S&A Law Offices

INDIAN LEGAL IMPETUS

Newsletter

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Manoj K Singh

Dear Friends,

We are elated to present to you the August 2026 edition of our monthly newsletter, Indian Legal Impetus, covering insights on recent developments, case laws, and issues relating to various disciplines of law. We sincerely hope that you will find this issue of Indian Legal Impetus informative and engaging.

This edition starts with our first article analysing the recently passed Mines and Minerals (Development and Regulation) Amendment Bill, 2026, which bars state governments from independently levying taxes or cesses on major minerals and extinguishes unpaid past tax dues. The article examines the tensions between the Union's regulatory power under Entry 54 of the Union List and the states' constitutional taxing power under Entry 50 of the State List, in light of the Hon'ble Supreme Court's landmark ruling in *Mineral Area Development Authority v. Steel Authority of India Ltd.,* and considers the broader implications for fiscal federalism in India.

The second article examines the Hon'ble Supreme Court's decision in *Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority* (2026 SCC OnLine SC 806), which lifted the corporate veil between a real estate developer and its subsidiaries, endorsed project-specific insolvency proceedings, and held public authorities accountable under the public trust doctrine. The judgment carries significant implications for homebuyer protection, corporate governance, and the intersection of corporate structures with insolvency proceedings under the Insolvency and Bankruptcy Code, 2016.

Our third article analyses the Hon'ble Delhi High Court's ruling in *ANI Media Pvt Ltd v. Open AI OPCO LLC,* India's first significant judicial pronouncement on jurisdictional challenges in AI litigation. It examines whether Indian courts can exercise territorial jurisdiction over foreign AI companies that train their models using data sourced from India but stored on overseas servers, applying the doctrine of purposeful availment and the provisions of Sections 20 and 62 of the Copyright Act, 1957.

Our fourth article discusses the Hon'ble Supreme Court's landmark ruling in *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi* (2026 SCC OnLine SC 670), which settled a long-standing judicial divide on whether a party that lost in arbitration can seek post-award interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that any party, including the unsuccessful party, may apply for post-award protection, albeit only in 'rare and compelling cases' exercised with care, caution, and circumspection.

Our fifth article closes the edition by examining whether a fresh arbitral tribunal can be appointed under Section 11 of the Arbitration and Conciliation Act, 1996, after a prior award on the same dispute has been set aside under Section 34. It analyses the Hon'ble Delhi High Court's decision in *Jaiprakash Associates Limited v. NHPC Limited,* which applied the 'deadwood' doctrine to refuse appointment, and considers the interplay of res judicata, manifest injustice, and the statutory framework for fresh proceedings.

We hope that our esteemed readers find the information useful. We trust that the contributions in this edition enable them to understand and interpret the recent legal developments with greater clarity. We welcome all kinds of suggestions, opinions, queries, or comments from all our readers. Please feel free to reach out to us with your valuable insights and thoughts at newsletter@sandalawoffices.com

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THE MINERAL TAX CONUNDRUM: ANALYZING PARLIAMENT'S MMDR AMENDMENT AND THE FUTURE OF FISCAL FEDERALISM

- Amar Tandon & Anushka Shekhar

Under the India's federal structure, powers of taxation have been a bone of contention between the Union and the State. Both the houses of the Parliament recently passed the Mines and Minerals (Development and Regulation) Amendment Bill, 2026 ("**the Bill**"), which hosts one of the most critical interventions in the federal strata of the nation.[1] This Bill proposed to bar state governments from independently levying any tax or cess on major minerals. It has further extinguished unpaid past tax dues, which marks a significant legislative intervention in the resource economy of the nation. Though this Bill reinforces relief to mining and manufacturing companies, it raises significant legal questions about state revenue rights, fiscal autonomy and the limits of legislative power as opposed to court rulings.

To comprehend the changes introduced by this Bill, it is necessary for us to take cognizance of its legal history. For long, mineral taxation was governed by the Hon'ble Supreme Court's decision in *India Cement Ltd. v. State of Tamil Nadu*,[2] which treated statutory mining royalties as a form of tax, which effectively prevented state governments from levying separate taxes or cesses on mineral extraction.

However, in July 2024, a nine-judge Constitution Bench of the Hon'ble Supreme Court in *Mineral Area Development Authority (MADA) v. Steel Authority of India Ltd.*[3] overturned the India Cement (Supra) precedent and held that royalty is not a tax and instead, it is a contractual consideration paid to the owner of the mineral resource for the right to extract it. As a result, the Hon'ble Supreme Court held that the constitutional power to tax mineral rights and mineral-bearing lands is with the state legislatures under Entry 50 and Entry 49 of the State List.[4] Thereafter, the Hon'ble Court also permitted the state legislatures to recover arrears of past tax dues dating back to April 1, 2005[5], consequently resulting in the mining companies facing financial exposure to a demand of thousands of crores and leading to several public and private sector enterprises facing an immediate financial burden.

The Bill was primarily driven by macroeconomic factors that significantly impacted the fundamental industries, including power generation, steel manufacturing, and infrastructure development, as these industries heavily

1 Mines and Minerals (Development and Regulation) Amendment Bill, 2026 (amending Act No. 67 of 1957).

2 *India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.* (1990) 1 SCC 12; 1989 INSC 322 (Seven-Judge Bench).

3 *Mineral Area Development Authority & Anr. v. Steel Authority of India Ltd. & Anr.* (2024) 2024 INSC 554; Civil Appeal No. 4056 of 1999 (Nine-Judge Bench).

4 Constitution of India, Seventh Schedule, List II (State List), Entry 49 ("Taxes on lands and buildings") and Entry 50 ("Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development").

5 *Mineral Area Development Authority & Anr. v. Steel Authority of India Ltd. & Anr.* (2024 INSC 603), Order dated August 14, 2024 (clarifying retrospective recovery modalities from April 1, 2005 onwards).

relied on the supply of minerals like coal, limestone, iron ore, etc. The Central Government argued that if each state could levy separate and uncapped taxes on mineral extraction, it would create an unpredictable business environment and drive up the cost of raw materials. This cost increase would inevitably be passed on to consumers in the form of higher electricity tariffs, expensive steel, and costly construction materials. Further, this could open up public sector undertakings to retrospective tax demands and test their financial viability. Enterprises such as Coal India and SAIL could face uncertainty in their investments in the mining sector across the country.

The Bill passed addresses the above-mentioned concerns of the mineral industry. By inserting Section 9D into the Mines and Minerals (Development and Regulation) Act, 1957 ("**the Act**"), the Union has used its regulatory powers under Entry 54 of the Union List to place a ceiling on the taxation powers of the state.[6] Under the amended law, state legislatures cannot introduce new taxes, cesses, or surcharges on major minerals unless the Union has permitted to do so or has capped them. Additionally, the Bill has nullified all previously uncollected tax claims, which were later demanded by the states. However, to avoid administrative disarray, the Bill has included a specific safeguard, that is, any tax that has already been collected and deposited into the State's treasuries before the amendment, do not have to be refunded.

Despite the economic rationale, the amendment places significant strain on India's federal structure. Mining operations impose heavy environmental, infrastructural, and social costs on mineral-bearing states such as Jharkhand, Odisha, Chhattisgarh, and Rajasthan. State governments point out that after the introduction of the Goods and Services Tax ("**GST**"), their independent revenue-raising powers became heavily restricted.[7] Land and mineral rights remained among the few areas where states could directly mobilize resources. For these states, losing the ability to tax mineral extraction within their borders represents a substantial blow to their fiscal planning and development budgets.

The legislation is also expected to face legal challenges in the Supreme Court. Under settled constitutional jurisprudence, while Parliament has the power to alter the underlying legal framework of a court judgment, it cannot simply override or nullify a judicial decree by legislative declaration without curing the underlying basis[8] as upheld in the case of *State of Tamil Nadu v. State of Kerala* (2014). The courts will have to examine whether the Centre's general regulatory authority under Entry 54 of List I can be used to entirely suppress a state's specific constitutional taxing power under Entry 50 of List II.

Conclusively, the Bill reflects an ongoing tension between the Union's economic planning and the States' financial autonomy.

6 Constitution of India, Seventh Schedule, List I (Union List), Entry 54 ("Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest").

7 Constitution (One Hundred and First Amendment) Act, 2016 (subsuming various state indirect taxes into the unified Goods and Services Tax framework).

8 *State of Tamil Nadu v. State of Kerala (2014) 12 SCC 696; In the matter of: Cauvery Water Disputes Tribunal* (1993) Supp (1) SCC 96 (affirming the constitutional doctrine that the legislature cannot directly overrule or invalidate a judicial decree).

It is considered view, that protecting core, mineral- driven industries from sudden financial chaos is a valid governance priority, but it should not result in the permanent negation of the states' power to generate revenue. A far- sighted overview, would require a cooperative approach such as frequently revising base royalty rates or establishing a transparent revenue-sharing framework, so that country's industrial needs are prioritised without financially constraining the mineral-producing states.

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LIFTING THE CORPORATE VEIL IN REAL ESTATE INSOLVENCY

- Vishal Singh

Introduction

Real estate developers in India often channel homebuyers' funds through complex networks of holding companies, subsidiaries and special purpose vehicles (**SPVs**). When these developers fail, homebuyers, often middle-class families who have poured their life savings into these projects often find themselves stranded without homes or legal remedies. They are frequently caught between the rigid timelines of the Insolvency and Bankruptcy Code, 2016 and the distinct legal personality of group companies. While the 2018 Amendment of the Code was lauded for recognising homebuyers as financial creditors. However, did not clarify whether the insolvency process for a holding company could include the assets of its subsidiaries. This issue arose in the case of ***Alpha Corp Development Private limited vs. Greater Noida Industrial Development Authority (GNIDA) & Others (2026 SCC OnLine SC 806)***. The judgement lifts the corporate veil, supports a project-wise approach to insolvency, and calls out public authorities for their role in systemic breakdowns impacting thousands of purchasers. At its core, the judgment rests on three pillars, namely being, lifting the corporate veil, giving primacy to homebuyer interests, and enforcing accountability on public bodies

Facts and Procedural History

Earth Infrastructures Limited (***EIL***) was a real estate developer managing several projects across Greater Noida and Gurugram. Rather than EIL holding the land directly, GNIDA leased plots of land on 90-year leases to three entities controlled by EIL. Firstly, Earth Towne Infrastructures Private Limited, where EIL held a 98% stake, and two wholly owned subsidiaries being Neo Multimedia Limited and Nishtha Software Private Limited. Though these subsidiaries held the leases, development rights were conferred upon EIL through various unregistered development agreements and thus it acted as the actual developer for all projects. These projects were known as Earth Towne, Earth TechOne, and Earth Sapphire Court, while a fourth project, Earth Copia, sat on freehold land in Gurugram owned by another subsidiary and had no connection with GNIDA.

Initiation of CIRP and Approval of Resolution Plan

Insolvency proceedings under Section 7 of the Code against EIL was admitted by the NCLT on 06.06.2018, with a Committee of Creditors (***COC)*** that included HDFC Bank and over 4,000 allottees. After an initial failed attempt to an initial omnibus invitation for resolution plans, the Resolution

Professional sought project-specific bids. The CoC eventually approved plans from Roma Unicon Designex Consortium (***Roma***) for Earth Towne and Alpha Corp Development (Alpha) for the other projects. However, these approvals were challenged by GNIDA which in turn lead the NCLAT to set aside the orders by its judgement dated 30.01.2023. The NCLAT while placing reliance on the Explanation to Section 18 of the Code and the ruling in *Vodafone International Holdings BV v. Union of India and Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Limited,* held that subsidiary assets could not be treated as assets of the corporate debtor and refused to lift the corporate veil. However, the NCLAT did suggest GNIDA should waive penal interest. This led to multiple appeals being filed in the the Supreme Court.

Lifting the Corporate Veil

The most doctrinally significant contribution of the judgment lies in the Court's decision to lift the corporate veil between EIL and its three subsidiaries. The Court highlighted an excerpt of the judgement in ***BRS Ventures Investments Limited vs. SREI Infrastructure Finance Limited (2025 1 SCC 456)***, reiterating a long-standing doctrine that a holding company and its subsidiary shall be treated as separate legal entities. However, the Court considered such a doctrine to not be absolute. Relying on established case law of ***Life Insurance Corporation of India vs. Escorts Limited (1986 1 SCC 264),*** the court ruled that the legal separation between companies can be set aside if their operations are so blended that they effectively run as one business, and thus the corporate veil of such companies can be pierced. Furthermore, the Court relied on *ArcelorMittal India Private Limited v. Satish Kumar Gupta (2019) 2 SCC 1* to emphasize that, when public interest is at stake or companies are used to dodge legal obligations, the corporate veil can be disregarded and that this principle would be applied even to group companies so that the economic reality of the group may be looked upon.

Several factors justified this approach in the EIL case. These factors were that the subsidiaries were almost entirely owned or controlled by EIL, they shared common directors, and their only assets were the lands EIL was developing. Additionally, GNIDA was fully aware that EIL was the party actually developing these plots. In the Court’s view, EIL exercised actual control, with the subsidiaries serving little more than as a front. Once this conclusion was reached, there was no need to examine the questions arising under Sections 18 and 25 of the Code regarding the meaning of ‘assets’. The Court’s approach signals that once the veil is lifted, the technical definition of assets becomes a secondary concern. The judgement highlights that if a special purpose vehicle is not operating with actual autonomy and it shares its directors with its parent company, its assets can be merged into the bankruptcy proceedings of its parent.

Project-Specific CIRP in Real Estate

The judgment supports the use of project-specific insolvency processes in the real estate sector. The Court highlighted the Clarification to Regulation 36A (1) of the IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which allows resolution professionals to seek plans for individual projects if the CoC agrees to the same. To support this stance, the judgement relied upon ***Indiabulls Asset Reconstruction Company Limited v. Ram Kishore Arora (AIR 2023 SC 2273)***alongside the decision in ***Mansi Brar Fernandes v. Shubha Sharma [(2025) 259 Comp Cas 769].*** Read as a whole, these case laws establish that the focus of insolvency proceedings in case of real estate developers must be on individual projects rather than dealing with the corporate debtor as a whole. This method is practical because not only does it prevents a single default from stalling otherwise viable projects, but it also allows different specialized bidders to take over specific projects. This in turn insulates homebuyers in solvent projects from the consequences of a developer's unrelated failures. This project-specific approach is now firmly established as the default rule.

Homebuyer Protection

The Supreme Court demonstrated great concern for the protection of thousands of buyers who had been waiting for project completion since 2016. A major part of this protection involves the payment of dues to public authorities. The successful resolution applicants, Alpha and Roma, committed to absorbing GNIDA's dues themselves rather than passing those costs on to the homebuyers. The Court explicitly endorsed this, noting that buyers who have already suffered through years of delay should not be burdened with the costs of the developer's failures or the inaction of public bodies.

Accountability of Public Authorities

Perhaps the most trenchant aspect of the judgment is the Court's criticism of GNIDA's conduct. Adopting the public trust doctrine as articulated in *Noida Entrepreneurs Association v. Noida (2011 6 SCC 508)* the Court stated that a public authority's power should be viewed as trust coupled with duty that must be used for the social and public interest. In accordance with the lease deed, GNIDA was contractually obliged to monitor project progress and ensure completion which it failed to perform. Despite receiving complaints from buyers as far back as 2016, GNIDA failed to take meaningful action against the developer. The Court observed that GNIDA's conduct during the entire process was erratic. By issuing erratic payment notices and failing to participate actively in the insolvency process, GNIDA demonstrated a clear pattern of neglect. Most concerning, however, was their decision to revoke allotments in direct violation of the Supreme Court's April 13, 2023 status quo order. This was an action the Court found materially escalated the conflict.

As a result, the Court ruled that GNIDA is not entitled to collect penal interest or extension charges. This direction of the court has a massive financial impact as for ETIPL alone, approximately ₹59.65 crore out of ₹309.79 crore comprised of such charges. The Court directed recalculated dues to be paid in equated monthly instalments over twenty-four months from 07.07.2026, with no interest accruing during the payment period.

Severability of Resolution Plans and Majority Rule

The Court also addressed the technical aspects of the resolution plans, specifically their severability. It found that the Earth Copia project in Gurugram, having no links to GNIDA, should not have been affected by GNIDA's objections. This reinforces the idea that resolution plans can be assessed on a project-by-project basis if they include severability clauses. Regarding voting, the Court while placing reliance on *Jaypee Kensington Boulevard Apartments Welfare Association (supra)* clarified that under Section 25A(3A) of the Code, if a majority of a class of creditors votes for a plan, individual dissenting members cannot block it. Finally, the Court reaffirmed the strict 15-day limit for condoning delays in filing appeals, dismissing one appeal that was 34 days late.

Pre Judgement Regime

Before the ***Alpha Corp Development*** ruling, Indian law strictly maintained the separate legal personality of parent companies and subsidiaries, with the Explanation to Section 18 of the IBC protecting subsidiary assets from the parent company's CIRP. Judicial precedents like ***BRS Ventures Investments Limited vs. SREI Infrastructure Finance Limited and Vodafone International Holdings BV vs. Union of India*** further extended this difference by noting that owning the entire share capital of a subsidiary company does not by itself grant direct legal ownership to a holding company for the underlying assets of the subsidiary. Further, ***Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC Limited*** held that resolution plans must be restricted to the direct assets of the parent company, excluding land-holding subsidiary SPVs. This allowed developers raise fund through a parent company while keeping the concerned land ownership with the subsidiaries. This leaves homebuyers vulnerable if the developer defaults.

Implications of the Judgement

In *Alpha Corp Development*, the Hon'ble Supreme Court has help the public interest and commercial substance over and above corporate structuring, and thus redefined the real estate restructuring framework. This change impacts insolvency, corporate governance, as well as regulatory oversight.

The ruling has clarified that Section 18 of IBC by allowing assets owned by subsidiary companies to be consolidated taken in to consideration for their parent companies insolvency assets under certain conditions. By relaying on the judgements in ***Life Insurance Corporation of India v. Escorts Ltd.*** and ***ArcelorMittal India Private Limited v. Satish Kumar Gupta,*** the Hon'ble Court held that the corporate veil can be raised when related businesses operate as a fully integrated economic unit. Thus, nominal subsidiaries are no longer enough for builders to protect the assets of a project from collective actions taken by the creditors.

Additionally, this judgement ensures that, in case of real estate defaults, any resolution is undertaken project-wise. Instead of starting a wholesale, enterprise-level insolvency that can triggers financial instability on a larger scale, the Hon'ble Court has affirmed localized proceedings. This protects viable projects and ensures that homebuyers are protected from unrelated defaults of a corporate group.

Thirdly, the ruling expanded the public trust doctrine to hold statutory land development authorities accountable. Development authorities can no longer levy penal interest or time-extension penalties if their own administrative inertia and failure to monitor project progress contributed to project stagnation.

The Court upheld Section 25A(3A) of the IBC, ruling that majority votes via class representatives bind dissenting homebuyers to prevent stalled resolution plans.

Conclusion

The decision in ***Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority*** establishes landmark precedent. It influences three distinct doctrinal areas within Indian insolvency law. The judgment restricts individual allottees from blocking approved restructuring strategies.

In corporate law, rather than treating group entities in isolation, the Court looked at the reality of how these corporate structures function on the ground. It recognised that, where a parent developer exercises overwhelming control over its subsidiary SPVs, the corporate veil may be disregarded. In insolvency law, the court reinforced project-specific CIRP as the norm and reiterated the strict limitation under Section 62(2). The court further upheld the primacy of majority decision-making within classes of financial creditors. In administrative law, it ensures the application of the public trust doctrine to hold a development authority accountable which marks a notable expansion of the doctrine beyond its conventional environmental law confines.

These principles, when read together, reinforce each other. By prioritising the protection of public interest and lifting the corporate veil, the Court made it possible to bring assets held by subsidiary entities into the resolution process. The court further upheld justice by holding GNIDA responsible for its failures to abide by the public trust obligations and denying claims for penal charges. Collectively, the judgment carefully consolidates existing principles as it adds a layer of clarity and realism, especially in dealing with the intersection of corporate structures and insolvency proceedings, which had often been a source of uncertainty.

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WHERE CAN AI COMPANIES BE SUED? NAVIGATING CROSS-BORDER JURISDICTIONAL CHALLENGES IN AI LITIGATION.

- Yash Mittal & Isra Mukhtar

In the modern day and age, generative Artificial Intelligence (**hereinafter "AI")** serves as an ingenious medium for disseminating information to the public. With a single prompt, AI chatbots such as ChatGPT, Claude and Lama can generate information by processing vast amounts of data. The legal controversy arises when the developers of these AI chatbots harness publicly available data from a different jurisdiction without the permission of the copyright holders or authors to train their Large Language Models (**hereinafter "LLMs"**).

There is no doubt in the fact that data is the new oil for the 21st century and such raw data is sacrosanct for refining the outputs given by AI Systems.[1] However, certain questions concerning whether training of AI infringes subsisting rights of authors remain unanswered, particularly because the existing legal framework does not address such alleged infringements. An equally pressing issue concerns the place of suing: -

"Whether Indian courts exercise jurisdiction over disputes involving data sourced from India but stored or processed on servers located overseas"

The aforementioned question pertaining to jurisdiction was answered by the Hon'ble Delhi High Court in ANI Media Pvt Ltd v. Open AI OPCO LLC[2], India's first significant ruling concerning the use of copyrighted content in the training and operation of generative AI. Here, **M/s ANI Media Private Limited ("ANI"),** the Plaintiff, had sought an interim injunction against **M/s Open AI OPCO LLC("Open AI"),** alleging infringement of its copyrighted content. While the court examined several issues concerning copyright infringement and fair dealing, this article focusses specifically on findings pertaining to territorial jurisdiction and the challenges that arise when the relevant AI operations and data storage extend beyond national borders.

<u>Training & Operation of AI Chatbots</u> – Before deeply analysing the jurisdiction issue, it is pertinent to take a brief understanding of the training and operation of AI chatbots. In this context, Hon'ble Mr. Justice Amit Bansal explained in detail the process involved in training LLMs, which generate outputs by employing, *inter alia*, the automated process of web crawling. Web crawlers are basically automated software programmes that scrape data readily available from public sources, including licensed materials such as books, articles, blog posts. The data so collected is thereafter filtered for quality and safety through trusted sources in order to remove toxic or undesirable content before being fed to the LLM as raw data.[3]

1 ANI Media Pvt Ltd v. Open AI Opco LLC, CS(COMM) 1028/2024, para 5.

2 Ibid.

3 Ibid, para 17.

The filtered raw data is then tokenised into smaller pieces called "tokens" and assigned a Token ID, which is further converted into a vector through a process known as embedding. Parts of this "training data" are then fed to the LLM, where words are masked and the model is trained to predict the next word or sequence of words based on probability.[4]

In the present case, it was undisputed between the parties that the training takes place outside India and is undertaken on the basis of data stored on servers located outside India. ANI, therefore, had a dual cause of action:

(a) One pertaining to use of ANI's data to train ChatGPT (**"Training Claim"**), and;

(b) Reproduction by ChatGPT of content similar to that of ANI (**"Reproduction Claim"**).

The quandary before the Hon'ble Court was whether it could exercise territorial jurisdiction over an entity situated out of its jurisdiction. The dispute in itself arose from Open AI's alleged use of publicly available data accessed from websites with Indian IP addresses, which was thereafter converted into raw data to train LLM's on physical servers located in California, USA.

Open AI's Jurisdictional Objection - Open AI did not contest the jurisdiction of the Hon'ble Court in respect of the Reproduction Claim. This was easier to establish for ANI, as the Hon'ble Court found that the data was being reproduced within India, where ANI's principal place of business was situated. Pertinently, Open AI contended that the Hon'ble Court's jurisdiction to entertain the Reproduction Claim did not automatically confer jurisdiction over the Training Claim.

In respect of Training Claim, Open AI maintained that the Copyright Act of 1957 (**hereinafter "the Act"**), particularly Section 62 r/w Section 1(2) of the Act did not confer extra-territorial jurisdiction upon Indian Courts. Therefore, it contended that the Hon'ble Delhi High Court lacked territorial jurisdiction, as Section 20 of the Code of Civil Procedure, 1908 (**hereinafter "the CPC"**) requires a suit to be instituted where the defendant resides or carries on business or where the cause of action, wholly or in part arises.

ANI's Counter to the Jurisdiction Objection - ANI contended that the location of Open AI's servers was immaterial, as Section 62(2) of the Act conferred upon authors and Copyright owners the right to sue for infringement within the jurisdiction where its principal office is located. ANI further contented that Open AI came under the jurisdiction of the Hon'ble High Court by application of Section 20(b) of the CPC as it operates an interactive website through which it conducts commercial transactions such as collection of subscription user fee that lie within the ambit of the Hon'ble Court.

Furthermore, Open AI's active targeting of consumers, advertising, and public outreach in India constitute a purposeful engagement, thereby satisfying the cause of action requirements under Section 20(c) of the CPC. In this regard, ANI placed reliance on

4 Ibid, para 21.

the doctrine of "**Purposeful Availment**", as recognised in *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy.*[5] ANI, accordingly, contended that since Open AI reproduced and distributed Indian published works with the objective of attracting users in India, a distinct part of the cause of action arose within the jurisdiction of the Hon'ble Delhi High Court.

Demystifying "Purposeful Availment" - The doctrine is rooted in the U.S. Supreme Court's *precedent of International Shoe Co. v. Washington*[6], which mandated that for a Court to have jurisdiction over an out-of-state Defendant, the Defendant must intentionally target a forum state and enjoy its legal protections. This places an onus on the Plaintiff to establish a substantial connection with the forum state arising out of the Defendant's own deliberate actions rather than relying on random interactions.

The doctrine found applicability in India through the *Banyan Tree Holding* judgement pronounced by the Hon'ble Delhi High Court which ruled that mere website accessibility was insufficient in order to establish territorial jurisdiction of a foreign user. Hence, the aggrieved party must demonstrate a series of commercial transactions with forum-located users to prove that the Defendant specifically targeted a particular market.

Applying these principles to the current AI litigation, Open AI clearly satisfies the parameters of "Purposeful Availment" under Section 20(b) of the CPC as it does not merely host a passive website, it actively enters into commercial transactions by maintaining a base of "paid subscribers" who interact with ChatGPT. These services are locally accessible and generate outputs that allegedly infringe copyrights thereby clearly establishing that a substantial part of the cause of action undeniably arises within the forum. Moreover, Section 62 of the Act provides an expansive, additional ground for jurisdiction over and above Section 20 of the CPC.[7] This statutory entitlement is robust and cannot be ousted by mere contractual stipulations or waived by user "Terms of Use".

Decision of the Hon'ble Delhi High Court - The Hon'ble Delhi High Court affirmed its *prima facie* territorial jurisdiction under Section 62(2) of the Act, noting that ANI's registered office and principal place of business are located within its jurisdiction. This statutory jurisdiction was further reinforced by Section 20 of the CPC, as Open AI actively targets and offers its commercial services to subscribers across India. Further, the alleged infringing activities, specifically, the generation of outputs by ChatGPT based on user prompts which occur within the Court's territorial limits. The Hon'ble Court thereby rejected Open AI's extraterritorial defence based on location of its servers in the US.

While acknowledging that the Copyright Act does not apply outside India, the Hon'ble Delhi High Court held that it was not restricted to examining merely the terminal step of an infringement. Instead, it must evaluate the entire interconnected chain of

5 CS (OS) No.894/2008.

6 326 U.S. 310 (1945).

7 Exphar SA v. Eupharma Laboratories Ltd, AIR 2004 SUPREME COURT 1682.

events, beginning with the alleged unauthorized access and transmission of copyrighted works from India before their storage abroad. Accepting Open AI's defence would create an untenable loophole, allowing infringers to evade domestic intellectual property laws simply by shifting their data storage servers overseas, thereby leaving copyright owners entirely remediless in an era of digital dissemination.

The Hon'ble Court while relying upon *Neetu Singh v. Telegram*[8] highlighted that conventional and rigid concepts of territoriality cannot be strictly applied to cloud computing and cross-border data litigation. Drawing a parallel with Telegram's hosting servers situated in Singapore which did not oust the jurisdiction of Indian courts over content circulated in India, the location of Open AI's servers could not, by itself, oust jurisdiction of Indian courts where the alleged harm and commercial exploitation occur domestically.

Conclusion

The decision demonstrates that the location of servers outside India or the absence of a physical presence within the country cannot, by itself, oust the jurisdiction of Indian courts. What remains essential is a territorial nexus between the alleged infringement, the activities of the defendant and the forum. Such a nexus may arise from purposeful commercial engagement with users in India, generation of allegedly infringing outputs within the jurisdiction, or other acts forming part of the cause of action under Section 20 of the CPC and Section 62 of the Copyright Act.

The ruling therefore establishes that jurisdiction in AI disputes cannot be determined solely by the physical location of technological infrastructure. In an era of cloud computing and generative AI, courts must examine the interconnected chain of events and identify where the *"digital cause of action"* arose, while ensuring a real and substantial connection with the forum.

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8 CS (COMM) 282/2020.

POST-AWARD INTERIM RELIEF FOR THE UNSUCCESSFUL PARTY: A CRITICAL ANALYSIS OF HOME CARE RETAIL MARTS PVT. LTD. V. HARESH N. SANGHAVI, 2026 SCC ONLINE SC 670

- Tanmay Joshi & Ishita Agarwal

Introduction

Section 9 of the Arbitration and Conciliation Act, 1996 (**"the Act"**) is the principal mechanism by which courts may grant interim relief before or during arbitration and after an award but before its enforcement under Section 36 of the Act. The position after an award was, however, unsettled. For more than a decade, the High Courts were divided on whether a party that had lost in the arbitration could invoke Section 9 after an award. Some allowed for limited post-award relief only to the successful party, while others interpreted "a party" to include every party to the arbitration agreement. The divergence had practical consequences. In ***Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi,*** 2026 SCC OnLine SC 670, the Hon'ble Supreme Court of India (**"SC"**) settled the issue. The SC held that any party, including an unsuccessful party, can apply for post-award protection. Such applications, however, may be made only in "rare and compelling cases" and must be considered with care, caution, and circumspection.

The Judicial Divide before the Judgment: Conflicting High Court Approaches

Before the issue was addressed by the Hon'ble SC, the answer was dependent on the High Court before which the matter was heard. The forum therefore was of relevance, and the conflicting answers gave rise to a divergence in authority.

Several High Courts adopted a restrictive approach including the Hon'ble Bombay High Court in ***Dirk India Pvt. Ltd. v. Maharashtra State Electricity Generation Co. Ltd.,*** 2013 SCC OnLine Bom 481, the Hon'ble Delhi High Court in ***Nussli Switzerland Ltd. v. Organizing Committee Commonwealth Games, 2010,*** 2014 SCC OnLine Del 4834, and again in ***National Highways Authority of India v. Punjab National Bank,*** 2023 SCC OnLine Del 4810. Similarly, the Hon'ble Madras High Court in ***A. Chidambaram v. S. Rajagopal,*** OA No. 843 of 2024, and the Hon'ble Karnataka High Court in ***Smt. Padma Mahadev v. Sierra Constructions Private Limited,*** COMAP No. 2 of 2021, have held the same. As per that interpretation, the unsuccessful party had to depend on the remedies under Sections 34 and 36 of the Act as Section 9 was understood to protect the "*fruits of the award*".

Other High Courts adopted a broader approach. The Hon'ble Telangana High Court in ***Saptarishi Hotels Pvt. Ltd. v. National Institute of Tourism & Hospitality Management***, 2019 SCC OnLine TS 1765, the Hon'ble Gujarat High Court in ***GAIL (India) Ltd. v. Latin Rasayani Pvt. Ltd.,*** 2014 SCC OnLine Guj 14836, and the Hon'ble Punjab & Haryana High Court in

DLF Home Developers Ltd. v. Orris Infrastructure Pvt. Ltd., FAO-CARB-51-2024, held that, read with Section 2(h) of the Act, the reference to "a party" in Section 9 includes every party to the arbitration agreement, without distinction. On that view, a court could grant interim protection for the subject matter of the arbitration while proceedings challenging the award remained pending. The divergence had practical consequences and produced inconsistent results in commercial arbitration. The Hon'ble SC was therefore required to resolve the conflict.

Thus, the central question at the heart of the controversy is: Can a party that had lost in the arbitration and therefore had no enforceable award bring an application under Section 9 after the award?

The SC's Interpretation of Section 9: Meaning of "A Party"

Section 9 begins with the term "a party", which Section 2(h) defines as "a party to an arbitration agreement". Neither provision distinguishes between successful and unsuccessful parties. Generally, when a statute defines a term, that definition applies throughout the statute unless the statute provides otherwise. Because the Act defines "party", the hon'ble SC held that restricting its meaning post award would amount to judicial legislation. The term must therefore retain its statutory meaning at every stage; it cannot refer to all parties before an award and then only to the award holder after the award. The structure of Section 9 reinforces this interpretation.

In this regard, it is to be noted that interim protection is permitted under Article 9 of the UNCITRAL Model Law only before or during the course of arbitration. On the other hand, the Act allows such measures during the period after the award is passed but prior to the award enforcement under Section 36. This is without any restriction on who may apply. This indicates that there is a purposeful departure from the international scheme under the Act.

In this regard, there is a clear distinction between provisions under Sections 9, 34, and 36 of the Act. While Sections 34 and 36 deal with validity and enforcement of the award, Section 9 is intended for preserving the disputed amount or the subject matter of the award. While a challenge under Section 34 is pending, an award by itself cannot finally determine the rights of the parties involved. The Hon'ble Court relied on the Constitution Bench judgment of ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*** [2025 SCC OnLine SC 986] to support this conclusion.

Thus, because courts may, in limited circumstances, modify an award by severing invalid portions, correcting errors, or adjusting interest, the parties' final rights cannot always be treated as settled while a challenge is pending. A party that appears to have lost may still have rights capable of being revived. Interim relief may be required in such a situation, provided that the threshold for such post-award relief remains appropriately high.

Why Interim Protection May Be Required by An Unsuccessful Party

Consider a monetary award alleged to have been obtained through fraud or corruption or passed without giving a proper notice. A challenge on those grounds is not routine, but it may be imperative to preserve an existing restraint on invocation of a bank guarantee while the Section 34 challenge is pending. Moreover, "unsuccessful" is not always a reliable label A party may succeed on some claims but still be treated as unsuccessful because the opposing party's counterclaim is greater than those claims. If there is asset dissipation while the challenge is pending, any eventual relief may be rendered meaningless. The need for protective measures that do not jeopardise the rights of the parties, has also been recognized by the Hon'ble Court, including preservation of confidentiality, as demonstrated by ***Wind World (India) Ltd. v. Enercon GmbH,*** 2017 SCC OnLine Bom 1147. The rationale behind the same is practical. A pending challenge may alter the parties' legal positions while relevant assets are dissipated, or existing protections expire before the court can decide the challenge. The risk is especially acute in high-value commercial, infrastructure, EPC and real estate disputes where the lack of interim protection may cause irreparable harm.

Implications for Arbitration Framework of India

By this judgment, the outcomes which were forum specific will be now substituted with a single standard across the nation. Section 34 challenges will clearly be affected by the consequences of this judgment. If the challenge succeeds, a meaningful relief will be preserved by the protection of the assets. By contrast, recovery may be rendered impossible by dissipation. Financial institutions and lenders now have a better guidance on post-award restraints, including those relating to bank guarantees. Nevertheless, post-award relief remains limited to *"rare and compelling cases"*. Courts must apply the usual tests for interim relief with heightened care, caution, and circumspection. The mere filing of a challenge under Section 34 does not establish the exceptional circumstances that are necessary for granting relief. The assets, subject matter, or existing protection at risk must be identified by the Applicants and the anticipated risk or harm must be linked to the pending challenge. Any order should be passed to preserve and should not replace the stay mechanism under Section 36.

Balancing Fairness

It is evident that the judgement is sound and cannot be question at least to the extent that it deals with established judicial doctrines. Under the Act, Section 9, read with Section 2(h), does not limit the status of the party who can file an application under Section 9. The intent of th legislature is clear from the fact that they have gone a step beyond of the UNCITRAL Model Law and added an express post award timeline. The reasoning in ***Gayatri Balasamy (supra)*** makes it difficult to treat an award as capable only of being upheld or set aside. A court may, in limited circumstances, modify an award by severing invalid portions, correcting errors, or adjusting interest. The possibility of modification means that a party's position may be partly revived, making interim protection necessary in an appropriate case. Such an approach advances the accessibility to justice since credible fraud allegations, threatened dissipation of assets, and procedural irregularity, should not render a statutory challenge futile. The outcomes and counterclaims of arbitration are not always binary. Whether judicial protection is necessary or not cannot be adequately determined a rigid distinction between successful and unsuccessful parties.

This being said, it must be admitted that the one impact of the decision may be that it may encourage resourceful parties that were unsuccessful to file tactical applications along with challenge under Section 34 and stay applications under Section 36. This could multiply proceedings and delay the enforcement of the award. An award holder may be prevented from realising the fruits an award and the statutory distinction between interim protection and enforcement may be blurred by an order that is broadly framed as it might act as a de facto stay.

This would sit uneasy with the minimum judicial intervention, autonomy and finality of arbitration as laid down under Section 5.The already long procedural timeline for awards to attain finality from judicial scrutiny will be extended even more than it already is. As orders passed under Section 9 are appealable under Section 37, this only adds another set of proceedings to the already extended timeline.

Conclusion

The mechanical rule under which the protection, post- award, was dependent on the party with the enforceable award was rejected in ***Home Care Retail Marts (supra).*** However, care, caution and circumspection must be exercised by the courts while applying the *"rare and compelling"* threshold. Although the judgment safeguards the meaningful avenue for parties whose rights may revive without undermining arbitral finality or enforcement, a broad application could make a Section 9, a delay tactic. Its balance between finality and justice will endure only through disciplined judicial implementation.

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TENABILITY AND CONSEQUENCES OF APPOINTMENT OF ARBITRAL TRIBUNAL AFTER SETTING ASIDE OF ARBITRAL AWARD

- Ankur Mishra

When a court sets aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"), the award becomes a nullity[1], although the dispute may remain unresolved. Under such circumstances, can the aggrieved party re-commence arbitration under Section 11? The answer depends on the grounds for setting aside of arbitral award under Section 34 of the Act. Where the award is annulled on procedural grounds, such as improper constitution of the tribunal or denial of natural justice, parties are entitled to a de novo hearing, as recognised in McDermott International Inc. v. Burn Standard Co. Ltd.[2] However, where the tribunal or setting-aside court has made a conclusive merits finding (such as that no evidence supports the claim), the position is contested.

This Article examines the legal position on what happens when arbitral award is set aside and whereupon an application is moved for appointment of arbitrator involving dispute/claims which have been set aside under Section 34 of the Act. This Article examines the issue in light of the recent decision of the Hon'ble Delhi High Court in M/s Jaiprakash Associates Limited v. M/s NHPC Limited[3] ("Jaiprakash"), which refused appointment of a tribunal after a prior award on the same dispute had been set aside.

The Scope of Section 11 and the "Deadwood" Doctrine at the Post-Award Stage

The first question is whether the referral court under Section 11 may refuse to appoint an arbitral tribunal where the dispute was adjudicated in a prior arbitration whose award was set aside. The Delhi High Court in Jaiprakash applied the "eye of the needle"[4] test to hold that such a dispute was "deadwood" and could not be referred again. This characterisation warrants consideration. Non-arbitrability has a specific meaning: whether the dispute permits adjudication; whether it is covered by the arbitration agreement; and whether the parties have referred it to arbitration.[5] Non-arbitrability refers to subject-matter incapable of resolution through arbitration (e.g., disputes in rem, criminal matters). Jaiprakash does not concern subject-matter non-arbitrability; rather, the Court found that the claim lacked evidentiary foundation and had been conclusively adjudicated, meaning there was no live dispute to refer.

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1 Gayatri Balasamy vs. ISG Novasoft Technologies Limited, (2025) 7 SCC 1.

2 (2006) 11 SCC 181

3 Jaiprakash Associates Limited v. NHPC Limited, 2025 SCC OnLine Del 170.

4 NTPC Ltd. v. SPML Infra Ltd, (2023) 9 SCC 385, ¶ 25.

5 Booz Allen and Hamilton v. SBI Home Finance Limited and Others, (2011) 5 SCC 532, ¶ 34 and ¶36.

Prior to the 2015 Amendment, all threshold issues (jurisdiction, existence of arbitration agreement, dead or time-barred claims, satisfaction and accord) were assessed by the referral court.[6] The scope has since narrowed to the existence of the arbitration agreement.[7] In Vidya Drolia v. Durga Trading Corporation, the Supreme Court held:

"153. Accordingly, we hold that the expression "existence of an arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the court at the referral stage would apply the prima facie test on the basis of principles set out in this judgment. In cases of debatable and disputable facts, and good reasonable arguable case, etc., the court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability"

Hence, Vidya Drolia[8] established that the arbitral tribunal has primary jurisdiction over disputes, including jurisdiction and non-arbitrability questions. The referral court may conduct prima facie review to weed out manifestly non-existent arbitration agreements and non-arbitrable disputes.[9] The threshold issues are left to the arbitrator; where prima facie review is inconclusive, the matter is referred as a preliminary issue.[10] Thus, "the Court may interfere at Section 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable."[11]

The seven-Judge Bench recently in Motilal Oswal Financial Services Ltd. v. Santosh Cordeiro[12] clarified that Sections 8 and 11 lay down different parameters for judicial review. Section 11(6-A) examination should be confined to the existence of an arbitration agreement under Section 7, and validity restricted to formal requirements. However, the referral court is not powerless. In SBI General Insurance Co. Ltd. v. Krish Spinning[13], the Supreme Court held that *"in exceptional cases, where it was manifest that the claims were ex facie time barred and deadwood, the Court could interfere and refuse reference to arbitration."*[14] Courts may reject petitions for claims that are "manifestly and ex-facie non-arbitrable."[15]

In Jaiprakash, the arbitral tribunal court had set aside the award finding no evidence to substantiate the claimant's overhead claim yet awarded INR 60 crore. The Court in Jaiprakash held that the referral court under Section 11 must protect parties from arbitrating non-arbitrable matters, particularly at the post-award stage.

The "Manifest Injustice" Exception and the Statutory Framework for Fresh Proceedings

Would allowing re-arbitration after a set-aside cause "manifest injustice"? If so, is this a

6 SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618, ¶ 39.

7 Duro Felguera, S.A. v. Gangavaram Port Limited, (2017) 9 SCC 729, ¶ 18.

8 Vidya Drolia vs. Durga Trading Corporation, (2021) 2 SCC 1, ¶153.

9 Supra Note 8, ¶ 134.

10 Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Limited, (2020) 2 SCC 455, ¶ 7.10.

11 Supra Note 8, ¶ 154.4.

12 (2026) 2 SCC 801

13 SBI General Insurance Co. Ltd. v. Krish Spinning, (2024) 12 SCC 1.

14 Id, ¶ 88.

15 NTPC Ltd. v. SPML Infra Ltd, (2023) 9 SCC 385, ¶ 26.

valid ground for refusing appointment? The general rule favours referring disputes to arbitration, but courts have recognised manifest injustice as an exception. In Goqii Technologies Private Limited v. Sokrati Technologies Private Limited, the Supreme Court observed that Section 11 jurisdiction must not be misused to canvas non-existent and mala fide claims.[16] Pertinently, in Jaiprakash, the Court held that the referral court must consider whether proceedings are being misused to perpetuate injustice. The Court interpreted "manifest injustice" as covering scenarios where the dispute is so flawed that arbitration would serve no purpose. However, no evidentiary threshold on what is meant by "manifest injustice" was detailed.

Res Judicata and the Limits of Section 11 Enquiry

In Jaiprakash, the Court observed that referring the same issue back to a tribunal, when the previous tribunal had found no evidence for the claim, would re-agitate a concluded issue. In effect, there is no live issue. However, the Court in Jaiprakash observed that there is no impediment to fresh proceedings where the award is set aside on issues not conclusively determined.

There is however the question of whether existence of live dispute qua res judicata can be adjudicated at referral stage. The Supreme Court in Indian Oil Corporation Ltd. v. SPS Engineering Ltd. held that claims barred by res judicata, estoppel, or Order II Rule 2 CPC are not matters for the referral court.[17] In Parsvnath Developers v. Rail Land Development Authority[18] , the Delhi High Court held such questions touch the merits and can only be decided by the tribunal. The Supreme Court in Rajiv Gaddh v. Subodh Parkash[19] reiterated that res judicata does not arise in Section 11 proceedings. Whether Jaiprakash is confined to cases with conclusive findings of no evidence or extends to general res judicata determination at the Section 11 stage remains unclear.

Conclusion

Whether an arbitral tribunal may be appointed after a prior award on the same dispute has been set aside sits at the intersection of competing principles: finality of arbitral adjudication, the limited scope of Section 11 enquiry, the statutory framework contemplating fresh proceedings (Sections 32, 34, and 43(4)), and evolving jurisprudence on non-arbitrability and manifest injustice. Jaiprakash offers guidance, but its broader applicability remains to be tested. Practitioners and courts should distinguish between subject-matter non-arbitrability and absence of a live dispute.

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16 Goqii Technologies Private Limited v. Sokrati Technologies Private Limited, 2024 SCC OnLine SC 3189, ¶ 21.

17 Indian Oil Corporation Ltd v. SPS Engineering Ltd, (2011) 3 SCC 507, ¶ 14.

18 Parsvnath Developers vs Rail Land Development Authority, 2018 SCC OnLine Del 12399, ¶ 8.

19 2026 SCC OnLine SC 507.

RECENT UPDATES

CORPORATE AND DIRECT TAX UPDATE

I. INCOME TAX

1. CBDT FAQs on The Taxation and Other Laws (Amendment) Bill, 2026

The CBDT has issued FAQs on The Taxation and Other Laws (Amendment) Bill, 2026, clarifying various tax proposals introduced under the Income Tax Act, 2025.

Key Highlights:

1. Extension of Tax Exemption for Foreign Electronics Companies
   - Tax exemption for foreign companies providing capital goods/equipment to Indian contract manufacturers has been extended by 10 years, i.e., up to Tax Year 2040-41.
   - "Specified electronic goods" has now been clearly defined (mobile phones, laptops, tablets, servers, wearables, etc.).
2. Data Centre Tax Reforms
   - Notification requirement for foreign companies and specified data centres has been removed.
   - Leased data centre model is now eligible.
   - These changes aim to improve ease of doing business and promote India's data centre ecosystem.
3. Exemption for Foreign Diamond Mining Companies
   - Income from the sale of rough diamonds in Special Notified Zones (Mumbai & Surat) will be exempt up to Tax Year 2040-41, subject to prescribed conditions.
4. Warehouse Component Storage Exemption
   - Foreign companies storing electronic components in customs bonded warehouses for supply to Indian contract manufacturers will receive tax exemption up to Tax Year 2040-41.
5. Business Trust Dividend Relief
   - Dividend received by unit holders from SPVs will now remain tax-exempt even if the SPV has opted for the new tax regime, ensuring tax neutrality for investors.
6. Relaxation for Investment Funds
   - Conditions for eligible foreign investment funds have been significantly simplified (reduced from 13 to 5 conditions) to encourage global fund managers to relocate to India without creating a business connection.

https://www.incometaxindia.gov.in/documents/d/guest/faqs-tola-2026-pdf

2. The Foreign Assets of Small Taxpayers Disclosure Scheme, 2026 (Chapter IV, sections 130 to 144 of the Finance Act, 2026, read with the Foreign Assets of Small Taxpayers – Disclosure Scheme Rules, 2026)

The Income Tax Department has issued FAQs on FAST-DS, The Key highlights are as under-

1. The Foreign Assets of Small Taxpayers – Disclosure Scheme, 2026 (FAST-DS) is a one-time voluntary disclosure scheme introduced under Chapter IV (Sections 130–144) of the Finance Act, 2026, read with the FAST-DS Rules, 2026.
2. Scheme period: The Scheme commenced on 16 August 2026, and declarations shall be filed up to 31 December 2026.
3. Valuation date: The fair market value (FMV) of assets is generally determined as on 31 March 2026.
4. Eligibility: The Scheme is available to specified resident taxpayers and subject to prescribed conditions, certain non-residents/RNORs who were resident in India in the relevant year of earning the income or acquiring the foreign asset.
5. Assets/income covered: The Scheme broadly covers:

- Undisclosed foreign assets/foreign income not offered to tax; and
- Foreign assets which were already offered to tax/acquired while non-resident but were not reported in the relevant return.

6. Monetary limits:

- For undisclosed foreign assets/foreign income: aggregate value should not exceed Rs.1 crore.
- For eligible undeclared foreign assets: aggregate value should not exceed Rs. 5 crores.

7. Amount payable:

- For undisclosed foreign assets/foreign income: 30% tax plus an additional amount equal to the tax.
- For eligible undeclared foreign assets: flat fee of Rs. 1 lakh, subject to the Rs. 5 crore thresholds.

8. Valuation: Specific valuation mechanisms are prescribed for different assets, including immovable property, securities, jewellery, foreign bank accounts, partnership/LLP interests, etc. Values are generally reported in Indian Rupees, with prescribed foreign-currency conversion rules.
9. Filing process: Declaration is required to be filed electronically in Form 1, along with supporting documents and valuation reports, where applicable. The payable amount is communicated through Form 2, followed by payment and filing of Form 3. On verification of payment, Form 4 is issued as confirmation.
10. Payment timeline: The amount specified in Form 2 is generally payable within two months from the end of the month in which the order is received. A further period of up to two months may be available with interest at 1% per month or part thereof, subject to the prescribed outer limit.
11. Benefits: Upon a valid declaration and payment, the Scheme provides immunity from further tax/penalty and prosecution under the Black Money Act, 2015, in respect of the declared income/assets, subject to the prescribed conditions.

12. Key exclusions: The Scheme is not available for income/assets representing proceeds of crime where proceedings have been initiated or are pending under the Prevention of Money Laundering Act, 2002, or for matters where assessment proceedings under the Black Money Act, 2015 have already been completed.

The Detailed FAQs is attached herewith.

https://www.incometaxindia.gov.in/documents/d/guest/fast-ds-faqs-pdf

3. Income Tax Department undertakes verification of suspicious foreign remittances

The Income Tax Department has initiated a nationwide verification exercise concerning suspicious outward foreign remittances based on data analysis and ground intelligence.

Key Points

- The Department identified several entities that remitted large amounts of foreign exchange over the last three years, despite reporting very low turnover or being non-filers.
- Many such entities were found to have no apparent correlation between their reported business activity and the amounts remitted abroad.
- The stated purposes of remittances, including freight, software imports and consulting services, were also found questionable in several cases.
- Ground verification indicated that some entities were not operating from their declared addresses, raising concerns regarding shell/fictitious entities.
- A significant number of Form 15CB certificates were issued by a relatively small group of professionals, while remitted funds were received by a clustered group of entities.
- The Department has raised concerns regarding the adequacy of due diligence by Accountants issuing Form 15CB certificates.
- The verification exercise covers approximately 394 entities, including 117 entities located in land-border States, and 36 professionals.
- Particular focus is being placed on shell entities, persons controlling/behind such entities, and professionals issuing Form 15CB certificates.

Implication for Professionals

The CBDT has reiterated that Accountants issuing Form 15CB/Form 146 must exercise appropriate due care, diligence and professional judgment. They are expected to independently examine the underlying transaction, books of account and supporting documents before certifying the taxability of foreign remittances.

https://www.incometaxindia.gov.in/documents/d/guest/18-08-2026-press-release-income_tax_department_undertakes_verification_of_suspicious_foreign_remittances-pdf

II. MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT

1. Public Examinations (Prevention of Unfair Means) Amendment Act, 2026

Following widespread student-led protests across India over alleged paper leaks including the cancellation and reconduct of NEET 2026, which triggered an intense agitation and the resignation of the then Education Minister, the Government has moved to tighten the legal framework governing public examinations.

On 31 July 2026, the President gave assent to the Public Examinations (Prevention of Unfair Means) Amendment Act, 2026, which significantly enhances penalties for offences under the 2024 parent Act. The maximum imprisonment for individuals resorting to unfair means has been raised from five to ten years, with fines increased up to Rs. 50 lakhs. Offences involving organised crime now attract a minimum of seven years' imprisonment and fines of up to Rs. 10 Crore, while service-provider debarment has been doubled from four to eight years.

Investigations must now be completed within two months, either by the empowered police officer, a Central Investigating Agency, or a newly constituted Special Task Force. Every State and Union Territory is required to designate Special Fast Track Courts to conduct day-to-day trials, with proceedings to be concluded within three months from the filing of the chargesheet. Appeals against the orders of these Special Fast Track Courts will lie before a Division Bench of the High Court and are to be disposed of, as far as possible, within three months from admission. Pending cases under the Act will stand transferred to these designated courts, signalling the Government's intent to enforce a zero-tolerance regime against examination malpractices.

egazette.gov.in/(S(lzbtzxsxvsgrao1gjnglriv4))/ViewPDF.aspx

2. Supreme Court (Number of Judges) Amendment Act, 2026

The Supreme Court (Number of Judges) Amendment Act, 2026 (Act No. 14 of 2026) has received Presidential assent and was published in the Gazette of India on 11 August 2026. The Act amends the Supreme Court (Number of Judges) Act, 1956, increasing the sanctioned strength of Supreme Court judges from thirty-three to thirty-seven, thereby creating four additional judgeships. The amendment is deemed to have come into force retrospectively from 16 May 2026, and it simultaneously repeals the earlier Supreme Court (Number of Judges) Amendment Ordinance, 2026, while preserving all actions taken under that Ordinance.

3. Appropriation (No. 3) Act, 2026

The Appropriation (No. 3) Act, 2026 (Act No. 13 of 2026) has been enacted to regularize excess expenditure incurred during the financial year ended 31 March 2023. The Act authorizes the appropriation of ₹54,067.46 crore from the Consolidated Fund of India, comprising a voted portion of Rs. 53,871.01 crore and a charged portion of Rs. 196.45 crore, primarily towards repayment of debt capital and Ministry of Railways capital expenditure. This legislation, which received Presidential assent on 11 August 2026, validates the additional spending that exceeded the originally granted amounts for these services during FY 2022–23.

4. Micro, Small and Medium Enterprises Development (Amendment) Act, 2026

The Amendment Act revises the MSME regime by introducing a statutory "Development Commissioner", updating enterprise classification criteria, and mandating free national and state digital registration platforms. It requires Central and State PSUs and other notified entities to settle MSME invoices through the Trade Receivables Discounting System (TReDS), imposes strict 90-day timelines for mediation and arbitration by Facilitation Councils, and permits recovery of awards as arrears of land revenue.

Buyers must now deposit 75% of the award amount to challenge a decree or settlement, while the Act also revamps council composition and institutes graded monetary penalties for non-compliance.

https://egazette.gov.in/(S(25en11tzm3dn4qqtmq5xgale))/ViewPDF.aspx

5. Companies (Indian Accounting Standards) Amendment Rules, 2026

The Rules amend Ind AS 101, 107, 109, 110 and Ind AS 7, effective for annual periods beginning on or after 1 April 2026. They introduce new classification and measurement guidance for financial instruments, establish hedge-accounting and disclosure requirements for contracts referencing nature-dependent electricity, and refine the "solely payments of principal and interest" test for carbon-linked or other contingent contractual features.

The amendments also allow derecognition of financial liabilities settled via electronic payment systems before the settlement date if prescribed safeguards are met and clarify the accounting for non-recourse and contractually linked instruments.

https://egazette.gov.in/(S(25en11tzm3dn4qqtmq5xgale))/ViewPDF.aspx

6. Bankers' Books Evidence Act, 2026

Repealing the 1891 Act, the new legislation aligns bankers' book evidence with digital banking by expressly including electronic, digital, cloud and backup records within its scope. It sets out detailed conditions for admissibility of digital records, requiring proof of system integrity, regular data processing, cyber-security safeguards and absence of tampering and provides that certified copies, whether physical or electronic, shall be prima facie evidence.

Bank officers are shielded from compulsory production of records absent a court order for "special cause," and existing rights and proceedings under the repealed law are preserved.

https://egazette.gov.in/(S(25en11tzm3dn4qqtmq5xgale))/ViewPDF.aspx

7. Tribunals Reforms Act, 2026

The Act repeals the 2021 legislation and establishes the National Tribunals Commission (NTC) to standardise the selection, oversight and performance review of Chairpersons and Members across 16 specified tribunals, including CESTAT, CAT, SAT, NCLAT, NGT and ITAT. Search-cum-Selection Committees constituted by the NTC will recommend appointments based on uniform qualifications, tenure (five years or age 70/67, whichever is earlier), and removal procedures, while a National Tribunals Data Grid will maintain case-related information.

The Act has overriding effect over inconsistent provisions in the parent enactments governing these tribunals.

https://egazette.gov.in/(S(25en11tzm3dn4qqtmq5xgale))/ViewPDF.aspx

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INTELLECTUAL PROPERTY UPDATES

- **Delhi High Court Restrains Use of 'Saurashtra Aaj Tak' by Gujarati Newspaper**

The Delhi High Court has restrained a Gujarati newspaper from using the title "Saurashtra Aaj Tak" in a trademark and passing-off dispute filed by TV Today Network, the owner of the popular news channel "Aaj Tak." The Court held that the mark "Aaj Tak" has acquired a distinct identity and substantial goodwill in the field of news dissemination, making it closely associated with TV Today Network in the minds of the public.

The dispute arose when TV Today Network objected to the publication of a Gujarati newspaper under the name "Saurashtra Aaj Tak." According to the broadcaster, the use of the expression "Aaj Tak" by another news publication was likely to create confusion among readers and give the impression that the newspaper was connected with or endorsed by the well-known television channel.

Although the trial court had earlier recognised the reputation of the "Aaj Tak" mark and the possibility of public confusion, it allowed the newspaper to continue using the title subject to a disclaimer stating that it had no association with TV Today Network. Challenging this limited relief, TV Today Network approached the High Court.

Justice Mini Pushkarna observed that once the trial court had found that the mark "Aaj Tak" had acquired distinctiveness and that the use of "Saurashtra Aaj Tak" was likely to mislead the public, there was no justification for permitting continued use of the title. The Court further noted that the newspaper had failed to produce any evidence showing that its adoption of the words "Aaj Tak" was honest or bona fide.

The High Court also held that merely adding the geographical prefix "Saurashtra" did not sufficiently distinguish the newspaper from the famous "Aaj Tak" brand. Instead, such use could lead readers to believe that the newspaper was a regional edition or affiliate of the news channel.

Accordingly, the Court granted a permanent injunction restraining the newspaper from using the title "Saurashtra Aaj Tak" and directed it to adopt a new name that is neither identical nor deceptively similar to the "Aaj Tak" trademark. The judgment reinforces the protection available to well-known trademarks and emphasises that businesses cannot use confusingly similar names to benefit from the reputation and goodwill built by another brand.

- **Nintendo Gets Relief from Delhi High Court Against Bihar Company 'Nintendo India'**

The Delhi High Court recently granted interim relief to Japanese gaming giant Nintendo Co. Ltd. by restraining a Bihar-based company from using the name "Nintendo India Private Limited." The Court found that the company's name was deceptively similar to Nintendo's well-known trademark and was likely to create confusion among the public regarding a connection with the global gaming company.

Nintendo submitted that it has been using the "Nintendo" mark for decades and owns trademark registrations for the mark in India and several other jurisdictions. The company is internationally recognized for its gaming consoles and popular franchises such as Super Mario Bros., Pokémon, The Legend of Zelda, Donkey Kong, and Nintendo Switch. It discovered that a company incorporated in Patna was operating under the name "Nintendo India Private Limited," despite being engaged in the real estate business.

The Court observed that "Nintendo" is a distinctive and well-known trademark that enjoys substantial goodwill and reputation worldwide, including in India. Justice Jyoti Singh noted that the adoption of the word "Nintendo" by the Bihar-based company appeared to be an attempt to capitalize on the reputation and goodwill built by the Japanese company over many years.

The Court further held that the use of the name "Nintendo India Private Limited" could mislead consumers into believing that the company was associated with, connected to, or endorsed by Nintendo. Such use was therefore likely to amount to trademark infringement and passing off.
Accordingly, the Delhi High Court restrained the defendants from using the name "Nintendo India Private Limited" or the mark "Nintendo" in any manner until further orders. The ruling reinforces the protection available to well-known trademarks and highlights that businesses cannot adopt famous brand names , even in unrelated fields, to benefit from an established reputation.

- **Calcutta High Court: Hotels Must Obtain Copyright Licence for Music Played Through In-Room Cable Television**

The Calcutta High Court held that hotels providing cable television facilities in guest rooms must obtain a copyright licence for the communication of copyrighted musical and literary works to their guests. The Court ruled that a hotel cannot avoid paying copyright royalties merely because the cable operator supplying television signals already holds the necessary licence.

In this case, the Indian Performing Right Society Limited (IPRS), a copyright society representing authors, composers, and music rights holders, alleged that Hotel Appolo & Tours Pvt. Ltd. was making copyrighted musical and literary works available to guests through television sets installed in hotel rooms without obtaining a licence from IPRS or paying the required royalty. The hotel contended that it had paid subscription charges to a licensed cable operator and, therefore, was not required to obtain any additional licence.

The High Court rejected this argument. It observed that the facility of cable television provided in hotel rooms is a commercial amenity offered to paying guests as part of the hotel's business. Therefore, the use of copyrighted works through in-room television sets amounts to "communication to the public" under the Copyright Act, 1957.

The Court further noted that hotel guests cannot be treated as ordinary cable television subscribers. The cable connection is obtained by the hotel, which then makes the content available to its guests. Such use goes beyond private viewing and falls within the scope of commercial exploitation of copyrighted works.

Consequently, the Court held that hotels must obtain the necessary copyright licence and pay royalties for communicating copyrighted musical and literary works to guests through cable television facilities in hotel rooms. The judgment reinforces the rights of copyright owners and clarifies that businesses using copyrighted content for commercial purposes must secure appropriate licences, irrespective of licences held by cable operators.

- **Delhi High Court Questions Meta's Rights Manager Access Policy: Why Are Scammers Getting the Tool Instead of Genuine Creators?**

The Delhi High Court recently raised concerns over Meta's Rights Manager tool, a copyright protection mechanism available on Facebook and Instagram. The Court questioned why genuine content creators are often denied access to the tool while alleged scammers are able to use it to file fraudulent copyright claims against original creators.

The case was filed by **Mohit Kumar**, an AI, business, and e-commerce educator who creates content under the social media handle **"Rise With Mohit."** Kumar alleged that certain individuals copied his original videos, falsely claimed ownership over them through Meta's Rights Manager system, and then used the tool to issue copyright strikes against his social media accounts.

During the hearing, Justice **Anup Jairam Bhambhani** directed Meta to disclose its policy, eligibility criteria, and the reasons for granting or denying access to the Rights Manager tool. The Court expressed concern that well-established creators with significant audiences appeared to be denied access, while individuals with very few followers were reportedly able to obtain the same facility.

The Court observed that such a situation was comparable to "giving the key to the robber and not to the owner of the house." It questioned why copyright protection tools intended to safeguard original creators were seemingly unavailable to many genuine content owners.

Kumar informed the Court that he had applied for access to the Rights Manager tool on three occasions but was rejected each time without receiving a clear explanation. He argued that fraudulent copyright strikes can seriously damage a creator's online presence, resulting in loss of visibility, reduced monetisation, disruption of brand partnerships, and potential removal of valuable content built over several years.

Meta explained that Rights Manager is a content protection tool that helps users identify, monitor, and take action against unauthorized use of their original content. The company informed the Court that the disputed copyright strikes against Kumar had been reversed and the removed content had been restored. Meta also stated that Kumar's accounts had never been suspended and agreed to place its access policy and eligibility criteria before the Court.

The case highlights growing concerns regarding the misuse of automated copyright enforcement systems on social media platforms. Through its observations, the Delhi High Court emphasized the need for transparency in Meta's access policies and sought to ensure that copyright protection mechanisms are not misused against the very creators they are meant to protect.

Case: *Mohit Kumar v. John Doe/Ashok Kumar & Others (Delhi High Court).*

- **Mandatory e-KYC Deadline Extended by CGPDTM**

The Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) has extended the deadline for completing the mandatory e-KYC process from 9 August 2026 to 31 August 2026.

The extension follows stakeholder representations and feedback received during the Open House Session held on 4 August 2026, with the aim of facilitating broader participation and ensuring a smooth completion process.

Key takeaway: All stakeholders who have not yet completed their e-KYC are advised to do so by 31 August 2026 to avoid any disruption in accessing Intellectual Property Office (IPO) services.

For technical assistance, stakeholders may contact: support.ipo@gov.in, patentagent-ipo@gov.in and trademarkagent-tmr@gov.in

- **HUL Moves Delhi HC Against Beco Over 'Harmful Chemicals' Ad Campaign**

Hindustan Unilever Limited (HUL) has approached the Delhi High Court against home-care brand **Beco** over its advertising campaign targeting **Surf Excel** and **Vim** products. HUL has alleged that the campaign is misleading, disparaging, and infringes its trademark rights.

The dispute relates to Beco's **#WarOnWhatsHidden** campaign, which claims that certain chemicals present in Surf Excel and Vim can cause skin irritation and allergic reactions. The advertisements compare Beco's products with HUL's products and encourage consumers to switch to Beco's alternatives.

HUL argued before the Court that Beco's tests only established the presence of certain ingredients in the products and did not prove that the finished products themselves cause irritation or allergic reactions during normal use. According to HUL, the campaign presents incomplete information and creates a misleading impression about the safety of its products.
The company has also objected to Beco's use of its well-known trademarks and taglines in the advertisements, claiming that the campaign unfairly harms the reputation of Surf Excel and Vim.

The Delhi High Court has issued notice to Beco and sought its response. However, the Court has not passed any immediate order to remove the advertisements and will consider HUL's request for interim relief after hearing both sides.

- **Delhi HC Allows Dabur to Sell Existing 'Cool King Thanda Tael' Stock Till September 30**

The Delhi High Court has allowed Dabur India Ltd. to sell its existing stock of 'Cool King Thanda Tael' until September 30, 2026, amid an ongoing trade dress dispute with Emami Ltd.

The court permitted Dabur to clear around 9,020 cartons of inventory that had been manufactured before the injunction was imposed.

The dispute began after Emami alleged that the packaging of Dabur's Cool King Thanda Tael was deceptively similar to that of its Navratna Ayurvedic Oil, which could potentially confuse consumers. Earlier, the High Court had restrained Dabur from selling the product in the disputed packaging, and the order was later upheld by a Division Bench.

While granting limited relief, the Court directed Dabur to stop selling the product through e-commerce platforms and remove its listings from online marketplaces. The remaining stock may be sold only through physical retail channels.

The Court further clarified that any unsold stock remaining after September 30 must be recalled by Dabur. The ruling allows the company to exhaust its existing inventory while ensuring compliance with the injunction concerning the disputed packaging.

- **Delhi High Court Cancels 'DAPLOGIN' Trademark for Similarity to Dr. Reddy's 'DAPLO'**

The Delhi High Court cancelled the trademark registration of "DAPLOGIN" owned by Razenta Pharmaceuticals after a petition filed by Dr. Reddy's Laboratories, the proprietor of the earlier trademark "DAPLO."

Dr. Reddy's argued that DAPLO was a unique and coined trademark adopted in 2020 for medicines used in the treatment of Type 2 Diabetes Mellitus. It contended that DAPLOGIN incorporated the whole of its mark DAPLO and was likely to cause confusion among consumers.

Razenta Pharmaceuticals defended its mark by claiming that it was derived from the active pharmaceutical ingredient Dapagliflozin and that similar marks existed in the market.

The Court rejected this defence and held that DAPLO was a distinctive and coined mark, not a generic or commonly used term. It observed that DAPLOGIN contains DAPLO as its dominant and essential part and that both marks are phonetically similar when pronounced.

The Court further noted that the competing marks were used for medicines intended to treat the same disease, namely Type 2 Diabetes Mellitus, increasing the likelihood of confusion.

Holding that the registration of DAPLOGIN was likely to deceive or confuse consumers, the Court ordered the Registrar of Trade

Marks to cancel the registration and remove the mark from the trademark register.

- **T-Series Renames Film to 'Tu Meri Zindagi Hai' Amid 'Aashiqui' Trademark Dispute**

A trademark dispute arose when Vishesh Films, led by Mukesh Bhatt, objected to T-Series' proposed film title **"Tu Hi Aashiqui"** (also referred to as "Tu Hi Aashiqui Hai"). Vishesh Films claimed that it held trademark rights in the well-known **"Aashiqui"** franchise and argued that the use of the word "Aashiqui" in the title could mislead audiences into believing that the film was connected with the *Aashiqui* series.

In September 2024, the Delhi High Court granted an interim injunction restraining T-Series from using **"Tu Hi Aashiqui"**, **"Tu Hi Aashiqui Hai"**, or any other title containing the word **"Aashiqui"** for its proposed film. The Court observed that such use could create confusion among the public and dilute the distinct identity of the *Aashiqui* franchise.

In the latest development, T-Series informed the Delhi High Court that it had changed the title of the film to **"Tu Meri Zindagi Hai"** in an attempt to resolve the dispute. However, the parties were unable to reach a complete settlement.

While the issue relating to the film title was substantially addressed through the renaming, disagreements remained regarding the ownership and future use of the **"Aashiqui"** trademarks. T-Series maintained that, as a co-producer of *Aashiqui* and *Aashiqui 2*, it was entitled to joint ownership rights in the trademarks, whereas Vishesh Films asserted its proprietary rights over them.

As the parties could not agree on the broader terms of settlement, the Delhi High Court directed them to continue discussions. Consequently, although the film will now be released under the title **"Tu Meri Zindagi Hai"**, the larger dispute concerning trademark ownership remains unresolved.

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