

Disputes Newsletter

January – June 2025

TABLE OF CONTENTS

ARBITRATION

1. Courts have a limited power to modify arbitral awards, rules Supreme Court
2. Supreme Court explains the law governing the arbitration agreement, clarifies the test to determine the same
3. Supreme Court clarifies the law on the permissibility of raising a plea of lack of jurisdiction in Section 34 proceedings for the first time
4. Bombay High Court refers dispute to arbitration, even in the absence of an arbitration clause by applying Business Efficacy Test
5. Disputes arising out of trademark license agreement are arbitrable, rules Supreme Court
6. Arbitral Tribunal has the *suo motu* power to implead a third party, clarifies Supreme Court
7. Mere Participation in the arbitration doesn't amount to the waiver of unilateral appointment of arbitrator

DEBT RECOVERY

8. Supreme Court recognizes 'Equitable Mortgage' under Indian law, rules on priority of charge in case of Equitable Mortgages
9. Mandatory for banks to provide forensic or transaction audit report to the borrower in case of classification as 'fraud', rules Kerala High Court
10. Supreme Court flags the importance of comprehensive title clearance reports to banks, calls for the RBI to frame standard guidelines

INSOLVENCY

11. Supreme Court invalidates the resolution plan of JSW Steel Ltd for Bhushan Power and Steel Ltd
12. Mandatory for Resolution Applicants to obtain prior CCI approvals of the Resolution Plan before placing it before the COC for approval, holds Supreme Court
13. NCLAT: Lenders can enforce the security documents despite not being a party to the Trusteeship Agreement; notice of demand under Section 13(2) of SARFAESI Act can be treated as an invocation of personal guarantee
14. Resolution Professional cannot adjudicate claims for damages arising out of non-performance, rules NCLAT
15. No bar on regulatory or punitive proceedings during moratorium under Section 96, rules Supreme Court

16. Corporate guarantee cannot be invoked against the corporate debtor after the initiation of CIRP
17. NCLT admits application for corporate insolvency on the basis of unpaid coupon payments on CCDs
18. Operational creditors cannot club dues to meet INR 1 crore threshold, holds NCLAT
19. Claim of gratuity with interest amounts to operational debt, rules NCLAT
20. Employee Provident Fund dues do not amount to assets of the corporate debtor, would not stand extinguished upon the conclusion of the resolution process, holds Bombay High Court
21. IBBI amends the CIRP Regulations

WHITE COLLAR CRIME

22. ED must provide the accused a list of material that has not been relied upon in the chargesheet, rules Supreme Court
23. Supreme Court provides crucial clarity on the vicarious liability of directors
24. ED cannot arrest a person merely for investigation purposes, clarifies Patna High Court
25. Where the arrest itself is illegal, courts cannot deny bail on the grounds of non-fulfilment of the twin test

CONSUMER LAW

26. Delhi High Court declares mandatory levy of service charges by restaurants as unlawful, upholds CCPA guidelines

MISCELLANEOUS

27. Supreme Court upholds the validity of an exclusive jurisdiction clause in an employment agreement
28. Supreme Court bars Central Government from granting *ex post facto* environment clearances, quashes notifications and office memoranda

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Advocates and Solicitors

ARBITRATION

COURTS HAVE A LIMITED POWER TO MODIFY ARBITRAL AWARDS, RULES SUPREME COURT

30 April 2025 | In a landmark ruling in **Gayatri Balasamy v. ISG Novacraft Technologies Limited**, 2025 SCC OnLine SC 986, a Constitution Bench of the Supreme Court has settled a long-standing debate concerning the courts' power to modify arbitral awards under Section 34 and 37 of the Arbitration and Conciliation Act, 1996 (“A&C Act”). In a 4:1 majority ruling, the court held that in limited circumstances, a court has the power to modify an arbitral award. On the other hand, Justice KV Vishwanathan penned an elaborate dissenting opinion, ruling that the courts have no power to modify an arbitral award. [Click here](#) for more.

SUPREME COURT EXPLAINS THE LAW GOVERNING THE ARBITRATION AGREEMENT, CLARIFIES THE TEST TO DETERMINE THE SAME

18 March 2025 | In a significant judgment in **Disortho S.A.S. v. Meril Life Sciences Pvt Ltd**, Arbitration Petition No. 48 of 2023, the Supreme Court has explained the various applicable laws in an arbitration agreement, particularly the law governing the arbitration agreement. The court has also iterated the aspects of arbitration that are governed by different laws, including the validity, scope and interpretation of the arbitration agreement.

In this case, for determining the law governing the arbitration agreement, the Supreme Court applied the three-fold test laid down in *Sulamérica Cia Nacional De Seguros S.A. and Others v. Enesa Engenharia S.A. and Others*, [2012] EWCA Civ 638. Regarding the more recent test by the UK Supreme Court in *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb*, 2020 UKSC 38, the court observed that this test states the good and correct legal position, except on the aspects where the courts in India have taken a different view. [Click here](#) for more.

SUPREME COURT CLARIFIES THE LAW ON THE PERMISSIBILITY OF RAISING A PLEA OF LACK OF JURISDICTION IN SECTION 34 PROCEEDINGS FOR THE FIRST TIME

16 May 2025 | In **Gayatri Projects Ltd v. MP Road Development Corporation Ltd**, Civil Appeal No. 6856 of 2025, the Supreme Court has issued crucial clarifications on the position of law as regards the permissibility of raising a plea of lack of jurisdiction in Section 34 proceedings for the first time. There were seemingly conflicting Supreme Court rulings on this issue, particularly, *Lion Engineering Consultants v. State of Madhya Pradesh*, (2018) 16 SCC 758; *Union of India v. Pam Development (P) Ltd*, (2014) 11 SCC 366; and *M.P. Road Development Authority & Anr v. L.G. Chaudhary Engineers & Contractors*, (2018) 10 SCC 826.

In conclusion, the Supreme Court held:

- A plea of lack of jurisdiction, being a question of law, may be raised for the first time under Section 34 of the A&C Act. However, such a plea is nevertheless subject to the waiver as held in *Pam Development* (supra).
- Such a plea may only be entertained if the party demonstrates a strong and sufficient reason for not raising it before the arbitral tribunal.
- *L.G. Chaudhary* (supra) merely clarifies that a failure to raise the issue of applicability of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 at the appropriate stage cannot be regarded as a sufficient reason, and therefore the plea cannot be permitted at the stage of Section 34 proceedings.
- There is no conflict between the aforesaid judgments. While *Lion Engineering* (supra) permits a jurisdictional plea to be raised under Section 34 of the A&C Act even if not urged under Section 16, *L.G. Chaudhary* (supra) merely clarifies that an arbitral award will not be annulled solely on that ground.

BOMBAY HIGH COURT REFERS DISPUTE TO ARBITRATION, EVEN IN THE ABSENCE OF AN ARBITRATION CLAUSE BY APPLYING BUSINESS EFFICACY TEST

11 February 2025 | In a landmark judgment in **Lords Inn v. Pushpam Resorts**, 2025 SCC OnLine Bom 447, the Bombay High Court applied the business efficacy test to refer a

dispute to arbitration even when the underlying agreement did not contain a conventional arbitration clause. The court applied the test to certain other clauses of the agreement making a reference to the arbitration clause despite the absence of any such clause and inferred the intention of the parties to refer the dispute to arbitration. [Click here](#) for more.

DISPUTES ARISING OUT OF TRADEMARK LICENSE AGREEMENT ARE ARBITRABLE, RULES SUPREME COURT

9 May 2025 | The Supreme Court in **K. Mangayarkarasi v. N. J. Sundaresan**, SLP (C) No. 13012 of 2025, has held that all matters that relate to trademarks are not outside the scope of arbitration. Disputes arising from subordinate rights such as licenses granted by the proprietor of a registered trademark are arbitrable.

Relying on *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1, the court reasoned that such disputes relate to rights and obligations between the parties to a license agreement.

ARBITRAL TRIBUNAL HAS THE SUO MOTU POWER TO IMPLEAD A THIRD PARTY, CLARIFIES SUPREME COURT

2 May 2025 | In **ASF Buildtech Pvt Ltd v. Shapoorji Pallonji and Company Pvt Ltd**, Civil Appeal No. 5823 of 2025, the Supreme Court has crucially upheld the arbitral tribunal's power to implead a non-signatory to the arbitration agreement on its own accord. Prior to this judgment, various high courts had passed conflicting judgments on this question.

The Supreme Court *inter alia* reasoned that the 'Group of Companies Doctrine' was earlier traced in Section 8 and 45 of the A&C Act, which was construed to mean that only the courts have the power to resort to and apply this principle. However, the Supreme Court in *Cox & King Ltd v. SAP India Pvt Ltd*, (2024) 4 SCC 1, clarified that the application of the 'Group of Companies' doctrine, or any analogous principles existing in the definition of "party" under Section 2(1)(h) read with the meaning of "arbitration agreement" under Section 7 of the A&C Act. The court held that these provisions are applicable to both court and arbitral tribunal alike.

MERE PARTICIPATION IN THE ARBITRATION DOESN'T AMOUNT TO THE WAIVER OF UNILATERAL APPOINTMENT OF ARBITRATOR

The Delhi High Court and the Bombay High Court have recently passed certain judgments, clarifying the position of law on the acceptance or waiver of the right to object to the unilateral appointment of the arbitrator by a party. In **Shakti Pump India Ltd v. Apex Buildsys Ltd**, 2025 SCC OnLine Del 1726, the Delhi High Court has held that mere participation of the parties without an unequivocal, written waiver after the dispute has arisen would not amount to acceptance of a unilateral appointment of the arbitrator.

However, if a party voluntarily invites the other party to appoint an arbitrator unilaterally or expressly consents to such appointment during the arbitration, such a party in that case would be estopped from raising an objection during Section 34 proceedings. This has been illustrated by another judgment of the Delhi High Court in **Bhadra International India Pvt Ltd & Ors v. Airports Authority of India**, FAO(OS) (COMM) 23/2025.

In a similar vein, the Bombay High Court in **Suryadeep Engineering Pvt Ltd v. NM Construction**, Commercial Arbitration Petition No. 210 of 2024, has also held that in case the arbitrator has been appointed unilaterally (that too without the agreement providing for it), it is not necessary that the party not consenting to such appointment has to either file a challenge under Section 13 of the A&C Act or approach the jurisdictional Court under Section 11 of the A&C Act to replace the arbitrator. In case the party fails to do so, it is not estopped from challenging the award under Section 34 of the A&C Act. [Click here](#) for more.

DEBT RECOVERY

SUPREME COURT RECOGNIZES 'EQUITABLE MORTGAGE' UNDER INDIAN LAW, RULES ON PRIORITY OF CHARGE IN CASE OF EQUITABLE MORTGAGES

4 February 2025 | In a landmark ruling, the Supreme Court has recognized the English law concept of 'Equitable Mortgage' in India. In **The Cosmos Co-operative Bank Ltd. v. Central Bank of India**, 2025 SCC OnLine SC 352, a

bench comprising Justice Pardiwala and Justice Mahadevan has discussed the distinction between ‘equitable mortgage’ and ‘legal mortgage’ as well as the priority of charge between multiple lenders. The court held that even if the mortgage lacks proper formalities (e.g., non-registration of document or non-deposit of the deed), it may still be enforced as an equitable mortgage as long as the intention to create a charge is clear. [Click here](#) for more.

MANDATORY FOR BANKS TO PROVIDE FORENSIC OR TRANSACTION AUDIT REPORT TO THE BORROWER IN CASE OF CLASSIFICATION AS ‘FRAUD’, RULES KERALA HIGH COURT

17 March 2025 | The Kerala High Court in ***Tip Top Furniture Land & Ors v. Reserve Bank of India & Ors***, W.P.(C) No. 3719 of 2025, has emphasized the requirement of furnishing the forensic audit report or transaction audit report to the borrower, in case of its classification as ‘fraud’.

The court relied on the Supreme Court’s ruling in *SBI v. Rajesh Agarwal*, (2023) 6 SCC 1, wherein it was held that the principles of natural justice have to be read into the RBI Master Directions on Fraud and a borrower whose account is being classified as ‘fraud’, should be given an opportunity of being heard.

The court also noted the Supreme Court’s observations that classification of a borrower’s account as fraud under the Master Directions virtually leads to his credit freeze and the borrower is debarred from raising finance from financial markets and capital markets. The bar on raising finances could be fatal for the borrower, leading to “civil death” in addition to the violation of his rights under Article 19(1)(g) of the Constitution of India.

SUPREME COURT FLAGS THE IMPORTANCE OF COMPREHENSIVE TITLE CLEARANCE REPORTS TO BANKS, CALLS FOR THE RBI TO FRAME STANDARD GUIDELINES

9 January 2025 | In ***Central Bank of India v. Prabha Jain***, 2025 SCC OnLine SC 121, the Supreme Court has observed that the banks must be very careful with inadequate title clearance reports, especially when such reports are obtained cheaply or at times for reasons other than obtaining the loan in

question. This concerns the protection of public money and is in larger public interest.

The Supreme Court also called upon the Reserve Bank of India (“RBI”) and other stakeholders to develop a standardized and practical approach for preparing title search reports before sanctioning loans and for determining liability (including potential criminal action) of the officer who approves the loan. In addition, it was held that there should be standard guidelines for fees and costs associated with title search reports so as to ensure that they maintain high quality.

While passing the final judgment in a matter concerning the jurisdiction of the Debt Recovery Tribunal (“DRT”), the Supreme Court held that under Section 17 of the SARFAESI Act, 2002, the DRT does not have the power to restore possession of a secured asset to a person who is neither the borrower nor the possessor.

INSOLVENCY

SUPREME COURT INVALIDATES THE RESOLUTION PLAN OF JSW STEEL LTD FOR BHUSHAN POWER AND STEEL LTD

2 May 2025 | In ***Kalyani Transco v. Bhushan Power & Steel Ltd***, 2025 INSC 621, the Supreme Court has invalidated the much-contested resolution plan of JSW Steel Ltd for the corporate debtor, Bhushan Power and Steel Ltd and directed its liquidation, nearly eight years after the commencement of the insolvency proceedings. [Click here](#) for more.

MANDATORY FOR RESOLUTION APPLICANTS TO OBTAIN PRIOR CCI APPROVAL OF THE RESOLUTION PLAN BEFORE PLACING IT BEFORE THE COC FOR APPROVAL, HOLDS SUPREME COURT

29 January 2025 | In a significant ruling introducing new regulatory dynamics, the Supreme Court in ***Independent Sugar Corporation Ltd v. Girish Sriram Juneja***, 2025 INSC 124, has held that the approval of the resolution plan containing combination proposals must be approved by the Competition Commission of India (“CCI”) before it can be placed before the Committee of Creditors (“CoC”) for approval.

Carrying out a plain interpretation of Section 31(4) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), the Supreme Court held that the approval to the Resolution Plan from the CCI shall be obtained ‘prior’ to its approval by the CoC and such a major omission cannot be cured at a later stage.

The court highlighted the practical challenges of a conditional approval by the CoC and held that the conditional approval is a ‘perilous deviation’ from the legislative intent behind CIRP to create a process characterized with finality and decisiveness. A conditional approval can also foster uncertainty, prolong negotiations and necessitate further modifications.

Regarding the timelines under the IBC and the Competition Act, 2002 (“**Competition Act**”), the Supreme Court held that the two timelines do not usually cause any disharmony or conflict. The timeline of 210 days under the Competition Act would be triggered only in rare cases involving a high degree of AAEC where public consultation and behavioural remedies are ordinarily required. Such a case might lead to an elongated timeline going beyond 120 days. However, only one such combination proposal has been received in the past few years.

NCLAT: LENDERS CAN ENFORCE THE SECURITY DOCUMENTS DESPITE NOT BEING A PARTY TO THE TRUSTEESHIP AGREEMENT; NOTICE OF DEMAND UNDER SECTION 13(2) OF SARFAESI ACT CAN BE TREATED AS AN INVOCATION OF PERSONAL GUARANTEE

23 January 2025 | In **Shantanu Jagdish Prakash v. State Bank of India**, 2025 SCC OnLine NCLAT 117, the National Company Law Appellate Tribunal (“**NCLAT**”) has given a couple of key rulings in relation to the invocation of personal guarantee under Section 95 of the IBC. The NCLAT has held that: (a) since security trustees are holding ‘security’ for the benefit of the lenders, the lenders can enforce security documents even if they are not a party to the trusteeship agreement; (b) the notice of demand under Section 13(2) of the SARFAESI Act, 2002 can be treated as an invocation of personal guarantee; and (c) merely because proceedings are pending before the DRT and certain counter claims have been filed by the Appellant, the application under Section 95 of

the IBC would not be rendered premature. [Click here](#) for more.

RESOLUTION PROFESSIONAL CANNOT ADJUDICATE CLAIMS FOR DAMAGES ARISING OUT OF NON-PERFORMANCE, RULES NCLAT

3 January 2025 | In **CSA Corporation Pvt. Ltd. v. Raj Bhatnagar**, 2025 SCC OnLine NCLAT 4, the NCLAT has held that the Resolution Professional (“**RP**”) cannot adjudicate claims for damages arising out of non-performance of a contract. Such claims for damages, in order to crystallize, require consideration by a court of competent jurisdiction. [Click here](#) for more.

NO BAR ON REGULATORY OR PUNITIVE PROCEEDINGS DURING MORATORIUM UNDER SECTION 96, RULES SUPREME COURT

4 March 2025 | The Supreme Court has recently clarified in **Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth & Ors**, 2025 SCC OnLine SC 493 that proceedings which are regulatory or punitive in nature, such as penalties imposed under the Consumer Protection Act, 1986 (“**CP Act**”), cannot be stayed during the moratorium imposed under Section 96 of the IBC. [Click here](#) for more.

CORPORATE GUARANTEE CANNOT BE INVOKED AGAINST THE CORPORATE DEBTOR AFTER THE INITIATION OF CIRP

6 February 2025 | The NCLAT in **Ankur Kumar v. Sustainable Agro-Commercial Financial Ltd**, CA(AT)(Ins) No. 484 of 2023, has held that if a corporate guarantee has been invoked subsequent to the initiation of CIRP, a claim based on that cannot be admitted in the CIRP.

In this case, the corporate guarantee was invoked after the commencement of CIRP against the corporate debtor. Thereafter, the corporate debtor was called upon to repay the agreed amount under the corporate guarantee. Upon non-payment, a claim was submitted to the RP.

The NCLAT noted that the purpose and object of moratorium is to save the corporate debtor from any future liability which may arise after initiation of CIRP and to protect its assets for purposes of resolution. Based on a detailed analysis of the Supreme Court’s ruling in **IDBI**

Trusteeship Services Limited v. Mr. Abhinav Mukherji, 2022 SCC OnLine NCLAT 267 and *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*, (2021) 10 SCC 623, the NCLAT passed the above ruling.

NCLT ADMITS APPLICATION FOR CORPORATE INSOLVENCY ON THE BASIS OF UNPAID COUPON PAYMENTS ON CCDS

1 May 2025 | In *L&T Finance Ltd v. Tikona Infinet Pvt Ltd*, C.P. (IB) 694 (MB) 2024, the NCLT, Mumbai has admitted an application for corporate insolvency based on unpaid coupon payments on Series ‘E’ Compulsorily Convertible Debentures. [Click here](#) for more.

OPERATIONAL CREDITORS CANNOT CLUB DUES TO MEET INR 1 CRORE THRESHOLD, HOLDS NCLAT

7 May 2025 | The NCLAT in *Kavindra Kumar & Ors. v. M/s Desein Private Limited*, 2025 SCC OnLine NCLAT 842, while upholding the dismissal of a CIRP application filed by 12 employees of the Respondent, affirmed that operational creditors cannot club their dues to meet the threshold of INR 1 crore for filing an application under Section 9 of the IBC. The NCLAT held that each employee is a different operational creditor and are required to give separate notice under Section 8(1) and any clubbing of operational debts to meet the threshold requirement is not permissible.

CLAIM OF GRATUITY WITH INTEREST AMOUNTS TO OPERATIONAL DEBT, RULES NCLAT

30 April 2025 | In *Sashi Kanta Jha and Anr. v. Devi Prasad and Ors.*, 2025 SCC OnLine NCLAT 831, the NCLAT has held that gratuity claim with interest amounts to operational debt under the IBC. Upholding the admission of a CIRP application against the corporate debtor, Juggilal Kamlatpat Jute Mills Co. Ltd. (now Geo Jute Ltd.), the NCLAT noted that operational debt under Section 5(21) of the IBC includes claims in respect of services including employment. Section 326 of the Companies Act, 2013 explicitly includes gratuity fund in “workmen’s dues,” reinforcing its status as a legally enforceable debt. The gratuity claim was based on a final and unchallenged award by the Labour Commissioner, which quantified the

dues. The corporate debtor never disputed this award, making the debt legally enforceable.

The appellants relied on *Kishore K. Lonkar v. Hindustan Antibiotics Ltd.*, 2022 SCC OnLine SC NCLAT 287, where the NCLAT had held that welfare dues do not constitute and cannot be treated to be service benefits due and payable. However, the tribunal distinguished this precedent from the facts of the present case. It noted that in *Lonkar* (supra), the principal gratuity had already been paid, and only the interest was disputed. In contrast, the present case involved wholly unpaid gratuity dues, supported by a final adjudication. Thus, the NCLAT concluded that gratuity is a statutory employment-related debt and falls squarely within the scope of operational debt under the IBC.

EMPLOYEE PROVIDENT FUND DUES DO NOT AMOUNT TO ASSETS OF THE CORPORATE DEBTOR, WOULD NOT STAND EXTINGUISHED UPON THE CONCLUSION OF THE RESOLUTION PROCESS, HOLDS BOMBAY HIGH COURT

29 April 2025 | The Bombay High Court in *Dalmia Cement (Bharat) Ltd. And Ors. V. Central Board of Trustees, Employees Provident Fund Organization*, 2025 SCC OnLine Bom 1754 has held that Employee Provident Fund dues do not amount to ‘assets’ of the corporate debtor over which it can exercise ownership rights. Hence, even when the resolution plan did not include the said dues, the same would not stand extinguished upon the approval of the resolution plan. As such, the provident fund department is not even obligated to lodge a claim for the dues.

The court further held that the exclusion of the amount due to any workman or an employee from the provident fund from the definition of liquidation estate, as provided under Section 36(4)(iii) of the IBC, cannot be deemed to be a provision under Chapter II of the IBC, which deals with the Corporate Insolvency Resolution Process.

IBBI AMENDS THE CIRP REGULATIONS

The Insolvency and Bankruptcy Board of India (“IBBI”) has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 (“**CIRP Regulations**”) on 3 February 2025 (“**First Amendment**”).

In the First Amendment, the IBBI has introduced several key amendments such as:

- Handing over the possession of plots, apartments, or buildings to the homebuyers by the RP, upon the approval of the CoC and upon fulfilment of all obligations by the homebuyer.
- Appointment of facilitators for sub-classes within large creditor classes such as homebuyers.
- Power of CoC to invite relevant land authorities such as NOIDA, HUDA etc. to their meetings for inputs and perspectives on regulatory and land development related matters.
- RP’s obligation to prepare a detailed report on the status of development rights, approvals, and permissions for real estate projects within 60 days of insolvency commencement.
- CoC’s power to relax certain conditions for associations or group of homebuyers to participate as resolution applicants in the insolvency resolution process.
- Provision for appointment of Monitoring Committee for implementation of Resolution Plan.
- RP’s obligation to disclose the corporate debtor’s registration status as a micro, small, or medium enterprise.

On 3 April 2025, the IBBI notified another amendment to the CIRP Regulations. (“**Second Amendment**”)

[Click here](#) to access the First Amendment of the CIRP Regulations.

[Click here](#) to access the Second Amendment of the CIRP Regulations.

[Click here](#) to access the amended CIRP Regulations.

WHITE COLLAR CRIME

ED MUST PROVIDE THE ACCUSED A LIST OF MATERIAL THAT HAS NOT BEEN RELIED UPON IN THE CHARGESHEET, RULES SUPREME COURT

7 May 2025 | In **Sarla Gupta v. Directorate of Enforcement**, Criminal Appeal No. 730 of 2024, the Supreme Court has passed various crucial directions, in the interest of an accused’s ability to defend themselves in a criminal trial under the Prevention of Money Laundering Act, 2002 (“**PMLA**”). The Supreme Court has directed:

- The Directorate of Enforcement (“**ED**”) must furnish the accused, a copy of list of statements, documents, material objects and exhibits that have not been relied upon by the investigating officer in the chargesheet.

This is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer and the accused can obtain a copy of the same by filing an application under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Although the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

- When records, instruments or documents of title of the property are seized along with the property under Sections 17 and 18 of the PMLA, the accused from whom the same are seized is entitled to their true copies.
- Once cognizance has been taken based on a complaint, the Special Judge must direct that these documents are also served on the accused along with the process:
 - (i) a copy of the complaint;
 - (ii) statements of the complainant and the witnesses, if any, before taking cognizance;
 - (iii) copies of the statements and documents produced by the ED before the Special Court till the date of taking cognizance; and
 - (iv) copies of any supplementary complaints along with the documents in support.

SUPREME COURT PROVIDES CRUCIAL CLARITY ON THE VICARIOUS LIABILITY OF DIRECTORS

2 January 2025 | The Supreme Court has passed an important judgment in **Sanjay Dutt and Ors v. State of Haryana and Anr**, 2025 SCC OnLine SC 32, in relation to the vicarious liability of directors for any crime committed by the company. The Supreme Court has held that in the absence of statutory provision, the personal liability of a director is not automatic even if the director had authorized the act concerned or was generally exercising a supervisory role over the actions of the company. [Click here](#) for more.

ED CANNOT ARREST A PERSON MERELY FOR INVESTIGATION PURPOSES, CLARIFIES PATNA HIGH COURT

5 February 2025 | In **Ajay Singh v. Directorate of Enforcement**, 2025 SCC OnLine Pat 815, the High Court of Patna clarified that in exercise of powers under Section 19(1) of PMLA, the ED, cannot arrest a person merely for investigation purposes or based on a mere suspicion that the person might have committed an offence under PMLA. [Click here](#) for more.

WHERE THE ARREST ITSELF IS ILLEGAL, COURTS CANNOT DENY BAIL ON THE GROUNDS OF NON-FULFILMENT OF THE TWIN TEST

21 January 2025 | In **Directorate of Enforcement v. Subhash Sharma**, 2025 INSC 141, the Supreme Court held that where the arrest of a person is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under Section 45(1)(ii) of the PMLA.

In this case, the arrested person was not produced before the nearest magistrate within 24 hours of his arrest, resulting in violation of his fundamental right under Article 22(2) of the Constitution. The court held that the requirement of Article 22(2) of the Constitution has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (“CrPC”). Further, there is no inconsistency between the provisions of PMLA and Section 57 of the CrPC.

CONSUMER LAW

DELHI HIGH COURT DECLARES MANDATORY LEVY OF SERVICE CHARGES BY RESTAURANTS AS UNLAWFUL, UPHOLDS CCPA GUIDELINES

28 March 2025 | In a significant ruling in the **National Restaurant Association of India v. Union of India**, 2025 SCC OnLine Del 1975, the Delhi High Court has upheld the guidelines dated 4 July 2022 framed by the Central Consumer Protection Authority (CCPA) (“**CCPA Guidelines**”). Under the CCPA Guidelines, hotels and restaurants have been prohibited from levying a service charge automatically or by default in the bill. Service charge cannot be collected from a consumer by any other name either. The CCPA Guidelines further stipulate that a hotel or restaurant cannot force a consumer to pay service charge and shall clearly inform the consumer that service charge is voluntary, optional and at the consumer’s discretion.

While assessing the constitutionality of the CCPA Guidelines in two writ petitions, the court held that the collection of service charge and use of different terminologies for the said charge is misleading and deceptive in nature. Service charge is a voluntary payment by the customer and it cannot be levied mandatorily or coercively. An establishment is free to price its products in any manner, taking into account the cost of raw materials, salaries, expenditure and capital expenses on premises. However, once the product is priced, collecting charges over and above the product price is not justified and constitutes unfair trade practice.

The court reasoned that on most occasions, the customer may not have even noticed the display of collection of service charge which may be printed on the menu card. Hence, the restaurant establishments, by mandatorily collecting service charge, are in fact misleading the consumer about the actual price of products on the menu card.

Lastly, the court held that the CCPA Guidelines would not curtail fundamental rights under Article 19(1)(g) in any manner in view of the discussion above as the guidelines are in the larger interest of the consumers and have been issued in accordance with law.

The court held that the CCPA may consider permitting change in the nomenclature for service charge which is nothing but a ‘tip or a gratuity or a voluntary contribution’. Terminology such as ‘voluntary contribution’, ‘staff contribution’, ‘staff welfare fund’ or similar terminology can be permitted. The use of the

word ‘service charge’ is misleading as consumers tend to confuse the same with service tax or GST or some other tax which is imposed and collected by the government.

MISCELLANEOUS

SUPREME COURT UPHOLDS THE VALIDITY OF AN EXCLUSIVE JURISDICTION CLAUSE IN AN EMPLOYMENT AGREEMENT

8 April 2025 | In **Rakesh Kumar v. HDFC Bank**, Civil Appeal No. 2282 of 2025, the Supreme Court has upheld an exclusive jurisdiction clause conferring exclusive jurisdiction on the courts of Mumbai, even though the concerned employees were posted in Delhi and Patna.

The Court held that there is no reason to interfere with such clauses as long as it is in consonance with the provisions of the Indian Contract Act, 1872 and Code of Civil Procedure, 1908 (“**CPC**”).

Citing the established precedents on the validity of an exclusive jurisdiction clause, the court reiterated that such a clause should not absolutely restrict any party from initiating legal proceedings and should not confer jurisdiction upon a court which would otherwise lack jurisdiction in terms of the CPC.

The court also rejected the contention that the general law is not applicable to employment

contracts as exclusive jurisdiction clauses in employment contracts may be unfair due to the unequal bargaining power between employers and employees.

The court reasoned that the private sector nowadays employs individuals pan-India for providing services to reach people in the last mile. Therefore, it may not be possible for all employers in the private sector to contest suits at far-off places from the registered office.

SUPREME COURT BARS CENTRAL GOVERNMENT FROM GRANTING EX POST FACTO ENVIRONMENT CLEARANCES, QUASHES NOTIFICATIONS AND OFFICE MEMORANDA

16 May 2025 | In **Vanashakti v. Union of India**, 2025 SCC OnLine SC 1139, the Supreme Court has restrained the Central Government from granting *ex post facto* environmental clearance (“**EC**”) and regularising the projects commenced without obtaining the mandatory prior EC, in contravention of the Environment Impact Assessment Notification, 2006. In this regard, the court has declared the Notification issued by Ministry of Environment Forests and Climate Change dated 14 March 2017 (“**2017 notification**”) and Office Memorandum dated July 7, 2021 (“**2021 OM**”) as unconstitutional. The court, however, clarified that the ECs already granted under the 2017 notification and the 2021 OM shall remain unaffected.

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