT said that the limitation period under the Limitation Act is extended in cases of continuing breach under Section 22, with each default triggering a fresh cause of action. The Corporate Debtor's failure to hand over possession or refund payments to allottees constitutes such a continuing breach. Directions by UP RERA, including the refund order, its amendment and project cancellation confirm the ongoing default. Additionally, the Corporate Debtor's balance sheet dated June 30, 2022 acknowledges the debt, thereby extending limitation under Section 18. Hence, the petition filed on January 09, 2024 is within the limitation period, and the Appellant's objection on this ground cannot be entertained.

The NCLAT opined that under the second proviso to Section 7(1) of the IBC, an application against a real estate developer must be filed by at least 100 allottees or 10% of the total allottees, whichever is lower. Since in the present case, with 247 units in the project and 34 units held by the Respondents, the threshold is met. Also, the Corporate Debtor's claim that some allotment letters are forged lacks supporting evidence and is misconceived.

The NCLAT further held that the allottees' deposits have not been fully refunded, and their outstanding claims exceed the Rs.1 crore threshold. The Adjudicating Authority (NCLT) found that the Corporate Debtor failed to provide any evidence supporting its allegation of fraudulent or malicious intent behind the proceedings. Further, the issuance of recovery certificates to some applicants does

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not bar them from initiating proceedings under the IBC, provided the existence of 'debt' and 'default' is established, which is the case here.

Hence, the NCLAT held that the mere assertion that the applicants are engaging in forum shopping or that some allotments are disputed does not meet the rigorous standard required to invoke Section 65 of the IBC. Also, all financial liabilities and obligations incurred by M/s Nikhil Associates prior to its conversion remain binding on M/s NHA Infrabuild Pvt Ltd. A mere change in legal structure does not absolve the Corporate Debtor of its pre-existing commitments. Section 369 of the Companies Act affirms the continuity of obligations post-conversion, and the present proceedings must be assessed accordingly. Accordingly, the appeal was dismissed.

Read more

3. An attempt to revive a failing company that has undergone insolvency proceedings shall not be at the cost of employees' security, hence, it shall not wipe off the provident fund of the employee

The Bombay High Court in the case of ***Murli Industries Ltd (Now represented by Dalmia Cement Ltd) & Ors vs. Union of India & Ors [Writ Petition No. 693 of 2022 dated April 29, 2025]*** had ruled that the definition of 'operational creditor', as contained under Sec.5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), is restricted to Statutory dues payable to the Central/State Governments and Local Bodies as these can sustain the loss of such dues, however an employee, cannot sustain the loss of his provident fund and any such loss, is bound to have a crushing effect upon the employee.

The High Court clarified that a Company, which is failing, would have the right to be revived, however, the attempt at revival shall not be at the cost of the employees security, who have rendered services to the company, which services form the very basis for the existence of the company, which security they have an account of their provident fund and an attempt to revive such company/industry, should not wipe off the provident fund of the employee.

Explanation (a) to Section 18(1) of the IBC unequivocally provides that "assets" for the purposes of the Code shall not include assets held in trust for any third party. The provident fund (PF), being a statutory social security fund, constitutes such a trust asset. In the context of corporate insolvency resolution, this means that both the employee's contribution, which is deducted from salary, and the employer's matching contribution, once deposited in the Employees' Provident Fund (EPF), do not belong to the corporate debtor and therefore cannot be included in the resolution applicant's pool of assets.

The High Court elaborated that the provident fund is not merely a contractual obligation but is recognized under statutory law as a social security measure under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The IBC must be interpreted harmoniously with the EPF Act, ensuring that Section 36(4)(a)(iii) of the IBC is respected. This section excludes PF, gratuity and pension funds from the liquidation estate. Furthermore, Section 11 of the EPF Act gives first charge to provident fund dues over the assets of the establishment, overriding any other claim. This statutory charge cannot be extinguished through a resolution plan, as it is neither subject to waiver nor discharge without explicit compliance with statutory mandates.

The High Court also noted that Section 17-B of the EPF Act squarely places joint and several liability on the transferee companies for the provident fund dues, pension, and insurance obligations of employees whose services are transferred due to a merger, sale, or transfer of an undertaking. This means that even if the corporate debtor is under resolution, the transferee entities are mandatorily liable for the PF contributions and cannot escape liability through the resolution mechanism. Since provident fund dues are not payable to a government body, but to a statutory trust fund administered by the EPFO. Hence, they do not qualify as operational debt, and their non-inclusion in the resolution plan cannot lead to automatic extinguishment under Section 31(1).

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F Arbitration and Conciliation Act, 1996 [A&C Act]

1. Power of remand u/s 34(4) of the Arbitration Act is of a restrictive nature for the Courts – Arbitral award should be remitted back only if there is a possibility to correct a defect in the award

While observing that an arbitral award should be remitted back only if there is a possibility to correct a defect in the award, the Supreme Court in case of ***Gayatri Balasamy vs M/s ISG Novasoft Technologies Limited in SLP(C) No. 15336-15337/2021 dated April 30, 2025***, held that the powers of Appellate Courts to remand arbitral awards back to the Tribunal u/s 34(4) of the Arbitration and Conciliation Act 1996 (A&C Act) cannot be seen as a straight-jacket formula.

Emphasizing that the Appellate Courts have limited powers to modify arbitral awards while exercising powers under either Section 34 or 37 of the A&C Act, the Apex Court has outlined specific circumstances for the exercise of this limited power. These are i) When the award is severable by separating the invalid portion from the valid portion of the award; ii) To correct any clerical, computation or typographical errors which appear erroneous on the face of the record; iii) To modify post-award interest in some circumstances; and iv) The special powers of the Supreme Court under Article 142 of the Constitution can be applied to modify awards, but with great caution within the limits of the Constitution.

The Apex Court held that the power of remand u/s 34(4) of the A&C Act is of a restrictive nature for the Courts. While the remand gives flexibility to the tribunals to make amends in the award, when it comes to modification powers, such flexibility is taken away from the tribunals. Considering the provisions of Section 34(1) of the A&C Act, which provides that the Court can only set aside an award when such an application is made, the Apex Court in its majority decision held that a great deal of caution has to be taken while exercising the powers of modification.

The Court added that the power of remand permits the court only to send the award to the tribunal for reconsideration of specific aspects.

It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the court. And upon remand, the arbitral tribunal may proceed in a manner warranted by the situation, including recording additional evidence, allowing a party to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. At the same time, the Apex Court cautioned that the exercise of modification powers does not allow for such flexibility, and explained that the power to remit the matter back to the tribunal is upon the discretion of the Court when it views the possibility of correcting a defect in the award which could prevent the setting aside of the whole award instead.

Even though the Tribunal has the flexibility to correct the curable defects, the Apex Court observed that Section 34(4) of the A&C Act cannot be used as a tool by the Tribunal to completely set aside the award or rewrite it. If the Court is of the opinion that the defect in the award is of such a nature that it cannot be corrected by the Tribunal, it should not remit the award back to the Tribunal. The primary objective of Section 34(4) of the A&C Act is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the award. A key consideration is the proportionality between the harm caused by the defect and the means available to remedy it.

The Apex Court further observed that the court must also remain mindful that the arbitral tribunal has already rendered its decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. There cannot be a lack of confidence in the tribunals' ability to come to a fair and balanced decision when an order of remit is passed. The Court should avoid sending a case back to the arbitral tribunal if it would put the tribunal in a difficult position or cause delays, extra costs, or inefficiencies. If remand is ordered, the tribunal has significant, though limited, power to revise the award u/s 34(4) of the A&C Act, which contrasts with the court's more restricted role under the rest of Section 34.

However, in its dissenting opinion from the majority of the four-judge bench, Justice KV Viswanathan held that Section 34 Court cannot modify the award unless expressly authorized by the law, since it tantamounts to exercising a merits review. Courts exercising Section 34 power cannot change, vary, or modify arbitral awards as it strikes at the core and the root of the ethos of the arbitration exercise. He

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disagreed with the view of the majority that the Courts can modify post-award interest. If there is any need for modification of interest, the matter has to be remitted back to the Tribunal. Also, this can lead to uncertainties and difficulties in enforcing foreign awards.

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2. Mere execution of full & final settlement receipt or discharge voucher will not bar arbitration even when validity thereof is challenged by the claimant on ground of fraud, coercion or undue influence

The Supreme Court in case of ***Arabian Exports Private Limited vs National Insurance Company [Civil Appeal No. 6372-6373 of 2025 dated May 06, 2025***, held that any dispute about the full and final settlement itself by necessary implication being a dispute arising out of or in relation to or under the substantive contract would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by 'accord and satisfaction'.

The Supreme Court observed that if the insured alleges coercion in arriving at a settlement with the insurer, then the dispute over the validity of the settlement remains arbitrable. Further, mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when the validity thereof is challenged by the claimant on the ground of fraud, coercion, or undue influence.

The Apex Court referred to the decision in the case of *SBI General Insurance Co. Ltd. Vs. Krish Spinning [2024 SCC OnLine SC 1754]*, wherein it was held that an arbitration agreement doesn't come to an end upon a full and final settlement arrived between the parties. Thus, if the party disputes settlement on the ground of fraud, coercion, etc., then the Arbitral Tribunal, by virtue of its power under Section 16 of the Arbitration Act, is empowered to decide its jurisdiction over the dispute.

Thus, the Apex Court held that the issue of whether the settlement between the parties was coerced falls within the scope of arbitration and must be determined by the arbitral tribunal. The question as to

whether the appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the respondent out of economic duress and whether receipt of Rs.1,88,14,146.00 as against the claim of Rs. 5,71,69,554.00, the claim to arbitration is sustainable or not are clearly within the domain of the arbitral tribunal. Accordingly, the appeal stands allowed.

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3. Merely because notice invoking Section 21 of the Arbitration and Conciliation Act was not issued to certain persons who are parties to the arbitration agreement, does not denude the arbitral tribunal of its jurisdiction to implead them as parties during arbitral proceedings

The Supreme Court in the case of ***Adavya Projects Pvt Ltd vs Vishal Structures Pvt Ltd [Civil Appeal No. 5297 of 2025 dated April 17, 2025***, has held that not being served with the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act ("A&C Act"), and not being made a party in the Section 11 application (for appointment of arbitrator), are not sufficient grounds to hold that a person cannot be made party to arbitral proceedings. The Court also clarified that although notice invoking arbitration u/s 21 of A&C Act is mandatory and it is prerequisite to filing an application u/s 11, however, merely because such notice was not issued to certain persons who are parties to arbitration agreement does not denude arbitral tribunal of its jurisdiction to implead them as parties during arbitral proceedings.

Concerning service of a Section 21 notice, the Supreme Court observed that the notice is mandatory and fulfils various purposes by fixing the date of commencement of arbitral proceedings. However, non-service of the notice on a person does not preclude his impleadment in the arbitral proceedings. Merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings, as the referral court's view does not finally determine this issue. The relevant consideration to determine whether a person can be made a party before the arbitral tribunal is whether such a person is a party to the arbitration agreement. In the case of *State of Goa v. Praveen Enterprises [(2012) 12 SCC 581 paras 16 & 18]* that the claims and disputes raised in Section 21 notice do not limit the claims that can be raised before the arbitral tribunal.

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Rather, the limited consequence of raising a claim before the arbitral tribunal for the first time is that the limitation period for such claim shall be calculated differently vis-a-vis claims raised in the notice. Extending the same logic to non-service of notice under Section 21 to a party, there is nothing in the wording of the provision, or in the scheme of the Act, to indicate that a party must not be impleaded merely because it was not served notice under Section 21.

On the aspect of '*impleadment*' in a Section 11 application, the Supreme Court noted that the purpose of the application is "constitution" of the arbitral tribunal, which takes place pursuant to a limited and prima facie examination by the referral court. As such, the order appointing the arbitrator does not limit the arbitral tribunal's terms of reference or scope of jurisdiction. In case of *Cox and Kings vs. SAP India [(2024) 4 SCC 1]*, it was observed that while deciding such an application under Section 11(6), the High Court or this Court, as the case may be, undertakes a limited examination as per Section 11(6A), the determination of whether certain persons are parties to the arbitration agreement, and consequently, whether they can be made party to the arbitration proceedings, is left to the arbitral tribunal. While the Section 11 court can return a prima facie finding on this issue, the same does not bind the arbitral tribunal, which must decide the issue based on evidence and the applicable legal principles. The determination of this issue goes to the very root of the arbitral tribunal's jurisdiction, and hence, is covered under Section 16 of the A & C Act. The Arbitral tribunal's jurisdiction over a person/entity, it further opined, is derived from their consent to the arbitration agreement. Hence, the proper inquiry in an application under Section 16, which embodies the *doctrine of kompetenz-kompetenz* (that the arbitral tribunal can determine its own jurisdiction), is whether such a person is a party to the arbitration agreement.

Read more

1. Circumvention of regulatory framework by banks/ housing financial corporations, and resultant illicit benefits is drawn by builders/developers at cost of homebuyers; Supreme Court directs for CBI probe on nexus between Banks & Builders

Considering grievances of homebuyers in the National Capital Region, who claimed that they were being forced by banks to pay EMIs without having obtained possession of flats due to delay by the builders/developers, the Supreme Court in case of ***Himanshu Singh vs Union of India [SLP (C) No. 7649 of 2023 dated April 29, 2025]*** had expressed that certain real estate companies, and banks which had sanctioned loans to them for their projects in the National Capital Region, had taken poor homebuyers to ransom.

Finding that the matter pertained to a batch of more than 170 petitions filed by over 1200 homebuyers/borrowers, the Supreme Court raised an issue of paramount importance, that is, "systematic failure of statutory and governmental authorities to discharge their functions, circumvention of regulatory framework by banks and housing financial corporations, and the resultant illicit benefits alleged to have been drawn by builders/developers at the cost of the homebuyers who are now bearing the brunt of such failure".

Accordingly, the Supreme Court has directed the Central Bureau of Investigation (CBI) to conduct preliminary enquiries into an unholy nexus between the banks/Housing Financial Corporations on one hand and the builder-cum-developers on the other, with priority being given to Supertech Ltd. Essentially, the Apex Court directed the CBI to register seven preliminary enquiries in the manner as suggested in the affidavit filed on its behalf. Starting from the first preliminary enquiry pertaining to the projects of M/s Supertech Ltd, then one preliminary enquiry for the projects of builders other than Supertech Ltd. falling outside NCR region, and then, last five preliminary enquiries (one each) for the projects only under one development authority i.e., Noida, Greater Noida, Yamuna Expressway, Gurugram and Ghaziabad.

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2. Appeals filed against procedural orders of the Debts Recovery Tribunal do not require pre-deposit as per Section 18 of the SARFAESI Act

The Supreme Court in case of ***Sunshine Builders and Developers vs HDFC Bank Limited [Civil Appeal No. 5290/2025 dated April 17, 2025]*** had held that appeals filed against procedural orders of the Debts Recovery Tribunal ("DRT") do not require pre-deposit as per Section 18 (appeal to the appellate tribunal) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

The moot question before the High Court was whether the aspect of pre-deposit under Section 18 should apply in "such orders" which are more procedural in nature, as the present one. The plain reading of Section 18 of the SARFAESI Act would indicate that if any person, which should also include a borrower, is aggrieved by any order made by the DRT under Section 17 of the SARFAESI, he may prefer an appeal subject to the pre-deposit. The expression 'any order' should be given some meaningful interpretation.

Should any and every order that may be passed by DRT, if sought to be challenged, be made subject to pre-deposit? One can understand that if any final order is passed by the DRT, determining the liability of the borrower or any other liability of any person, and an appeal is preferred under Section 18 of the SARFAESI Act to the appellate tribunal, the provision of pre-deposit would come into play. However, what would be the position if an order like the one passed in the present litigation, i.e., declining to implead the auction purchaser in the pending proceedings before DRT, is concerned? Thus, the Apex Court remanded the matter to the High Court for the purpose of reconsidering the aforesaid aspects of the matter.

Read more

3. An objectively grounded incentive can't be condemned as 'unfair', if slab mechanism did not foreclose alternative suppliers or throttled output – Use of volume-based rebates which did not restrict rival output or limit imports, does not constitute an 'abuse of dominant position' u/s 4(2)(b) of the Competition Act, 2002

Referring to Section 4(2)(a) of the Competition Act, 2002 ("2002 Act") which implies that an abuse of market position arises only where a dominant enterprise "directly or indirectly imposes unfair or discriminatory…price in purchase or sale", the Supreme Court in case of ***Competition Commission of India vs Schott Glass India Pvt Ltd [Civil Appeal No. 5843 of 2014 dated May 13, 2025]*** has observed that if the challenged differentiation rests on an objective commercial justification, or if it is open on identical terms to every purchaser similarly placed, the price cannot be stigmatised as abusive.

Since the slabbed target-rebate scheme by the glass manufacturing company i.e., the Respondent, employs a neutral, volume-based criterion applicable to all purchasers alike; it is objectively justified by demonstrable efficiency considerations; and has not been shown to restrict rival output, limit imports or distort downstream prices, no charge of abuse of dominant position gets attracted under clauses (a) or (b) of Section 4(2) of the 2202 Act, clarified the Supreme Court.

The Bench observed that for the relevant period, Schott India circulated a single rebate ladder applicable to all converters, and four slabs of 2%, 5%, 8% and 12% were triggered exclusively by the aggregate tonnage of Neutral Glass Clear and Neutral Glass Amber collected within the financial year. Every customer who reached a slab, whether by one purchase order or by several, obtained the corresponding allowance on the entire year's turnover. The rebate therefore rose mechanically with volume and with nothing else, and all converters were informed of the thresholds in advance, and none has suggested that any hidden concessions existed outside the ladder.

The Supreme Court noted that the furnace tanks operate at temperatures around 1600 °C and cannot be cyclically shut down without inflicting catastrophic refractory damage, hence, stable and high-volume orders are indispensable for efficient utilisation and for amortising the very substantial capital employed. Since a volume-contingent rebate transmits a share of those scale economies

downstream, to the ultimate benefit of pharmaceutical customers, such an objectively grounded incentive cannot be condemned as "unfair", that too when there is no evidence that the slab mechanism foreclosed alternative suppliers or throttled output in order to attract Section 4(2)(b)(i) of the Act.

The Supreme Court also found that the purchase-plan requirement secures furnace utilisation in a continuous-fire technology whose tanks cannot be cyclically idled without grave damage; and the Director General (DG) in fact accepted the objective necessity of load stability. Further, the temporary "no-Chinese" stipulation rested upon contemporaneous chemical-analysis certificates and the inspection right extends solely to verifying tubing origin and is a standard incident of trade-mark licensing, as observed by the minority Member in CCI's order after surveying comparative jurisprudence. Since each condition is objectively connected with the legitimate aim, patient safety and brand integrity, and is proportionate to it, the Supreme Court concluded that the functional rebate and its successor agreements therefore do not offend either Section 4(2)(a) or Section 4(2)(b)(i) of the 2002 Act.

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4. The compliance officers cannot be held liable for the fraud committed by the promoters or directors of a listed company, in the absence of a specific proven involvement or legal obligation to verify financial data

The Securities Appellate Tribunal ("SAT") in the case of ***V Shankar vs. SEBI [Appeal No.283 of 2022 dated May 05, 2024]***, has quashed the penalty order of Rs. 10 (ten) lacs against the Company Secretary of Deccan Chronicle Holdings Ltd. (DCHL), while ruling that the Company Secretary is not liable for the violations committed by the company and its directors in the absence of a specific proven involvement or legal obligation to verify financial data.

The SAT observed that the main charge was that the Appellant, by signing the public announcement for buyback without adequate free reserves, had misled the shareholders. Moreover, the public announcement itself stated that the Board of Directors took responsibility for its contents, not the Company Secretary. Further, the AO had incorrectly interpreted Section 215 of the Companies Act

by suggesting that the Company Secretary should verify and audit the certified accounts.

The SAT explained that it is not the duty of a Company Secretary to audit or re-verify financial statements already approved by the Board and certified by auditors. Since no specific violation of legal provision alleged to be committed by the Appellant was cited by the SEBI, the Tribunal noted that SEBI's findings repeatedly attributed the fraudulent acts to the company and its directors, not the Appellant.

Though, as per Regulation 19(3), a Compliance Officer must ensure compliance with Buyback Regulations, the SAT found no evidence of non-compliance attributable directly to the appellant under this Regulation, and therefore concluded that a presumption that a Company Secretary must re-examine the audited accounts is untenable and without legal basis. Accordingly, the Tribunal deleted the penalty, quashed the order of SEBI, and allowed the appeal.

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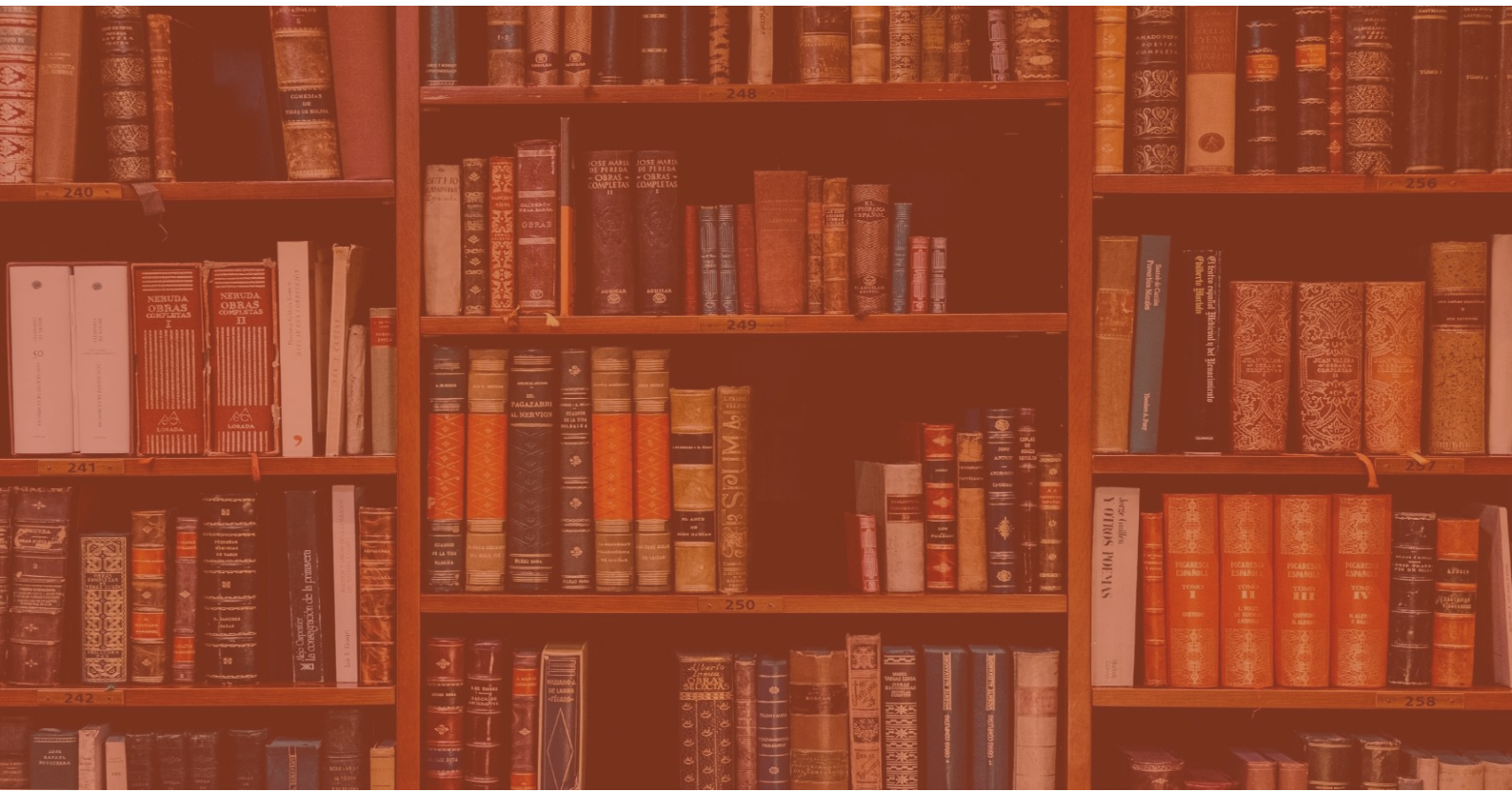

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H Miscellaneous Regulations

1. IFSCA (Capital Market Intermediaries) Regulations, 2025

The International Financial Services Centres Authority (IFSCA), vide its ***Notification F. No. IFSCA/GN/2025/003 dated April 11, 2025***, has established a regulatory framework for the registration, regulation, and supervision of capital market intermediaries operating within India's International Financial Services Centres. To protect investor interests and maintain the integrity of the securities market, IFSCA has defined capital market intermediaries, outlined the process for registration, including eligibility criteria and potential refusal, and specified the perpetual validity of registration unless suspended or cancelled.

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2. Competition Commission of India notifies norms to assess predatory pricing practices

The Competition Commission of India (CCI) vide its ***Notification F.No. CCI/ Reg-COP/01/ 2025-26 dated May 07, 2025***, has notified the Determination of Cost of Production Regulations, 2025, replacing the earlier norms established in 2009. These updated regulations aim to modernize and clarify the framework for calculating the cost of production, particularly in the context of assessing anti-competitive practices such as predatory pricing and deep discounting in e-commerce.

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I Recognitions and Industry Rankings

1. India Business Law Journal (IBLJ) Law Firm Awards 2025

SNG & Partners has been honoured at the India Business Law Journal (IBLJ) Law Firm Awards 2025 in three categories:

- **Capital Markets**
- **Private Client Practice**
- **Real Estate**

The awards acknowledge our role in advising on notable matters such as the INR 2 billion NCD issuance by UGRO Capital, public offerings by RBZ Jewellers and Vistaar Financial, and the acquisition of a distressed real estate project by Shriram Properties. Our Private Client Practice has been commended for its guidance to prominent families and individuals on succession planning and cross-border inheritance, while the Real Estate team was recognised for advising on large-scale acquisitions and regulatory litigation.

2. Benchmark Litigation 2025 Rankings

SNG & Partners has been recognized in the Benchmark Litigation 2025 Rankings in multiple categories, marking a notable progression from last year. The Firm Rankings are as follows:

1. **Mumbai – Recommended Firm**
2. **New Delhi – Recommended Firm**
3. **Commercial and Transactions – Tier 4**
4. **Government and Regulatory – Tier 4**
5. **Insolvency – Tier 4**

Mr. Sanjay Gupta has been recognised as a **Litigation Star** for Commercial and Transactions.

Benchmark Litigation has noted our strong positioning in banking and finance disputes, backed by comprehensive litigation and arbitration services. A highlight includes the firm's representation of Future Corporate Resources in a constitutional challenge to provisions under the Recovery of Debts and Bankruptcy Act.

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3. Thought Leadership & Legal Insight – Noteworthy Publications by Our Professionals

- **Greater Access to Credit, Greater Chance of Fraud – Ashish Kumar, Partner; Lokesh Malik, Senior Associate; and Atika Chaturvedi, Associate**

  This article discusses how corporate fraud and/or businesses run with an intent to defraud the creditors and threaten the rights of financial institutions and investors, which eventually results in losses incurred by financial institutions, thereby increasing the level of bad debts.

  Read Article

- **Changing paradigm of Co-lending in India – Anju Gandhi, Partner; Rashmi Raveendran, Associate Partner; and Prateek Mohnot, Senior Associate**

  This article analyses the impact of the draft Reserve Bank of India (Co-lending Arrangements) Directions, 2025, issued on April 09, 2025, for regulating co-lending arrangements (CLA) between regulated entities, on the co-lenders in obtaining default loss guarantees from sourcing or funding entities to mitigate the consequences of default.

  Read Article

- **Interim Moratorium and its Nuances – Jagriti Ahuja, Associate Partner; and Geetansh Kathuria, Associate**

  This article talks about the tactical abuse of the interim moratorium by personal guarantors to delay recovery or security enforcement actions initiated by secured creditors under the provisions of the SARFAESI Act, 2002, and the RDDBFI Act, 1993.

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