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SNG Newsletter

Volume 42, July 2025

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Editor's Letter

Dear Readers,

July 2025 witnessed a multitude of regulatory developments from the MCA, IBBI, RBI, and SEBI, as well as important judicial pronouncements spanning various fields, including Insolvency and Bankruptcy, Registration Act, Limitation Act, and the Negotiable Instruments Act. Many of those that may interest our readers have been covered in this edition.

The current edition pens down an article addressing the "Non-Competes: The Paper Tiger in Employment Contracts", which highlights how the increasing reliance of companies on proprietary business information, trade secrets, technical know-how, and intellectual property has led to a marked rise in the inclusion of restrictive covenants, particularly non-compete clauses, in employment agreements. By exploring both historical precedents and contemporary judicial trends, this article offers a critical evaluation of the evolving judicial approach and trends that attempt to balance the competing interests of employers seeking to protect their legitimate business interests, vis-à-vis the employees' right to freedom of employment.

On the judicial front, the NCLT Mumbai has held that a petition u/s 95 of the IBC against a Personal Guarantor is not maintainable in the absence of the invocation of the guarantee prior to issuance of the demand notice. Further, the NCLAT New Delhi has held that a Corporate Debtor cannot avoid its obligation to repay debt under IBC, arguing that Section 186 of the Companies Act, 2013 was not followed while disbursing the loan. In a separate ruling, the Madras High Court has held that IBC gives discretion only to the Committee of Creditors and not IBBI to substitute an Insolvency Resolution Professional. In another significant judgment, the NCLAT Bengaluru has held that set-off of fixed deposits against overdraft as per untainted pre-CIRP contract does not violate moratorium u/s 14 IBC.

In the realm of the Limitation Act, in one of the landmark judgments, the Madhya Pradesh High Court has ruled that the benefit of Sections 4 to 24 of the Limitation Act is available to causes raised u/s 17(1) of the SARFAESI Act, before the DRT. Significantly, the Karnataka High Court has ruled that 'Sufficient cause' used u/s 5 of the Limitation Act should not be unduly elastic in terms of stringent provisions of the Commercial Courts Act, 2015.

Coming to the Negotiable Instruments Act, the Supreme Court has ruled that even if a cheque was drawn in a firm's name and signed by only one partner, both partners were jointly and severally liable in case of its dishonour. Whereas, in the general laws stream, the Supreme Court has held that interest on unpaid penalty can be applied retrospectively, and SEBI need not issue a separate demand notice once liability is crystallized in an adjudication order. The Supreme Court in another significant ruling also held that a gift subject to maintenance can't be revoked u/s 126 of the Transfer of Property Act, without a specific revocation clause.

On the regulatory front, the RBI has issued revised guidelines whereby no RE can individually contribute more than 10% of the corpus of an AIF scheme. The SEBI has also issued steps for Asset Management Companies to handle active breaches, defined as an investor's total investment falling below INR 10 lakh due to investor-initiated transactions. Further, while tightening the disclosure norms for Avoidance Transactions in the CIRP Regulations, the IBBI has directed that the information memorandum must include updates and details of all identified avoidance transactions or fraudulent trading. Significantly, the Ministry of Corporate Affairs has substituted existing Form INC-22A with a new e-Form INC-22A, which calls for comprehensive disclosures from companies regarding their registered office, directors, and statutory filings. The MCA has also amended the Rules for Listing Equity Shares in Permissible Jurisdictions.

I hope you find this edition insightful.

Warm regards,

Navneet Gupta

Mr. Navneet Gupta, Partner

SNG & Partners

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ARTICLE - Non-Competes: The Paper Tiger in Employment Contracts

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INTRODUCTION

In recent years, the increasing reliance of companies on proprietary business information, trade secrets, technical know-how and intellectual property has led to a marked rise in the inclusion of restrictive covenants, particularly non-compete clauses, in employment agreements. Non-compete clauses essentially aim to restrict employees from entering into employment or engaging in any manner with competitor companies engaged in a similar business, often even after the termination of the contractual relationship between the employer and employee. This is especially the case with respect to senior management and executives, as they are privy to much of the company's proprietary information, and merger and acquisition deals, wherein non-compete clauses may be required so as to preserve the deal's commercial value. Similarly, in the case of takeovers, the Securities and Exchange Board of India ("**SEBI**") regulates the payment of non-compete fees to exiting promoters to ensure equal treatment of public shareholders. Owing to a lack of equal bargaining power, employees often acquiesce to such non-compete clauses in their employment agreements.

In the Indian legal landscape, the enforceability of such clauses presents a complex intersection of public policy, individual freedom, and commercial interests. While such restrictive clauses in employment agreements may be justified during the course of employment to reasonably safeguard a company's proprietary interests, the issue arises when such clauses extend beyond the termination of the employee, raising significant concerns regarding the restriction on the employee's freedom to seek alternative employment in his or her field of expertise. Consequently, non-compete agreements have been viewed with scepticism under Indian law, primarily due to their potential to unduly restrict an individual's right to livelihood, a constitutional guarantee enshrined under Article 19(1)(g) of the Indian Constitution. The Indian Contract Act, 1872 ("**ICA**"), under section 27 (*discussed below*), further reinforces this stance.

By exploring both historical precedents and contemporary judicial trends, this article seeks to explore the nuanced contours of post-termination non-

compete clauses under Indian law, examining their enforceability and legal and practical implications. It offers a critical evaluation of the evolving judicial approach and trends that attempt to balance the competing interests of employers seeking to protect their legitimate business interests, vis-à-vis the employees' right to freedom of employment. The Indian courts have extensively dealt with this contentious issue, drawing upon legal principles and key case laws, and developments. The Delhi High Court, in its recent ruling in ***Varun Tyagi v. Daffodil Software Private Limited, dated June 25th, 2025***[1], while making a reference to multiple judicial precedents in this regard, held that any contract restraining employment after termination is void per section 27 of the ICA, and emphasised the constitutional fundamental right to livelihood. This case brought renewed scrutiny to the enforceability of non-compete clauses in employment agreements, underscoring their relevance in today's evolving landscape of employment law and business practices in India.

ANALYSIS OF THE COURTS' VIEW ON POST-TERMINATION CLAUSES

Under the ICA, section 27 deems every agreement by which one is restrained from exercising a lawful profession, trade, or business of any kind, void to that extent, subject to the exception of the sale of goodwill of a business. Let's first delve into the former part of the provision, which deems agreements in restraint of profession or trade as void. Subsequently, we will also discuss the circumstances where such restraints in the case of the sale of goodwill are held to be valid.

As post-termination non-compete clauses are a form of restrictive covenant from seeking alternative employment imposed on the employee, they are often scrutinised in the light of section 27. Section 27 has been held to be a facet of Article 21 of the Indian Constitution[2]. It has been enacted as a matter of public policy in India and does not create any personal right that can be waived[3].

i. Pre/Post-termination Restrictions, Test of Reasonableness and Absolute & Partial Restraint

Indian courts have drawn a distinction between non-compete clauses that operate during the subsistence of the agreement and those that attempt to operate after its termination or expiry. Further, some employment letters may impose absolute restraints on trade, which completely prohibit trade, or partial restraints, which can impose limited restrictions in terms of time, geography, or scope. There is ample case law under Indian jurisprudence

[1] MANU/DE/4616/2025 (*Varun v. Daffodil*)

[2] *Independent News Service Pvt. Ltd. v. Sucherita Kukreti*, MANU/DE/0286/2019

[3] *Taprogge Gesellschaft MBH v. IAEC India Ltd.* MANU/MH/0332/1988; Sharp Business System v. The Commissioner of Income Tax, MANU/DE/5431/2012; and *Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd. and Ors.*, MANU/DE/0740/1999.

which deals with these aspects, and some of the major decisions are discussed below.

One of the earliest contentions with respect to non-compete clauses has been with respect to restrictive covenants applicable before and after the subsistence of an agreement. In ***Gujarat Bottling Co. Ltd. v. Coca Cola Co.***[4], Coca Cola had entered into an agreement for grant of franchise by Coca Cola to GBC to manufacture, bottle, sell and distribute the beverages trademarked by Coca Cola during the term of the agreement. Observing that this form of commercial agreement wherein both parties have undertaken obligations for promoting the trade in beverages for their mutual benefit, the Supreme Court opined that a condition restricting the right of the franchisee to deal with competing goods *during the term* of the contract is for facilitating the distribution of the goods of the franchiser and the same cannot be regarded as in restraint of trade. It was noted that if such a clause were to be imposed post the termination of the agreement, the same would be unenforceable in light of section 27 of the ICA.

In furtherance of the above, the High Courts in ***Interlink Services (P) Ltd. v. S.P. Bangera***[5], ***Ambiance India (P) Ltd. v. Naveen Jain***[6], ***Wipro Ltd. v. Beckman Coulter International***[7] and ***Indus Power Tech Inc. Vs. Echjay Industries Pvt. Ltd***.[8], have unequivocally held that once the agreement between the parties ends, whether due to termination or expiry, any restriction that is imposed on a person's ability to work or carry on their profession is barred under section 27 of the ICA.

In ***Superintendence Company of India (P) Ltd. v. Krishan Murgai***[9], the Supreme Court addressed the enforceability of a post-service non-compete clause under section 27 of the ICA, imposed on Krishan Murgai, a former employee of Superintendence Company. The clause was operative for 2 years post-service and limited to the place of his last posting. It was upheld by the Single Judge of the Delhi High Court on the grounds that the negative covenant acted as a partial restraint of trade, and adopting the test of reasonableness, observed that the covenant was reasonable in as much as it was limited in terms of time period as well as area of operation, and was, therefore, not hit by section 27. Subsequently, this reasoning was overturned by the Division Bench, and the matter reached the Supreme Court ("**SC**").

[4] MANU/SC/0472/1995
[5] MANU/DE/0640/1997
[6] MANU/DE/0385/2005
[7] MANU/DE/2671/2006
[8] MANU/MH/6523/2024
[9] MANU/SC/0457/1980

Firstly, on the application of the test of reasonableness, the SC unequivocally rejected its application to post-termination restraints governed by section 27. It held that where the ICA is exhaustive, principles of English law cannot be imported unless necessary for interpretation. On the question of partial and absolute restraint, it was categorically held that the wording of section 27 does not suggest that the principle does not apply when the restraint is for a limited period or confined to a specific area[10]. All post-termination restraints, whether partial or absolute, are void unless they fall within the statutory exception relating to the sale of goodwill. Hence, the non-compete clause imposed on Murgai, even though partial, was held to be void as per section 27. The SC further observed that restrictive covenants must be strictly construed in light of the fair meaning of the parties, and in case of ambiguity, a narrower interpretation should be preferred.

In ***Percept D'Mark (India) Pvt. Ltd. Vs. Zaheer Khan and Ors***.[11], Zaheer Khan entered into a promotion agreement with the company, which was to act as Zaheer's agent, for an initial period of 3 years with an option to extend the agreement for such further period as may be mutually agreed. The agreement included a 'right of first refusal' clause, requiring Zaheer Khan to notify the company of any third-party endorsement or management offers and allow them the opportunity to match such offers. Post expiry of the initial period, Zaheer Khan communicated vide a letter to the company that he does not wish to renew or extend the contract, and subsequently entered into a contract with another company. This was contested by the Company, and it contended that its right to first refusal clause was reasonable, inasmuch as it would not lead to any loss for Zaheer. The Bombay High Court held that such a clause was void under section 27 of the ICA, as in the present case, it restrained the employee even after expiry, and in such cases, there is no question of applicability of reasonableness. On appeal, the Supreme Court upheld the High Court's decision, observing that while rights of first refusal during the agreed initial term of 3 years may be enforceable, any extension of such a restrictive covenant post the termination of the contract is void as per section 27.

A plethora of cases have upheld the rights of employees when it comes to the imposition of post-termination restrictive clauses in the form of non-competes. The Indian position, as clarified by multiple courts, leaves little room for judicially crafted exceptions to the statutory mandate of section 27. Whether the restraint is partial, reasonable, or narrowly tailored, it remains unenforceable post-termination, unless it is tethered to the sole exception carved out by the exception to section 27.

[10] Also held in *Madhub Chunder Poramanick Vs. Rajcoomar Doss and Ors*., MANU/WB/0020/1874
[11] MANU/SC/1412/2006

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ii. Payment of Consideration (Garden leave)

Employers often seek to reinforce non-compete obligations through garden leave provisions, whereby employees receive payment during a post-termination period for compliance with restrictive covenants. The Indian judiciary has addressed the validity of such arrangements in VFS Global Services Pvt. Ltd. v. Suprit Roy[12], providing important guidance on their enforceability.

In this case, Suprit Roy was employed by the company in July 1999 and thereafter was designated as general manager. His employment contract included a non-compete clause restricting employment with competitors for one year post-termination. In 2006, the company introduced a garden leave clause, by way of which the company imposed a 3-month leave following termination of or resignation by the employee, during which the employee must refrain from engaging in any competing business, comply with non-compete and non-solicitation conditions, and shall receive compensation equal to his last 3 month's drawn remuneration, at the Company's sole discretion. It was contended on behalf of the company that the clause was valid and enforceable as the employer had agreed to pay compensation for the 3-month period. Citing precedents such as ***Niranjan Shankar Golikari v. The Century Spinning and Mfg. Co. Ltd***[13]. and ***Superintendence v. Murgai***, the Bombay High Court observed that the payment of compensation does not renew the contract of employment which has come to an end. In the present case, the effect of the garden leave clause was viewed as prohibiting the employee from taking up alternative employment after cessation of his employment with the company. In its view, such negative covenants indirectly compelling the employee to either remain idle or serve the company cannot be enforced. Hence, the garden leave clause was held to be in restraint of trade and barred under section 27 of the ICA.

This case reaffirms that mere payment of consideration during a post-termination restraint period does not cure the fundamental non-enforceability of a covenant in restraint of trade under section 27. Whether styled as garden leave or otherwise, if the restriction operates after the cessation of employment and inhibits the employee's right to seek alternative engagement, it falls squarely within the statutory prohibition. The Indian courts remain resolute in holding that consideration cannot validate a restraint that would otherwise be void under the ICA.

[12] MANU/MH/1043/2007

[13] MANU/SC/0364/1967(*Niranjan Shankar*).

iii. Non-Compete Clauses Operative during Unserved Period of Agreed Term

It is well established that non-compete clauses can validly operate during the term of the employment[14]. While post-termination non-compete clauses are unequivocally void under section 27 of the ICA, Indian courts have acknowledged a nuanced distinction when the restriction is tied to the unexpired duration of a fixed-term employment contract. In such cases, the employment agreements may contain non-compete restrictions for the unserved period, or impose a liability on the employee in lieu of the unserved period[15]. In ***Niranjan Shankar***, the SC drew a clear distinction between restraints operative during the term of employment and those which operate post-termination, holding that the former may not attract the prohibition under section 27 of the ICA. In this case, the employment agreement of the employee stipulated that if the employee were to terminate the employment before the agreed term period of 5 years, he could not directly or indirectly engage with any similar business as that of the company for the remainder of the said period, and would further be liable for liquidated damages and reimbursement of training costs.

Thereafter, the employee left his employment without notice and got himself employed at another company for a higher salary. The SC opined that where a distinction between restraints applicable during the term of the employment contract and those that apply after its cessation is not assailable, a stipulation as in this case would generally be enforceable and not against section 27 of the ICA, unless the contract is unconscionable, excessively harsh, unreasonable, or one-sided. In the SC's view, as the negative covenant was restricted to the period of employment and not to work in a similar business as that carried out by the company, it was reasonable and necessary for the protection of the company's interests. It was also found that there was no indication that if the employee was prevented from being employed in a similar capacity elsewhere, he would be forced to idleness or that such a restraint would compel the employee to go back to the company. Accordingly, the restriction was held valid and not in restraint of trade.

Many subsequent cases have referred to the judgement in Niranjan Shankar. In BLB Institute of Financial Markets Ltd. v. Ramakar Jha[16], the BLB Institute of Financial Markets Ltd. ("BIFM"), an institute for imparting education and knowledge in the financial services field, appointed Ramakar Jha ("Jha") as a faculty member in 2006. One of the terms of the employment agreement was that he shall serve BIFM for a period of 5 years, out of which there shall be no exit for a minimum of 3 years, during which he shall maintain confidentiality. Thereafter, Jha demanded a raise,

[14] *Indus Power Tech Inc. v. Echjay Industries (P) Ltd*., MANU/MH/6523/2024
[15] *Vijaya Bank and Ors. Vs. Prashant B. Narnaware*, MANU/SC/0696/2025
[16] MANU/DE/1359/2008

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which was given to him vide letter dated 14.04.2007, and pursuant to this letter, he agreed that during the period of his employment with BIFM, he will not engage directly or indirectly in any business or associate himself in any capacity with an organisation undertaking business, that is similar to the business conducted by BIFM. Jha was given a raise, however, he subsequently resigned from his employment and notified BIFM of his intention to join another institute. BIFM, seeking grant of interim relief against Jha during pendency of the ongoing arbitration proceedings, contended that unless Jha was refrained from doing so, all the proprietary confidential information and business strategies of BIFM would be divulged and that he had breached the terms of his employment. The Court, observing that the balance of convenience lay in favour of BIFM, observed that BIFM could not be monetarily compensated if its course materials, confidential information or trade secrets were divulged by Jha to a competing institute. Accordingly, the Court granted interim relief and restrained Jha from joining any employment or engaging in any business or organisation of a similar nature as that of BIFM, during the pendency of the arbitration proceedings.

In ***Crest Education (P) Ltd. v. Career Launcher (I) Ltd***.[17], Crest Education ("CE") entered into a 3-year contract with Career Launcher ("CL"), under which it was granted a licence to conduct and deliver courses at three learning centres of CL, under CL's name. The contract also contained a non-compete clause, applicable during the subsistence of the term. Prior to this contract, CL had entered into a contract with Mr. Satyam, who subsequently established the company CE, and thereafter, CL and CE had entered into the abovementioned contract. In the present case, CL contended that CE had commenced similar courses under the brand name "Team Satyam" from the same location from which it was running a centre under CL's name. The matter reached the High Court of Delhi, and it upheld the arbitrator's award, vide which damages were awarded to CL on account of breach of the contract by CE in terms of operating a similar business.

The decision in the above cases carves out a critical exception to the general prohibition under section 27 by upholding the enforceability of non-compete covenants or payment of damages in lieu thereof, not after termination, but during the subsistence of the employee's contractual period, specifically, before completion of the agreed term of service. Where the restraint is narrowly drawn, not oppressive, and necessary to protect the employer's legitimate proprietary interests, particularly in cases involving specialized training or proprietary processes, Indian courts have shown limited willingness to uphold such clauses. In such cases, the non-compete is viewed as an incident of the ongoing contractual obligation, and

[17] MANU/DE/4144/2023

not as a post-contractual restraint, allowing limited scope for enforceability. However, the threshold for enforceability remains stringent, and the covenant must withstand scrutiny against principles of public policy, proportionality, and fairness.

iv. Protection of Confidential Information and Trade Secrets

While Indian courts have taken a strict approach towards post-termination non-compete clauses, they have recognized limited carve-outs where the restraint is vis-à-vis protection of confidential information or trade secrets to which the employee had access during the course of employment. Conflicting case laws under Indian jurisprudence on this aspect are discussed below.

In ***Manipal Business Solutions Private Limited v. Aurigain Consultants Private Limited and Ors***.[18], former employees of Manipal, who had access to proprietary e-KYC and gold loan sourcing technology, resigned and established a competing firm, Aurigain. The company sought to enforce a non-disclosure agreement ("NDA") which was valid for a period of two years from the date of the employees' resignation, seeking an injunction restricting them from making use of the confidential information and trade secrets, and further, invoked a non-compete clause (Clause 11) under the NDA against the ex-employees. An ex-parte interim injunction was initially granted. The company contended that the employees were privy to confidential data, which included customer data, agents' data, contract data, employees' data and market data, and the business plan of the company. The High Court, while looking into aspects of what constitutes the company's confidential information/ data, how it is confidential, and how Aurigain has used such information to the detriment of the company, held that the company failed to show how the confidentiality claimed is different from the data of any entity engaged in a similar business. The court held that the company's vague assertions were insufficient and that Clause 11 was barred by section 27, rendering the restrictive covenant unenforceable.

In ***Navigators Logistics Ltd. v. Kashif Qureshi and Ors***.[19], the Court observed that every customer's/ client's list cannot qualify as confidential information or a trade secret, unless the confidentiality is of economic/ commercial/ business value, or not easily available in the public domain[20]. A restriction by way of which freedom of seeking better employment is curtailed on the ground that the employee has employers' data and confidential information of customers, which is capable of public

[18] MANU/DE/2955/2022

[19] MANU/DE/3355/2018

[20] *Stellar Information Technology Private Ltd. v. Rakesh Kumar*, MANU/DE/2238/2016; *Modicare Ltd. v. Gautam Bali and Ors.*, MANU/DE/3270/2019; and *American Express Bank Ltd. v. Priya Puri*, MANU/DE/2106/2006

ascertainment, by an independent canvass at a small expense and in a very limited period of time, will be hit by section 27 of the ICA.

On the other hand, in ***E-merge Tech Global Services P. Ltd. Vs. M.R. Vindhyasagar and Ors***.[21], the employment letter of the employee, inter alia, contained a confidential information clause and non-compete and non-solicitation clauses. Post the employee's resignation in 2017, the company found out that another company ("Defendant Company"), incorporated in 2019, was being run with an identical business model, with the directors being the ex-employee of the company and the representative of one of the company's long-standing clients. While the High Court held the non-compete clause to be unenforceable under section 27; for the purpose of examining the confidential information clause, the High Court found the employee, who had risen to a senior role, with wide access to the company's information and client relationships. Accordingly, the High Court held that the employee had an obligation under the confidentiality/ non-disclosures and non-solicit clauses, which he was bound by even post his termination.

A limited exception has been carved out by Indian courts, where the restraint seeks to safeguard confidential information or trade secrets. The onus lies on the employer[22] to demonstrate through clear, specific, and credible evidence that the information in question is not publicly accessible, holds commercial value, and is inadequately protected without judicial intervention. Mere assertions of confidentiality or broad references to customer data or business plans will not suffice. Thus, the enforceability of such clauses depends on the nature of the information and the employer's ability to prove beyond a reasonable doubt its proprietary character and the harm likely to result from its misuse.

v. Exception: Sale of Goodwill

According to the exception to section 27 under the ICA, non-compete agreements that are part of a sale of business or goodwill may be enforceable to protect the buyer's interests, provided the restriction is (i) within specified local limits, (ii) so long as the buyer or any person deriving title to the goodwill carries on a like business therein and (iii) provided the Court finds such limits reasonable, taking into account the nature of the business. From point (ii), we can infer that the benefit of this exception is assignable and would also be available to the successor in title of the buyer. However, it is important to note that even in the case of the sale of goodwill, only reasonable restrictions can be imposed, and an absolute restriction shall not be enforceable. The sale of goodwill cannot be used as a pretext

[21] MANU/TN/9773/2021

[22] *Vijaya Bank v. Prashant B Narnaware*, MANU/SC/0696/2025

to impose a post-employment restraint on the seller who has entered into employment with the purchaser[23].

In the case of ***Affle Holdings Pte Ltd. v. Saurabh Singh***[24], the parties entered into a share purchase agreement ("SPA"), under which the person holding the entire shareholding of the company and also managing the company, sold his shares to Affle Holdings Pte Ltd. ("AHPL"), with an addendum to the SPA specifying a condition that he shall not engage in competing business for 36 months after the completion (execution) date of the SPA. On alleged breach of this condition, AHPL contended that this resulted in dilution of its market share and business value. The High Court, observing that substantial consideration was paid by AHPL for acquiring the rights in the company, held that the case fell within the exception to section 27 of the ICA, being reasonable both in time and space, and not in restraint of trade. Similarly, in Ozone Spa Pvt. Ltd. v. Pure Fitness & Ors.[25], the Delhi High Court restrained the defendants from setting up, operating, or establishing any competing business within the local vicinity of the plaintiff's premises.

Another notable case is ***Arvinder Singh and Ors. v. Lal Pathlabs Private Limited and Ors***.[26], wherein Lal Pathlabs Private Limited ("Lal Pathlabs") acquired 100% of the shareholding of Amolak Diagnostics (situated in Udaipur) and its goodwill from Dr. Arvinder Singh (pathologist) and Dr. Rajendra Kachhawa (radiologist) (collectively the "Sellers"), with one of the clauses under the share purchase agreement ("SPA") being that the Sellers shall not engage in any business that directly or indirectly competed with Lal Pathlabs. The Sellers also entered into 3-year retainership agreements with Lal Pathlabs, agreeing not to compete with its business for five years post-termination. Subsequent to their cessation of employment with Lal Pathlabs, they took up employment with another entity, Arth Diagnostics Private Limited ("Arth Diagnostics"), in the capacity of pathologist and radiologist. Lal Pathlabs contended that the Sellers funded its formation, and that Arth Diagnostics was conducting similar business as that of Lal Pathlabs, and that the SPA and retainership agreements restrained the Sellers from engaging in any similar business. Notably, neither of the Sellers held any shares in Arth Diagnostics. While the Single Bench of the High Court opined that such a clause was enforceable and restricted the Sellers from practicing as radiologists or pathologists in Udaipur for a period of 5 years, the Delhi High Court reversed the order observing that these activities are not similar to those undertaken by Lal Pathlabs and hence, would not fall within the exception to section 27. It opined that restricting the Sellers from carrying on their professions as a pathologist and radiologist would be contrary to section 27 of the ICA. The High Court,

[23] *Le Passage to India Tours & Travels Pvt. Ltd. v. Deepak Batnagar*, MANU/DE/0357/2014
[24] MANU/DE/0152/2015
[25] MANU/DE/2182/2015
[26] MANU/DE/0936/2015

which, looking at the wording of the exception, specifically "to refrain from carrying on similar business", noted that this applies to the business sold (i.e., operation of a pathology lab/diagnostic centre), not the Sellers' ability to practice individually in their respective fields of expertise. However, the Delhi High Court was of the view that the clause under the SPA fell within the exception to section 27, and categorically held that the Sellers shall not covertly or overtly run or structure a pathology or diagnostic venture in a manner that had the essential organizational attributes of a business.

As the primary regulator overseeing M&A deals, the Competition Commission of India ("CCI") has also dealt with non-compete clauses. In the context of a business transfer agreement ("BTA") between Orchid Chemicals and Pharmaceuticals Limited ("OCPL") and Hospira Healthcare India Private Limited ("HHIPL"), a notice was filed with the CCI, as mandated under the Competition Act, 2002. The BTA contained a non-compete clause, by way of which OCPL and its promoter were not to undertake certain business activities related to the business being transferred, for a period of 8 years and 5 years, respectively, and also restrained certain research, development and testing activities. The CCI, in its order[27], held that for a non-compete clause to be enforceable, it must satisfy the test of reasonability, in terms of duration, business activities, geographical limits and persons subject to such restraint, in order to ensure that such conditions do not result in an appreciable adverse effect on competition under the Competition Act, 2002. Accordingly, the clause was revised to limit the duration to 4 years and confine its applicability to the Indian market, and permit research, development and testing activities. The CCI accepted these modifications and subsequently approved the proposed transaction. In another order of the CCI[28], pursuant to notice received under the Competition Act, 2002, by Advent International Corporation ("Advent") and MacRichie Investments Pte Limited ("MacRitchie") (collectively, the "Acquirers"), MacRitchie was to acquire certain shareholding in a company from Avantha Holdings Limited ("Avantha"). The CCI observed that the share purchase agreement in the proposed transaction imposed non-compete restrictions on Avantha and its affiliates for a period of 5 years. It sought justifications from the Acquirers regarding this clause, and the Acquirers in their response offered to modify the clause and reduce the non-compete restriction to 3 years, which was accepted by the CCI.

[27] Combination Registration No. C-2012/09/79, Competition Commission of India (December 21, 2012), available at http://164.100.58.95/sites/default/files/C-2012-09-79_0.pdf

[28] Combination Registration No. C-2015/05/270, Competition Commission of India (June 12, 2015), available at https://www.cci.gov.in/uploads/filemanager/catalog/faqs/C-2015-05-270_0.pdf

vi. Payment of Non-Compete Fees to Promoters

In the landscape of corporate acquisitions, the payment of non-compete fees to promoters has emerged as a nuanced tool for safeguarding the commercial value of the transaction. The rationale for such fees is to prevent the exiting promoters, who possess confidential knowledge of the business and market, from re-entering the same business and thereby diluting the value of the acquirer's investment. Such payments, while often positioned as ancillary to the sale consideration, carry significant legal and regulatory implications, particularly within the Indian legal framework.

Regulation 8 (7) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("Takeover Regulations"), states that the open offer price paid to other public shareholders (price paid for shares/voting rights/control of the target company), shall include non-compete fees, including such fees paid to exiting promoters. Under the earlier SEBI (Substantial Acquisition of Shares and Takeover), Regulations, 1997, non-compete fees were to be added to the offer price if it exceeds 25% of the offer price. This often resulted in promoters receiving a higher payout than public shareholders under such agreements. However, Regulation 8 (7) under the current Takeover Regulations eliminated this threshold, ensuring that all shareholders receive the same exit price. Essentially, it served to place the public shareholders on a similar footing as the promoters, and ensure that the non-compete fees flows through all the shareholders on an equal treatment basis, as opposed to additional payments or preferential treatment of the promoters. In this regard, a notable case is that of I.P. Holding Asia Singapore Private Limited & Anr. v. SEBI[29], which was brought before the Supreme Court after SEBI and the Securities Appellate Tribunal (SAT) held that held that only 5 out of 20 promoters were justifiably entitled to non-compete fees, citing lack of rationale for payments to the others. The Supreme Court, highlighting the independence of the parties entering into agreements, observed that SEBI cannot restrict the payment of such non-compete fees as commercial decisions of the parties should be respected, unless it can be conclusively evidenced that such a decision had mala fide intentions. The Supreme Court was of the view that sufficient flexibility should be provided to businesses for entering into commercial transactions, and a multitude of considerations go into such business relations.

Notably, the Takeover Regulations do not apply to mergers/demergers through schemes of arrangement under the Companies Act, 2013. This may be because the Companies Act, 2013 itself provides an elaborate process of approval, thereby ensuring that no undue benefits are passed on only to the promoters, and such schemes also require the court/ tribunal approval, hence, providing room for any unfair provision in the Scheme to be questioned, if need be. However, in reality, as the non-compete fees is paid

[29] Civil Appeal No. 7390 of 2012

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outside the deal value in schemes of amalgamation, minority shareholders may be left at a disadvantage[30].

Further, the taxability of non-compete fees under the Income Tax Act, 1961 ("IT Act"), has also been a contentious issue. In ***Sagar Ratna Restaurants Pvt. Ltd. v. ACIT***[31], the issue of whether depreciation on non-compete fee is in the nature of an intangible asset under section 32 (1) (ii) of the IT Act came up before the Delhi Income Tax Appellate Tribunal ("ITAT"). The assessing officer had disallowed the claim of depreciation, in accordance with the ratio laid down in the case of Sharp Business System v. CIT[32], in which case the High Court held that while non-compete is an intangible asset, however, it is not similar to know how, patent, copyright, or other commercial rights of a similar nature, as the right with respect to non-compete fee is restricted only to the seller, as opposed to the other intangible rights which are exercisable against the world at large. The ITAT, relying on this decision, held the assessee's claim of depreciation on non-compete fee unacceptable.

The payment of non-compete fees to promoters, though commercially pragmatic in safeguarding the acquirer's interests, sits at the intersection of complex legal, regulatory, and tax considerations. While courts have recognized the commercial autonomy of parties in structuring such arrangements, SEBI's evolving regulatory framework, particularly Regulation 8(7) of the Takeover Regulations, reflects a clear shift towards equitable treatment of shareholders and heightened scrutiny of preferential payouts. Moreover, judicial reluctance to categorise non-compete fees as depreciable intangible assets under the IT Act further underscores the nuanced legal character of such payments.

THE NON-COMPETE STANCE IN OTHER JURISDICTIONS

i. United Kingdom (UK)

In the UK, non-compete clauses are subject to the common law principle of restraint of trade, whether absolute or partial. Accordingly, the courts are empowered to apply the test of reasonableness for safeguarding the

[30] Post HDFC Life-Max Deal, *SEBI reviews the concept of non-compete fees*, The Economic Times (October 10th, 2016), available at https://economictimes.indiatimes.com/post-hdfc-life-max-life-deal-sebi-reviews-the-concept-of-non-compete-fees/articleshow/54769770.cms?from=mdr

[31] ITA No. 7354/Del/2018

[32] ITA 492/2012 & C.M. APPL. 14836/2012

legitimate business interest of the employer; however, this shall be no wider than reasonably necessary, keeping in view the interests of the parties and the public, a landmark test laid down in ***Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co.***[33]. This allows courts to analyse each case on its factual basis. The employer can seek an injunction, damages or other remedies if the employer is able to satisfy the court of the need for enforcement of the non-compete clause[34]. Arising from the abovementioned judgement, the "blue pencil doctrine" also gained prominence, a term derived from the use of a blue pencil to edit or censor films or manuscripts. This doctrine allows courts to strike or sever the unenforceable and/ or unnecessary portion of a clause, thereby retaining the enforceable portion. However, this does not extend to adding terms that were not originally part of the agreement. In 2023, the UK's policy paper[35] proposed to limit the duration of non-compete clauses to three months. However, this has not been enforced as of this date.

ii. **United States of America (USA)**

The USA has undergone a significant development in case of non-compete clauses. On 23th April, 2024, the Federal Trade Commission ("FTC") issued a final rule banning non-competes nationwide ("Proposed Rule"), deeming it an unfair means of competition, and therefore, violative of sections 5 and 6 (g) of the Federal Trade Commission Act[36]. It proposed alternatives in the form of issuance of non-disclosure agreements. For existing non-competes, the Proposed Rule notably drew a distinction between senior executives, for whom existing non-compete clauses were to remain in force, and other workers, for whom existing non-compete were not to be enforceable. However, the Proposed Rule was subsequently challenged by way of multiple lawsuits, with the US District Court for the Northern District of Texas blocking the Proposed Rule and stating that the FTC lacked authority to issue the ban. The FTC appealed the decision. However, in March 2025, the FTC stayed its appeal in the Fifth Circuit and the Eleventh Circuit[37], and was ordered to file status reports regarding future steps by 10th July, 2025, and 18th July, 2025, respectively[38]. Accordingly, the USA

[33] [1894] AC 535

[34] *Non-Compete Clauses – Call for Evidence, Department for Business and Innovation & Skills* (May, 2016), available at https://assets.publishing.service.gov.uk/media/5a7f68b440f0b6230268f53d/bis-16-270-non-compete-clause-call-for-evidence.pdf

[35] *Smarter regulation to grow the economy, Department for Business & Trade* (May 10, 2023), available at https://www.whitecase.com/sites/default/files/2025-02/smarter-regulation-to-grow-the-economy-gov.pdf

[36] *Non-Compete Clause Rule, 16 CFR Part 910, Federal Trade Commission*, available at https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf

[37] *Ryan, L.L.C., Chamber of Commerce of the United States of America, et al. v. Federal Trade Commission*, No. 24-10951, available at https://faircompetitionlaw.com/wp-content/uploads/2025/03/FTC-Ryan-5th-Cir-202503-Motion-to-Pause.pdf

[38] *Courts grant FTC's pause of non-compete appeals, Fair Competition Law (March 24, 2025)*, available at https://faircompetitionlaw.com/2025/03/24/courts-grant-ftcs-pause-of-noncompete-appeals/

is back to its previous regime with state-wise enforcement of non-compete clauses.

In the USA, the blue pencil doctrine has historically been adopted in several cases[39]. For instance, in the case of ***Burk v. Heritage Food Serv. Equip***[40], the Court of Appeals of Indiana, Fifth District upheld the application of this doctrine to blue pencil the provision restricting solicitation of appellant's clients by deleting "past" clients but leaving "present and prospective" clients, and enforcing the restriction as modified. As this doctrine is discretionary in nature, several states show reluctance on its application, unless deemed necessary. This was seen in the case of ***Sunder Energy, LLC v. Jackson***[41], where the Supreme Court of Delaware held that the Court of Chancery was well within its discretion in refusing to blue pencil the covenants, on the contention that the Court of Chancery made an error to refuse blue pencilling the covenants.

In light of the above discussion, jurisdictions like the UK and certain USA states, at the present stage underscore a recalibration not to abandon employee protection, but to introduce a structured reasonableness exception, particularly for senior executives, wherein restraints can be assessed in light of (a) protecting legitimate business interests, (b) reasonability in scope, duration, and geography, and (c) not disproportionately restricting the employee's right to livelihood. Further aspects which would require consideration include the relative bargaining power of the parties at the time of contract to avoid unconscionability, and whether the restraint is necessary to prevent unfair competitive advantage, rather than merely suppressing lawful competition. Such a model would enable courts to scrutinise contracts case-by-case, preserving fairness and senior employee mobility while recognising legitimate employer concerns.

Analysis and Conclusion

The Indian legal framework governing post-termination non-compete clauses, owing to the unequivocal wording of section 27 of the ICA, leans in favour of the employee by limiting the courts from assessing the proportionality, necessity, or fairness of restraints, unless they fall within the narrow statutory exception relating to sale of goodwill. While this serves an important purpose in prioritising freedom of trade and employment, it risks undermining contractual freedom and legitimate commercial

[39] *Smart Corp. v. Grider*, 650 N.E.2d 80, 83 (Ind.Ct.App.1995)
[40] 737 N.E.2d 803, 2000 Ind. App. LEXIS 1713 (Ind. Ct. App. October 24, 2000)
[41] 332 A.3d 472, 2024 Del. LEXIS 407 (Del. December 10, 2024)

interests. This has significant implications for both employers and employees navigating the increasingly knowledge-driven and competitive workforce environment.

From the employee's perspective, this approach plays a crucial protective role. The High Court in ***Pepsi Foods Ltd. and Ors. v. Bharat Coca-Cola Holdings Pvt. Ltd. and Ors.***[42], stated that a post-termination restraint directly curtailing the freedom of employees for seeking better employment opportunities "would almost be a situation of "economic terrorism", creating a situation alike to that of bonded labour." In a labour market where power asymmetries persist, absolute statutory invalidation of post-termination restraints ensures that employees are not burdened by unequal bargaining power, prevented from seeking better opportunities, or coerced into remaining idle. This doctrinal stance reinforces the fundamental right to livelihood and safeguards the employees' rights.

Evidently, the enforcement of post-termination confidentiality, particularly in cases where specific and sensitive information is proven to be misused, has emerged as an important facet. However, courts remain highly cautious, requiring demonstrable confidentiality, commercial value, and clear breach. Companies are held to high evidentiary thresholds when it comes to proving the misuse of confidential information. Mere assertions of proprietary knowledge or access to customer lists are not sufficient, and rightly so, to prevent cloaking general business knowledge as trade secrets. To strengthen their position, employers should clearly define what constitutes "confidential information" in employment contracts and maintain documentary proof of its sensitivity or commercial value. Limiting access to trade-sensitive materials to employees on a need-to-know basis, can help strengthen the enforceability of confidentiality obligations. Courts have increasingly recognised the surviving obligations under confidentiality and non-solicitation agreements, and where misuse of specific trade secrets is proven, employees can be restrained or held liable. Employees in senior, strategic roles face greater judicial scrutiny in the enforcement of confidentiality terms. Nonetheless, despite these measures, employers face a legal ceiling they cannot circumvent. The distinctions recognised in Niranjan Shankar and Crest v. CL, offer some reprieve.

On the flip side, for employers, particularly those in sectors like technology, finance, consulting, or healthcare, where employees routinely deal with proprietary tools, client strategies, trade secrets or sensitive data, the inability to enforce any form of post-termination non-compete clause, even where they are narrowly tailored and time-bound, leaves businesses vulnerable to knowledge migration and competitive disadvantage. The unenforceability of even compensated restraints, such as garden leave, disincentivises investment in employee training and strategic knowledge sharing. Although not routinely exercisable, longer notice periods and

[42] MANU/DE/0740/1999

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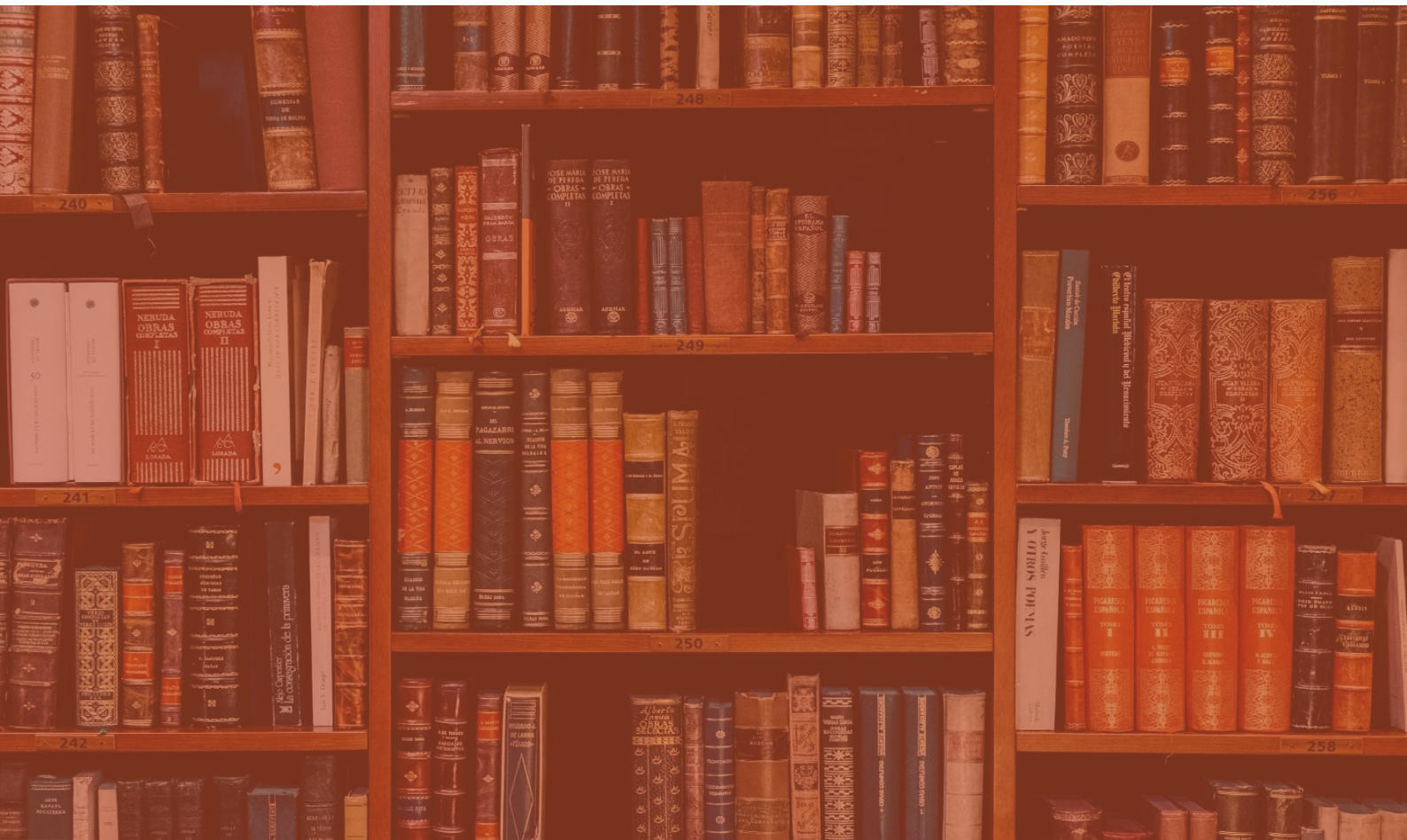
entering into shareholders' agreements (i.e., sale of goodwill) with senior employees can serve as protective measures.

The only statutorily granted exception for enforcing a post-termination covenant, is ensuring there has been a sale of goodwill of business, and such restraints are permitted if they are reasonable in scope and necessary to protect the value of the goodwill sold. To invoke this exception, it must be clearly evident from the contractual agreements that a genuine transfer of goodwill has occurred, and the restrictive covenant is directly linked to preserving that goodwill, rather than merely restricting an individual's right to carry on a profession or trade post-termination. Further, by way of SEBI's evolving regulatory framework with respect to non-compete fees paid to exiting promoters, a clear shift towards equitable treatment of shareholders can be seen.

While the narrow exceptions and construed doctrines around non-competes, confidentiality and contractual subsistence offer partial solutions, they do not provide the predictability or doctrinal coherence required by either employers or employees in an increasingly competitive professional environment. Therefore, both parties must carefully navigate the limited exceptions and doctrines carved out by courts and adapt their contractual and strategic approaches accordingly.



B Reserve Bank of India ["RBI"]

1. RBI fastens the ceiling limit on the Regulated Entities' contribution to Alternative Investment Funds

RBI has issued revised guidelines capping investment by Regulated Entities (REs) at 20% of the corpus of an Alternative Investment Fund (AIF) scheme. As per the Notification, no RE can individually contribute more than 10% of the corpus of an AIF scheme. However, the collective contribution by all REs in any AIF Scheme shall not be more than 20% of the corpus of that scheme.

Read more

2. RBI Implements STRIPS for State Government Securities

The RBI has introduced a facility for the Separate Trading of Registered Interest and Principal of Securities (STRIPS) for State Government Securities (SGS), whereby eligible SGS for stripping or reconstitution must have a residual maturity of up to 14 years, a minimum outstanding value of Rs. 1,000 crores as of the stripping date, be eligible for Statutory Liquidity Ratio (SLR) requirements, and be transferable.

Read more

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C Securities and Exchange Board of India [SEBI]

1. SEBI Extends Algo Trading Rule Implementation to 1st October 2025

SEBI has postponed the timeline for its earlier circular on "Safer participation of retail investors in Algorithmic trading" to October 01, 2025, aiming to ensure a smooth implementation process without disrupting market players and investors.

Read more

2. SEBI Modifies SIF Minimum Investment Monitoring

SEBI has modified the mechanism for monitoring the minimum investment threshold in Specialized Investment Funds, detailing steps for Asset Management Companies (AMCs) to handle active breaches, defined as an investor's total investment falling below INR 10 lakh due to investor-initiated transactions.

Read more

3. SEBI Eases NRI Derivative Trading Regulations

SEBI has simplified the monitoring of Non-Resident Indian (NRI) position limits in exchange-traded derivatives, and annulled the mandate requiring the NRIs to inform exchanges about their clearing members. Now, exchanges and clearing corporations will monitor NRI position limits for those without a Custodial Participant (CP) Code in the same way they monitor client-level position limits.

Read more

D Insolvency and Bankruptcy Code, 2016 [IBC]

1. Petition u/s 95 of the IBC against the Personal Guarantor is not maintainable in the absence of the invocation of the guarantee prior to issuance of the demand notice

The NCLT Mumbai in the case of **Abhyudaya Co-Op. Bank Ltd. vs Ritadevi Devilal Chapagain [C.P. (IB) No. 807(MB)2024] dated July 08, 2025**, has held that a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the Personal Guarantor is not maintainable in the absence of the invocation of the guarantee prior to the issuance of the demand notice. As per the guarantee agreement, the guarantees are on-demand guarantees, so they can be invoked only after the guarantors raise a demand notice.

Read more

2. Corporate Debtor cannot avoid its obligation to repay debt under IBC, arguing that Section 186 of the Companies Act, 2013 was not followed while disbursing the loan

The NCLAT, New Delhi, in the case of **Pancham Studios Pvt Ltd. vs Konark Aquatics & Exports Pvt Ltd. [Company Appeal (AT) (Ins.) No. 406 of 2024] dated July 15, 2025**, has held that the Corporate Debtor cannot avoid its obligation to repay the debt on the ground that Section 186 of the Companies Act, 2013 was not followed while disbursing the loan, since the aim of Section 186 is to protect the shareholders, not to shield the corporate debtor from its repayment obligations.

Read more

3. IBC gives discretion only to the Committee of Creditors and not IBBI to substitute an Insolvency Resolution Professional

The Madras High Court in the case of **K.J. Vinod (Insolvency Professional) v. Registrar, NCLT, Chennai [W.P. No. 22949 of 2025] dated July 08, 2025**, has held that the Insolvency and Bankruptcy Board of India (IBBI) is mandated to accept the

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recommendation of the applicant, be it, Financial Creditor (FC), Operational Creditor (OC) or Corporate Debtor (CD), for the appointment of IRP and it is only the CoC in charge of management of the company, that has the discretion to change the IRP.

Read more

4. Set-off of fixed deposits against overdraft as per untainted pre-CIRP contract does not violate moratorium u/s 14 IBC

The NCLT Bengaluru in the case of **Sindhu Cargo Services Pvt Ltd vs Yes Bank Ltd [IA No. 864/2024 In C.P. (IB) No. 71/BB/2023] dated July 08, 2025**, has held that the set-off of a fixed deposit against an overdraft, based on an untainted contract entered into before the commencement of the Corporate Insolvency Resolution Process (CIRP), does not breach Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC), nor do such deposits form part of the Corporate Debtor's asset pool.

Read more

5. Investments/ Advances made with an element of commercial return satisfy the test of 'time value of money' and qualify as financial debt under IBC

The NCLT New Delhi in the case of **Kaliber Associates Pvt Ltd vs J.R. Modi Associates Pvt Ltd [Company Petition No. (IB)-1122(ND)/2020] dated July 10, 2025**, has held that the amount disbursed by the Applicant to the Corporate Debtor (CD) as an advance against property squarely falls within the ambit of "financial debt" as defined under Section 5(8)(f) of the IBC, as the transaction bears the commercial effect of borrowing, and therefore, the Applicant qualifies as a "Financial Creditor" under Section 5(7) of the IBC.

Read more

6. Claim of allottee can't be extinguished merely because of being a Speculative Investor

The NCLT Chandigarh in the case of **Tajinder Pal Setia vs Arvind Kumar [IA (I.B.C)/2105(CH)2023 in CP(IB) No. 248/Chd/Chd/2019] dated July 02, 2025**, has held that claim of an allottee cannot be rejected solely on the ground of being a speculative investor, and an allottee does not cease to be a financial creditor merely because they qualify as a speculative investor. It clarified that section 250 of the Companies Act allows the creditors to recover dues and seek discharge of liabilities even if the company is struck off.

Read more

7. Mere possession of assets of the Corporate Debtor under Section 13(8) of the SARFAESI Act does not confer any title on the Creditor

The NCLT Kochi in the case of **Muthoot Fincorp Ltd vs Orchid Valley Buyer's Association Apartment [IA (IBC)/57/KOB/2025 in IA (IBC)/215/KOB/2023] dated June 24, 2025**, has held that mere possession over assets of the Corporate Debtor under section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) does not confer any title on the Creditor, and a title over the property passes to the purchaser only after a valid sale.

Read more

8. NCLT clarifies issuance & service of demand notice u/s 8(1) IBC is mandatory pre-condition for initiating insolvency proceedings u/s 9 IBC

The NCLT New Delhi in the case of **Delhivery Ltd. vs Futuretimes Technology India Pvt Ltd. [Company Petition IB (IBC)/169(ND)2023] dated July 22, 2025**, has held that where a demand notice is returned unserved with the remark "addressee has left without instruction" and no subsequent service is effected via email or other electronic means, then the service cannot be deemed valid.

Read more

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9. Moratorium u/s 14 & 96 of the IBC does not prevent a bank from classifying a fraudulent account during an ongoing CIRP

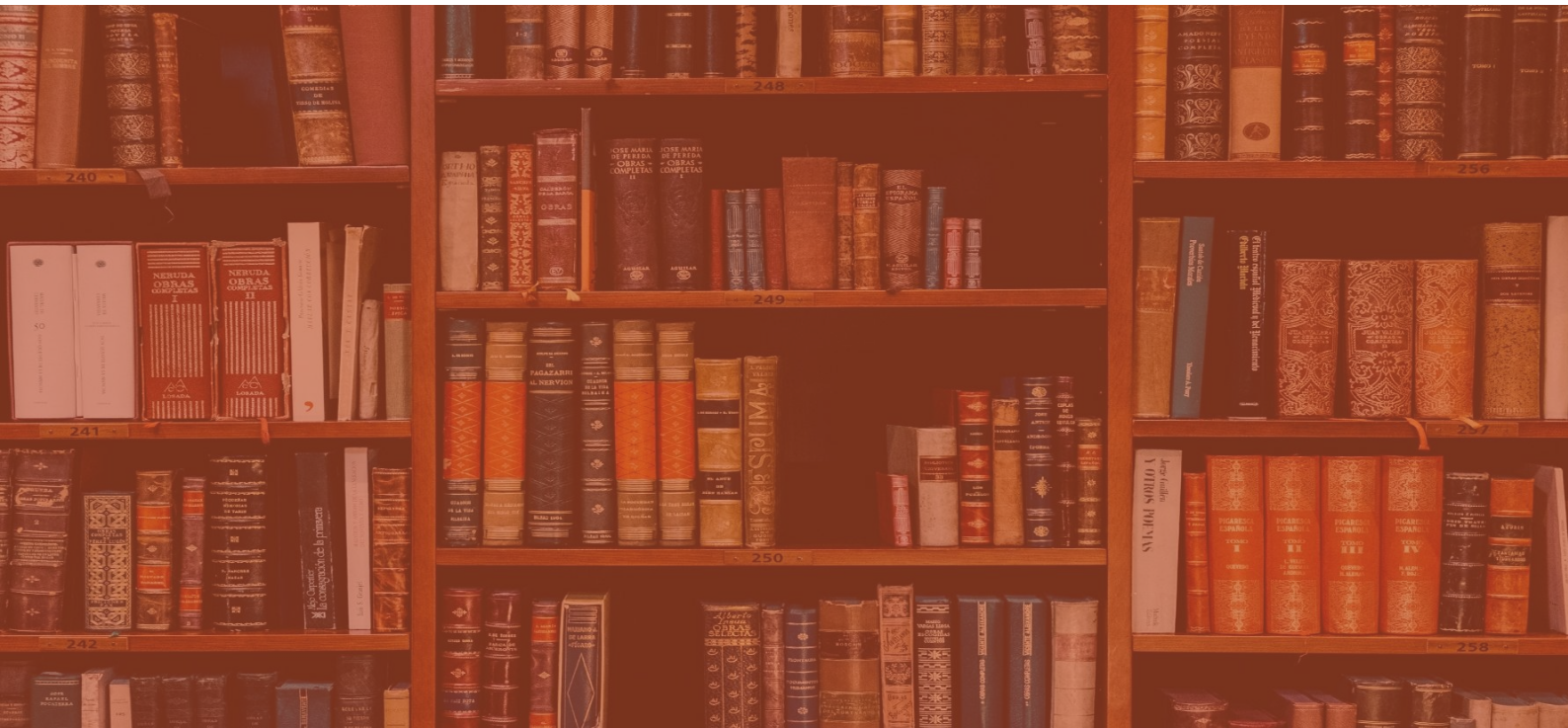
The Mumbai NCLT in the case of **Union Bank of India vs Rolta India Ltd. [IA(I.B.C)/3028(MB)2025 (NEW IA) IN C.P. (IB)/530(MB)2020] dated July 08, 2025**, has held that the banks can classify a Corporate Debtor's account as fraud even while a Corporate Insolvency Resolution Process (CIRP) is ongoing, and moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 (IBC) does not bar such classification as the same lies within the administrative decision of banks.

Read more

10. IBBI tightens disclosure norms for Avoidance Transactions in CIRP Regulations

While tightening the disclosure norms for Avoidance Transactions in CIRP Regulations, the IBBI has directed that the information memorandum must include updates and details of all identified avoidance transactions or fraudulent/wrongful trading, along with subsequent filings before the Adjudicating Authority.

Read more



E

Legislative Updates

1. Amendment to Rules for Listing Equity Shares in Permissible Jurisdictions; Introduction of Revised Form LEAP-1

The Ministry of Corporate Affairs (MCA) has notified the revised structure and mandatory fields in Form LEAP-1, so as to enable new declaration and verification protocols for companies and practicing professionals. Further, in addition to digital signature and compliance certification requirements, MCA has laid emphasis on pending inspections, investigations, or inquiries under the Companies Act, 2013.

Read more

2. MCA Rolls out updated INC-22A for Company Verification

The Ministry of Corporate Affairs (MCA) has substituted the existing Form INC-22A with a new e-Form INC-22A, which mandates comprehensive disclosures from companies regarding their registered office, directors (with photograph), auditors, CEO/CFO/Company Secretary (if applicable), and statutory filings.

Read more

3. Government replaces the Indian Bills of Lading Act, 1856, with the Bills of Lading Act, 2025, to strengthen the Consignee Rights

The Bills of Lading Act, 2025, provides that all rights of suit and liabilities under a bill of lading shall vest in the consignee or any endorsee to whom property in the goods has passed, whether by consignment or endorsement. Further, the Right of stoppage in transit or freight claims will not be affected. Also, the bill of lading in the hands of the consignee, etc., will be conclusive evidence of shipment as against the master.

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F General Laws

1. The benefit of Sections 4 to 24 of the Limitation Act is available to causes raised u/s 17(1) of the SARFAESI Act, before DRT

The Madhya Pradesh High Court in the case of **Bherulal Kumawat vs Cholamandalam Investment and Finance Company [Misc Petition No. 5925 of 2023] dated July 04, 2025**, has held that the provision of Section 5 of the Limitation Act, 1963, will apply for condoning the delay in an application under Section 17 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

Read more

2. 'Sufficient cause' used u/s 5 of the Limitation Act should not be unduly elastic in terms of stringent provisions of the Commercial Courts Act, 2015

The Karnataka High Court in the case of **C. Krishnaiah Chetty and Sons Pvt Ltd. vs Deepali Co. Pvt Ltd. [Commercial Appeal No. 161 of 2023] dated June 02, 2025**, has held that the strict procedure provided in terms of the Commercial Courts Act, 2015, the timeline specified therein is mandatory in nature and bound to be followed by the litigant. Thus, failing to comply with the statutory timelines and strict procedure would result in an adverse order on account of a lack of bona fide/bordering negligence on the party seeking relief at the hands of the Court.

Read more

3. Even if the cheque was drawn in the firm's name and signed by only one partner, both partners were jointly and severally liable in case of its dishonor

The Supreme Court in the case of **Dhanasingh Prabhu vs Chandrasekar [Special Leave Petition (Criminal) No.5706 of 2024] dated July 14, 2025**, has held that a complaint under

Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (NI Act), is maintainable against the partners of a firm, when the dishonored cheque was issued from the firm's account and signed by one of its partners, even when the firm was neither served with a statutory notice nor arraigned as an accused.

Read more

4. Interest on unpaid penalty can be applied retrospectively, and SEBI need not issue a separate demand notice once liability is crystallized in the adjudication order

The Supreme Court in the case of **Jaykishor Chaturvedi vs SEBI [Civil Appeal Nos. 1551 - 1553 of 2023] dated July 15, 2025**, has held that no separate demand notice is required to be issued by SEBI after the liability is crystallized in the adjudication order. Further, the interest on unpaid penalty amounts can be applied retrospectively, and the defaulter's liability to pay interest shall accrue from the date of expiry of the period specified in the assessment order.

Read more

5. 'Res judicata' cannot be decided in an application filed under Order VII Rule 11 of CPC for rejection of a plaint

The Supreme Court in the case of **Pandurangan v. T. Jayarama Chettiar [Civil Appeal No. 7743 of 2025] dated July 14, 2025**, has held that res judicata is an issue to be decided in trial and cannot be summarily decided in an application to reject the plaint. Thus, a plea of 'res judicata' cannot be decided in an application filed under Order VII Rule 11 of the Code of Civil Procedure for rejection of a plaint.

Read more

6. A gift subject to maintenance can't be revoked u/s 126 of the Transfer of Property Act, without a specific revocation clause

The Supreme Court in the case of **J. Radha Krishna vs Pagadala Bharathi [Civil Appeal No. 1834 of 2015] dated June 05, 2025**, has held that a validly executed gift deed could not be revoked as per

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the terms of Section 126 of the Transfer of Property Act, 1882, unless there was a reserved right to revoke it, which was not established in this case. The Supreme Court reaffirmed that a gift subject to maintenance cannot be revoked under Section 126 without a specific revocation clause, and such failure merely results in a lack of consideration, not invalidity of the gift itself.

Read more

7. The Registering Authority can't refuse registration solely on the ground that the vendor's title is not established

The Supreme Court in the case of **K. Gopi vs The Sub-Registrar [Civil Appeal No. 3954 of 2025] dated April 07, 2025**, has held that Rule 55A(i) of the Tamil Nadu Registration Rules, by requiring production of prior title documents and encumbrance certificates as a precondition for registration, is inconsistent with the parent Act, i.e., the Registration Act, 1908, itself. It imposes additional conditions not contemplated under the statute and confers an adjudicatory power on the registering officer that the Act does not intend.

Read more

8. The State can't invoke adverse possession over property of its citizens occupied forcibly without following due process of law

The Jammu & Kashmir High Court in the case of **Mushtaq Ahmad Jan vs Government of J&K [LPA No. 55/2024] dated July 11, 2025**, has held that the State cannot be permitted to invoke the doctrine of adverse possession to legitimise forcible and unauthorised occupation of private land, reiterating that such action is a violation of both constitutional and human rights of the citizen. So long as the State remains in unauthorised possession, the cause of action to seek compensation remains alive.

Read more

9. Debt created by a cash transaction above Rs. 20,000 in violation of the Income Tax Act can't be treated as a legally enforceable debt

The Kerala High Court in the case of **P.C. Hari vs Shine Varghese [Criminal revision Petition No. 408 of 2024] dated July 25, 2025**, has held that the debt arising through an illegal transaction cannot be treated as a legally enforceable debt. While clarifying that the complainant has neither paid any income tax on the alleged cash of Rs. 9 lacs advanced to the accused, nor offered any explanation for such excessive payment in cash in violation of Section 269SS of the Income Tax Act, the Court held that the accused has rightly rebutted the presumption under Section 139 of the Negotiable Instruments Act, 1881. Accordingly, the Court treated the debt claimed to have been created by a cash transaction above Rs. 20,000 in violation of the Income Tax Act as 'no legally enforceable debt'.

Read more

10. A sale certificate issued by a revenue authority to an auction purchaser following the sale of immovable property that belonged to a revenue defaulter will not attract stamp duty

The Kerala High Court in the case of **Revenue Divisional Officer vs Thomas Daniel [WA No. 2008 of 2024] dated July 21, 2025**, has held that a sale certificate issued by a revenue authority to an auction purchaser following the sale of immovable property that belonged to a revenue defaulter will not attract the levy of stamp duty. Considering the interplay between the provisions under the Registration Act, 1908, and the Kerala Stamp Act, 1959, the Court held that the original of the sale certificate concerned may attract the levy of stamp duty under the Kerala Stamp Act, in the exceptional circumstances when it qualifies to be an instrument as defined under the Kerala Stamp Act.

Read more

11. Amendment to the complaint u/s 138 of the NI Act can be made at the post-cognisance stage, provided that no 'prejudice' is caused to the accused and the complainant's cross-examination is awaited

The Supreme Court in the case of **Bansal Milk Chilling Centre vs Rana Milk Food [SLP (CRL.) No. 15699 of 2024] dated July 25,**

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2025, has held that an amendment to a complaint u/s 138 of the Negotiable Instruments Act, 1881 can be made at the post-cognisance stage, provided that no 'prejudice' is caused to the accused and the complainant's cross-examination is awaited. Since the amendment in the complaint requiring a change of term “Desi Ghee (milk products)” to “milk” was a typographical error appearing in both the legal notice and the complaint, the same did not prejudice the accused.

Read more

G Recognitions, Press Releases, and Deals

1. Chambers High Net Worth 2025 rankings

Chambers High Net Worth 2025 rankings, released on 30th July, 2025, have recognised SNG & Partners for Private Wealth Law. The firm has been consistently featured in the Chambers HNW Guide since 2021. Further, Mr. Rajesh Narain Gupta has been recognised as a Notable Practitioner by them in this practice area.

Read more

2. SNG & Partners advises UGRO Capital on ₹1,315 crore Rights and Preferential Issue

SNG & Partners has advised **UGRO Capital Limited**, a prominent Data-Tech NBFC focused on MSME lending, on its successful capital raise aggregating ₹1,315 crore through a rights issue and a preferential allotment. The Firm advised UGRO on all legal and regulatory aspects of the capital raise, including drafting and finalisation of the Letter of Offer, assisting with shareholder and board approval processes, handling SEBI and stock exchange compliances, and providing inputs on structuring and procedural matters.

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

- **Corporate Governance – Liability of Independent Directors, by Rajesh Narain Gupta, Founder & Chairman**

  This article addresses the Corporate Governance vis-à-vis related party conflicts, building efficient risk management systems, respect for independence of the board, compliance of laws in letter and spirit, respect for international laws, building a no tolerance zone for corruption including anti-bribery policies, prevention of sexual harassment at the workplace, appropriate policies for safety and environmental control, having a succession planning in place and most importantly, accountability to stake holders.

  Read Article

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- **Need for implementation and enforcement of the Prevention of Sexual Harassment Act in a stricter way by Anju Gandhi, Senior Partner, Head of Banking & Finance, and Sweta Mehta, Associate Partner**

  This article discusses the drawbacks in the POSH Act that place a significant burden on employers to constitute and manage the ICC, which may not always be feasible for smaller organizations or those lacking resources and lack of training among ICC members, which in turn can lead to the mishandling of cases. The article also emphasized the adoption and enforcement of a zero-tolerance policy towards sexual harassment against women in the workplace.

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