

# **INDIAN LEGAL IMPETUS**

## **Newsletter**

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## Dear Friends,

We are elated to present to you the September 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.

The first article sets out the key takeaways of the India-UK Free Trade Agreement from an indirect tax, customs and trade perspective, examining phased tariff reductions, their impact on customs duty and IGST, and preferential market access for Indian sectors. It identifies rules of origin as both the gateway to FTA benefits and the principal compliance challenge and urges businesses to adopt an active trade strategy backed by robust origin management and record-keeping.

The second article examines the mechanisms under the Patents Act, 1970 for challenging a patent after grant, contrasting post-grant opposition under Section 25(2) before the Controller with revocation under Section 64 before the High Court, and outlining the substantive grounds for revocation, including revocation by the Central Government under Sections 65 and 66.

The third article examines the Supreme Court of India's judgment dated 08.09.2026 in National Skill Development Corporation v. Surya Wires Private Limited & Ors. (2026 INSC 977), which held that an arbitration clause in a loan agreement binds a personal guarantor whose guarantee contains no such clause. Reading the loan documents, without diluting M.R. Engineers judgment, the Court found the dispute resolution clause incorporated into the Personal Guarantees under Section 7(5) of the Arbitration and Conciliation Act, 1996.

The fourth article discusses the Delhi High Court's judgment dated 11.08.2026 in Sai Consulting Engineers Pvt. Ltd. v. National Highways Authority of India & Anr., which set aside a two-year debarment imposed by NHAI on a DPR consultant. Describing debarment as a stigmatic remedy tantamount to "civil death", the Court held that a bona fide contractual dispute, without allegations of fraud or collusion, does not warrant debarment, and faulted NHAI for not applying its graded policy or giving reasons.

The fifth article analyses the Bombay High Court's decision in Tecpro Systems Limited (In Liquidation) v. Reliance Infrastructure Limited (2026 SCC OnLine Bom 1178), which held that NCLT's prior approval under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 is mandatory for a liquidator to invoke arbitration, but that its absence does not render the invocation void; the proceedings take effect only from the date approval is granted.

The sixth article examines the efficacy of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 in foreign-seated arbitrations following the 2015 amendment to Section 2(2). Drawing on key judicial decisions, the authors observe that an "agreement to the contrary" must specifically exclude Section 9 and that territorial jurisdiction must still be established, and distil a four-part test for practitioners.

As we step into the festive season, the entire team at S&A Law Offices extends its warmest greetings to all our readers on the occasions of Navratri, Dussehra and Diwali. May this season of lights bring joy, prosperity, good health and success to you and your loved ones.

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](mailto:newsletter@sandalawoffices.com)



**Manoj K Singh**

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## THE INDIA-UK FREE TRADE AGREEMENT: KEY TAKEAWAYS FROM AN INDIRECT TAX, CUSTOMS, AND TRADE PERSPECTIVE

- **Smita Singh**

### Introduction

The negotiations for India-UK Free Trade Agreement is a significant landmark development which carries profound implications for India's indirect tax, customs and international tax landscape. The India-UK FTA has the potential to reshape duty structures, compliance obligations, and supply chain economics.

### Customs Duty Restructuring and Revenue Impact

India has committed to phased tariff reductions and will liberalize the UK tariff applicable on majority UK origin products exported to India. Items such as dairy, cereals, poultry, and specified agricultural goods will remain on an exclusion list. From Indian perspective, this will lead to a reduction in customs revenue collection on UK origin imports, affecting Basic Customs Duty (BCD), Social Welfare Surcharge (SWS), and effective landed costs.

On the other hand, Indian goods will have a preferential market access, sectors expected to benefit include textiles, apparel, leather, footwear, gems and jewellery, marine products, engineering goods, among others. This will lead to a substantial duty benefit for Indian exporters, subject to satisfaction of conditions of Rules of Origin. Upon close to the implementation date, the Indian Government will start

issuing Notifications under Section 25 of the Customs Act to this effect and the Central Board of Indirect Taxes/ DGFT will issue circulars and trade notices, to operationalise these tariff schedules domestically.

### GST and Indirect Tax Cascade Effects

Reduced BCD under FTA preferential rates directly lowers the duty inclusive value on which Integrated GST (IGST) is computed on imports. This has cascading implications such as importers will benefit from reduced upfront duty outflows and improved working capital, whilst domestic manufacturers operating in sectors exposed under the FTA will face competing pressure with cheaper UK imports. Customs valuation will also require careful attention while declaring transaction value since Customs authorities will examine the value and preferential tariff claims, and businesses should ensure robust documentation since customs authorities may enhanced scrutiny on related-party transactions involving UK suppliers.

### Rules of Origin: The Compliance Imperative

Rules of Origin (RoO) represent the gateway to FTA benefits and simultaneously the greatest compliance challenge for Indian businesses. The agreement incorporates Product-Specific Rules, which means that single origin rule is not applicable to all goods. Therefore, each category of product

has its own specific origin requirements. Regional Value Content thresholds alongside general rules based on Change in Tariff Classification have to be satisfied in certain products, which implies that products covered under the FTA will have different value-based thresholds.

Certificate of Origin requirements revolve around a self-certification of origin declarations. Indian exporters must invest in robust origin documentation systems, vendor qualification processes, and origin tracing across supply chain. Record retention remains standard for verification purposes during scrutiny in audits/proceedings.

### Trade Defence Mechanisms and Safeguards

The FTA preserves the rights and obligations of both parties to impose anti-dumping duties (ADD) and countervailing duties (CVD), whilst incorporating bilateral safeguard clauses permitting temporary reimposition of duties where import surges cause or threaten serious injury to domestic industry.

### Trade Facilitation

The trade facilitation chapter will include provisions for advance rulings on tariff classification and origin, pre-arrival processing, mutual recognition of Authorised Economic Operator (AEO) programmes, and time-bound release of goods. The interaction between FTA preferential rates and existing schemes such as EPCG (Export Promotion Capital Goods) and Advance Authorisation requires careful

mapping to avoid inadvertent non-compliance or suboptimal duty outcomes.

### Practical Steps for Indian Businesses

Proactive preparation is essential. Businesses should undertake supply chain mapping to assess RoO compliance feasibility, implement IT systems for preferential origin management and tariff tracking. FTA utilisation strategies must weigh the duty savings of preferential rates against the compliance cost of meeting origin requirements. Vendor qualification processes, tiered origin tracing, and robust record-keeping are no longer optional but foundational to capturing the agreement's benefits whilst managing the risk of post-clearance verification, denial of preference, and consequential duty recovery with interest.

### Conclusion

The India-UK FTA will fundamentally alter the indirect tax and customs calculus for businesses trading between the two markets. The duty savings are significant, but they are conditional upon rigorous origin requirements, and subject to ongoing trade defence actions. The agreement demands a shift from passive tariff application to active trade strategy i.e., optimising FTA utilisation, managing compliance risk, and structuring supply chains to extract maximum value from the preferential regime. Businesses that invest early in the systems, processes, and expertise required will be best positioned to capitalise when the agreement enters into force.

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## THE CHALLENGING OF PATENT VALIDITY AFTER GRANT IN INDIA: GROUNDS AND CONSIDERATIONS

- *Suchi Rai*

### Introduction

In India the grant of a patent presents upon the patentee an exclusive statutory right to prevent others from making, using, selling, offering for sale, or importing the patented invention for a term of 20 years. The grant of a patent does not create a presumption of validity. The Patents Act, 1970 provides several ways through which third parties may challenge the validity of a patent after the grant to ensure that monopolies are presented only upon inventions that satisfy the statutory requirements of patentability primarily.

The remedies available for challenging a granted patent are Post-Grant Opposition under Section 25(2) and Revocation under Section 64 of the Patents Act. These remedies portray a vital role in maintaining the reliability of the patent system by removing patents that lack novelty, inventive step, or otherwise fail to comply with the requirements of patent law.

### Post-Grant Opposition under Section 25(2):

A post-grant opposition may be filed by any "person interested", a term that generally includes competitors, licensees, manufacturers, institutions, or any entity having a commercial or technical interest in the patented technology.

The opposition should be filed within one year from the date of publication of the grant of the patent. Failure to act within this statutory period generally bars the challenger from pursuing a post-grant opposition, though other remedies may remain available.

The notice of opposition is filed before the Controller of Patents. Upon receipt of the opposition, an Opposition Board is constituted to examine the issues raised and provide recommendations to the Controller. Thereafter, both the parties are afforded an opportunity to submit applicable evidence and be heard regarding validity before a final decision is rendered.

### Revocation of a Patent under Section 64:

Revocation is a remedy through which a granted patent may be declared invalid and removed from the patent register. Unlike post-grant opposition, revocation proceedings are conducted before the High Court and constitute a more formal adjudicatory process.

One of the most significant advantages of revocation proceedings is that there is no statutory one-year limitation period. A revocation petition may generally be filed at any time during the life of the patent. Where a patentee brings an infringement action, the defendant may challenge the validity of the

patent by filing a counterclaim for revocation. This *Défense* strategy is frequently employed in high-value patent disputes involving pharmaceuticals, biotechnology, electronics, and telecommunications technologies.

The choice between post-grant opposition and revocation often depends on timing. Where the patent has been granted recently, post-grant opposition offers a relatively specialized administrative forum before the Patent Office. Conversely, where the one-year opposition period has expired, revocation proceedings before the High Court may be preferable.

A revocation petition can be filed by any interested person or the Central Government under Section 64 of the Patents Act. Such petitions are filed before the competent High Court. The grounds for revocation are provided under Section 64(1) - the substantive grounds include:

- The invention was already claimed in a valid claim of an earlier Indian patent priority date.
- The patent was granted to someone not entitled to it, or it was obtained fraudulently in violation of the true owner's rights.
- The invention is not new and was publicly known, used, or published in India or elsewhere before the priority date, or anticipated by traditional knowledge.
- The invention is obvious and lacks a sufficient inventive step to a person skilled in the art.
- The subject matter does not qualify as an invention or falls under non-patentable categories (such as Sections 3 and 4).

- The complete specification does not adequately describe the invention, fails to disclose the best method known to the applicant, or is not enabling for a skilled person.
- The scope of the claims is not clearly defined or not fairly based on the specification.
- The patent was obtained by a false suggestion or misrepresentation.
- The applicant failed to disclose details of matching foreign patent applications or provided false information under Section 8.
- The applicant violated secrecy directions or filed an application abroad without prior written permission from the Indian Patent Office (Section 39).
- The source or geographical origin of biological material used in the invention was not disclosed or was wrongly disclosed.

As per prevalent practice in cases of suit for infringement, the Defendant usually files the petition for revocation of patent u/S. 64 challenging the validity of the patent as a counterclaim in a suit for infringement. In such circumstances, issues of infringement and validity are generally determined together by the Court.

Apart from Section 64, other provisions for cancellation of a patent are:

- Section 65 (Atomic Energy): The Central Government can revoke a patent if the invention relates to atomic energy areas restricted under the Atomic Energy Act, 1962.
- Section 66 (Public Interest): The Central Government may revoke a patent

if it appears to be mischievous to the State or prejudicial to the public interest.

### Conclusion:

The Indian patent system balances the rights of patentees with the public interest by providing strong post-grant mechanisms for challenging invalid or improperly granted patents. Post-grant opposition under Section 25(2) offers a specialized administrative remedy within one year of grant, while revocation proceedings under Section 64 provide a broader judicial remedy that may be invoked throughout the life of the patent.

A successful patent validity challenge requires careful claim analysis, identification of strong prior art, evaluation of statutory exclusions, and a well-planned litigation strategy. By effectively utilizing these mechanisms, stakeholders can prevent baseless monopolies and promote a competitive innovation environment in India.

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## BINDING NON-SIGNATORY PERSONAL GUARANTORS TO ARBITRATION: AN OVERVIEW OF THE NATIONAL SKILL DEVELOPMENT CORPORATION JUDGMENT

- **Adhip Kumar Ray & Shruti Manchanda**

### Introduction:

Recently, a Supreme Court Bench of Justice Shri Pamidighantam Sri Narasimha and Justice Shri Alok Aradhe, vide its judgment dated 08.09.2026 in *National Skill Development Corporation v. Surya Wires Private Limited & Ors.*<sup>1</sup>, examined whether the arbitration clause in one instrument can bind a party/personal guarantor through another instrument (deed of personal guarantee) having no arbitration clause of its own. The Court held that a personal guarantor can be bound by an arbitration clause in a loan agreement, even though the guarantee itself has no such clause.

The dispute arose out of loans that National Skill Development Corporation (NSDC/Appellant) gave to training partners to set up Pradhan Mantri Kaushal Kendras. Respondent no. 2, the borrower company's Managing Director, signed Personal Guarantees on 27.12.2016 and 18.08.2017. After the borrowers defaulted, the appellant invoked the arbitration clause. The Sole Arbitrator removed Respondent no. 2, along with Respondent Nos. 3, 5 and 7, as parties on the ground that they had not signed the Loan Agreements in their personal capacities. The Delhi High Court upheld the decision of the Sole Arbitrator. In its view, a general reference to another document does not bring in its arbitration clause, and jurisdiction cannot rest on commercial links between instruments.

The Supreme Court vide its Judgment dated 08.09.2026 reviewed the law on Section 7(5) of the Arbitration and Conciliation Act, 1996, and on non-signatories, thereby reading the Loan Agreements as a whole. The Court therefore held that Clause 11.2 (dispute resolution clause) is incorporated into the Personal Guarantees under Section 7(5), so Respondent no. 2 must arbitrate.

### Facts in brief:

The Ministry of Skill Development and Entrepreneurship decided to set up Model Training Centres, called "Pradhan Mantri Kaushal Kendra" (PMKK), in every district of the country. The appellant, National Skill Development Corporation (NSDC), is a not-for-profit company that funds skill-training organisations, and it was the implementing agency for the scheme. On 29.07.2016, it issued a Request for Proposal for setting up PMKKs. Surya Wires Private Limited (Respondent no. 1) and Disha Education Society (Respondent no. 4) jointly applied and were allotted districts. Shanti Finance and Property Development Private Limited (Respondent no. 6) joined as co-borrower and provided mortgage security. Respondent no. 2 was the Managing Director and Authorised Representative of Surya Wires Pvt. Ltd.

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<sup>1</sup> 2026 INSC 977, SLP (C) No.10030 of 2026

On 20.12.2016 the parties signed several agreements at the same time. These were a Service Level Agreement, a First Loan Agreement for Rs. 7,17,63,197, and supporting "Facility Agreements". The Facility Agreements included a Personal Guarantee given by Respondent no. 2 to the Appellant/NSDC, which he signed on 27.12.2016. A second, materially identical set of agreements was signed on 18.08.2017 for a further loan of Rs. 2,13,83,194, again with a Personal Guarantee from Respondent no. 2. Clause 11.2 of the Loan Agreements required disputes to go to arbitration under the Rules of the Indian Council of Arbitration. The Personal Guarantees had no arbitration clause of their own.

Subsequently, the borrowers defaulted on repayment, and Loan Recall Notices were issued on 29.10.2021. Respondent no. 2 was served as a signatory to the Personal Guarantees. On 21.06.2022, the Appellant/NSDC started arbitration before the Indian Council of Arbitration against Respondent nos. 1 to 7 to recover the amounts due under both Loan Agreements. Respondent nos. 2, 3, 5 and 7 challenged the tribunal's jurisdiction over them under Section 16 of the Arbitration and Conciliation Act, 1996. They argued that they had not signed the Loan Agreements in their personal capacities. On 23.10.2024, the Sole Arbitrator accepted this argument and ordered that they be removed as parties to the arbitration proceedings.

NSDC appealed to the Delhi High Court under Section 37(2)(a), but only against the removal of Respondent no. 2. On 28.01.2026<sup>2</sup>, the High Court upheld the arbitrator's order. It held that a general

reference to another document does not bring in its arbitration clause. It also held that the tribunal's jurisdiction cannot rest on how closely the transactions are connected. It further found no material showing that Respondent no. 2 was the "alter ego" of the company. The question before the Supreme Court was whether an arbitration clause in one instrument can bind a party through another instrument that is expressly integrated with it but has no arbitration clause of its own.

### Analysis:

The Supreme Court examined the ratio laid down in *M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited*<sup>3</sup> wherein it was held that a general reference to another contract does not incorporate its arbitration clause. Incorporation needs a clear reference showing an intention to incorporate, and the clause must be capable of applying to disputes under the contract. The Supreme Court did not dilute *M.R. Engineers*(supra) and found that the reference was not "general" at all, because several provisions worked together to integrate the loan documents:

- Schedule IV: expressly lists Personal Guarantees as "Facility Agreements".
- Definitions (Clause 1.1(b) and (u)): state that the "Agreement" includes all Schedules and that the Schedules form an integral part of it.
- Clause 12.1: deems the Facility Agreements to be part of the Loan Agreement "as if the provisions thereof were set out herein in extension".

<sup>2</sup> Judgment dated 28.01.2026 passed by Delhi High Court in ARB. A. (COMM.) 11/2025

<sup>3</sup> *M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited*, (2009) 7 SCC 696

The Court read this phrase as a "deeming fiction internal to the contract" that brings every facility agreement within the same legal and arbitral framework. On this reading, the guarantee is not a separate contract that refers to the loan agreement.

### Contemporaneity and pre-disbursement conditions: supporting, not decisive

The High Court had stated that jurisdiction cannot rest on how closely transactions are connected and must be traceable to an express or validly incorporated arbitration agreement. The Supreme Court did not reject that principle. It relied on two further facts only as "independent reinforcement" of a conclusion already drawn from the text:

- Signing the facility agreements was a pre-disbursement condition under Schedule I.
- The guarantees were signed close in time to the loans.

The Court described the parties' intention as "explicit, rather than a matter of inference". The order of reasoning is significant: the text comes first and the surrounding circumstances second. This keeps the decision consistent with the consent-based approach while drawing on the composite-transaction analysis endorsed in *Cox & Kings Ltd. v. SAP India (P) Ltd.*<sup>4</sup>

### The dual capacity of the Guarantor

The Court noted that Respondent no. 2 signed the documents in two capacities:

- as Managing Director of the company, in a representative capacity; and

- in his personal capacity, as guarantor.

The arbitrator's reasoning depended on the first capacity: because he signed the Loan Agreements only as a director, he was not a party. The Supreme Court held that his not signing the Loan Agreements personally was "not, in the circumstances of this case, decisive". The significant signature was the one on the guarantee, which was itself, by contract, part of the Loan Agreement. In this sense, Respondent no. 2 is not truly a "non-signatory." He signed an instrument that the contract treats as incorporating the arbitration clause.

### The role of public purpose

A notable feature of the reasoning is its reliance on the commercial and public setting of the transaction. The Court observed:

- The loans were not ordinary private bargains but a means of disbursing funds for skill training.
- Training partners are often thinly capitalised special-purpose entities.
- The personal guarantee is the real, and often the only, assurance of recovery.

The aforesaid is in line with the findings of the Court in *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited*<sup>5</sup> that arbitration must respond to commercial reality in multi-party and multi-contract arrangements.

<sup>4</sup> *Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1

<sup>5</sup> (2025) 9 SCC 76

### Conclusion:

The Court reinforced the principle laid down in Cox & Kings regarding the binding of non-signatories to arbitration in composite transactions. The decision confirms that where contract documents expressly integrate ancillary instruments, such as guarantees, into a main agreement through definitions, schedules and deeming clauses, the main agreement's arbitration clause can bind a non-signatory guarantor under Section 7(5). The Court also relied upon the role of public purpose, thereby strengthening the resolution of disputes and recoveries for lenders. The decision is a useful addition to India's developing law on multi-party, multi-contract arbitration, and confirms that personal guarantors cannot escape dispute resolution. It shows that where parties have contractually merged their instruments into one agreement, a guarantee cannot be separated from the arbitration clause for dispute resolution alone while remaining tied to the main agreement for every other purpose.

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## CONTRACTUAL BREACHES ≠ DEBARMENT: DELHI HIGH COURT SETS LIMITS ON DEBARMENT FOR CONTRACTUAL DEFAULTS

- **Rajdutt Shekhar Singh & Rounak Singh**

### Introduction

The Hon'ble High Court of Delhi by way of its Judgment dated 11.08.2026 in *Sai Consulting Engineers Pvt. Ltd. v. National Highways Authority of India & Anr., W.P. (C) No. 15518/2025* interprets the important line between a contractual default by a consultant and conduct to justify debarment of the consultant. The Hon'ble High Court of Delhi set aside a two-year debarment order imposed by National Highways Authority of India ("NHAI") against Sai Consulting Engineers Pvt. Ltd. ("**Petitioner**") i.e. a DPR consultant in relation to alleged irregularities in the land acquisition process.

This article discusses why the decision of the Hon'ble High Court of Delhi is of utmost significance, a step so grave such as debarment cannot be imposed on every alleged deficiency in performance under the contract. In cases where the disputes remain contractual in nature, a bona fide interpretation is raised, no fraud, collusion, fabrication, misrepresentation, moral turpitude or *mala fides* are alleged, and legal remedies remain available under the Consultancy Agreement, the authority must cross a substantially higher threshold before excluding any entity from participating in future bids for public work.

### Dispute between the DPR Consultant and NHAI: From land acquisition irregularities to debarment

The Petitioner was appointed under a Consultancy Agreement dated 26.03.2018 for preparation of Detailed Project Reports ("**DPRs**") for bypass/ring road around Gorakhpur, Bareilly, Moradabad, Kanpur and Ayodhya in the State of Uttar Pradesh under the NHDP Phase-VII. As per the Terms of Reference ("**ToR**"), the Petitioner was required to "*support NHAI in land acquisition process inter alia by conducting all required surveys/valuation, liaison with relevant state departments throughout the said process, assist NHAI and CALA in publishing of notifications in Official Gazette as required under Section 3A and 3D of the National Highways Act, 1956 ("the NH Act, 1956") and declaration of award under Section 3G of the NH Act, 1956.*"

The dispute arose from a complaint regarding land acquisition process following which, a committee constituted by NHAI reported discrepancies / irregularities in the land acquisition and valuation process of the structure constructed on a certain stretch. Consequently, NHAI issued show cause notices against the Petitioner and eventually, debarred the Petitioner / DPR Consultant for two years from all future bids of NHAI, Ministry of Road Transport and Highways ("**MoRTH**") and their executing agencies.

### Debarment is an Exceptional Remedy, Stigmatic in character

The Hon'ble High Court of Delhi proceeded to examine the action taken by NHAI within

the confines of ambit of judicial review, noting that blacklisting or debarment is amenable to judicial review under Article 226 of the Constitution of India even when it arises from a contract. The Hon'ble Court observed that debarment is stigmatic in character, and its consequences travel far beyond the dealings of the debarred entity with the authority which passes the order as it can produce a "domino effect" in public procurement contracts which can effectively lead to the civil death of a person and thus, the Hon'ble Supreme Court has consistently laid specific emphasis on strict adherence to principles of natural justice on blacklisting entities. (*UMC Technologies Pvt. Ltd. v. Food Corporation of India*, (2021) 2 SCC 551)

The Hon'ble Court, thus, distilled five broad principles (1) the process of decision making on passing of a debarment order is open to judicial review; (2) debarment is tantamount to 'civil death' and the power to debar must be exercised sparingly; (3) contractual breach alone is insufficient unless the conduct is shown to be deviant, aberrant or subversive of public interest; (4) the order must contain reasons why the conduct of the entity justifies debarment and why the period/penalty is proportionate; and (5) the reasons must record the consideration of the defence taken by the debarred entity.

### Analysis of the Hon'ble Delhi High Court

Allegation of deficient performance, no fraud or collusion - The Hon'ble High Court firstly examined what the Respondent/NHAI had actually alleged which was evident from the NHAI's own debarment order which attributed to deliberate conversion of the land to the landowner acting in connivance

with the revenue officials. Further, the alleged escalation in the compensatory component were also recorded to be determinations by CALA.

The Petitioner / DPR Consultant was attributed with the alleged lack of proactive engagement, failure to detect irregularities and insufficient follow-up. NHAI also expressly stated that no allegation of collusion had been made against the Consultant. Therefore, the Hon'ble Court characterized the same to be deficient performance simpliciter in a complex, multi-agency statutory process.

- It is a bona fide contractual dispute – The Hon'ble High Court held that for the challenge on the debarment order, the submissions of both the Petitioner and NHAI makes it enough that the rival constructions disclosed a substantial contractual dispute. The Hon'ble Court further observed that the functions of the Petitioner / DPR Consultant were assistive in nature and did not displace the statutory functions of CALA and revenue authorities under the National Highways Act, 1956 and Manual of Guidelines on Land Acquisition under the National Highways Act, 1956. The Hon'ble High Court applied the principles of *Blue Dreamz Advertising Pvt. Ltd. v. KMC*, (2024) 15 SCC 264 to hold that a *bona fide* dispute of this nature does not warrant debarring the Petitioner as a method of resolution or punishment.
- Statutory remedies for damages are available – The Hon'ble High Court relied on *M/s Techno Prints v. Chhattisgarh Textbook Corp.*, 2025 SCC OnLine SC 343 to underline that in cases where the complaint relates to a breach under the contract and

dispute resolution is available, blacklisting should not become the default response. The Hon'ble Court further relied on to stress that blacklisting requires strong, independent and overwhelming material; mere breach of contractual obligations, without more, does not invite such punitive action, especially where alternate remedy is available.

- NHAI's graded policy required a reasoned classification – The Hon'ble Court observed that Clause 7.4.2 of the GCC and NHAI Policy Circular No. 97/2012 provided a graded regime i.e. a warning for minor deficiencies, a shorter debarment for minor deficiency in services, and debarment of one to five years for major negligence or deficiency. However, the debarment order under challenge did not identify the specific alleged conduct of the Petitioner / DPR consultant as a "major" negligence. In addition, NHAI failed to explain why a warning was inadequate and failed to provide any reason for selecting two years as debarment period.

Consequently, the Hon'ble Court held that NHAI cannot sustain a debarment of a contractor / consultant / company merely by alleging and/or establishing deficiency in performance of contractual obligations. The record must show strong material of conduct of qualitatively graver character i.e. deviant, aberrant, egregious or subversive of public interest together with a reasoned and proportionate application of the governing policy.

In cases where the disputes remain contractual in nature, a *bona fide* interpretation is raised, no fraud, collusion,

fabrication, misrepresentation, moral turpitude or *mala fides* are alleged, legal remedies remain available under the contract, the policy gradation is not reasoned by NHAI, material defences are not demonstrably considered, the debarment is vulnerable to challenge under Article 226 of the Constitution of India.

### What this means for Companies / Consultants working on Government Agencies' projects

The decision of the Hon'ble High Court vide the said Judgment provides a focused mechanism under which a contractual dispute should be tested for actual egregious conduct instead of mere deficient performance. The Hon'ble Court laid out the requirements to identify the specific functions belonging to NHAI, CALA, Revenue Authorities or other government agencies. The response to debarment should test whether NHAI actually alleges dishonesty or demonstrates any *bona fide* dispute on the scope of work under the contract, reliance on contractual or statutory remedies already available for the alleged loss, insist on application of the exact graded debarment policy and require reasons for both the decision to debar and the period/penalty of debarment.

The decision is not a general immunity from debarment orders/notices issued by government agencies / bodies; however, the protection lies in preventing an ordinary contractual dispute on deficient performance from being converted into debarment / blacklisting of the entities resulting in commercial exclusion from public procurement works without

appreciating the required threshold as by doing so, the authority has “*lifted a sledgehammer to crack a nut*”.

#### Author’s Note & Conclusion

The Hon’ble High Court of Delhi has reaffirmed and reinforced a discipline in public works with PSUs holding that contractual obligations and liability thereunder and debarment are not interchangeable remedies. PSUs may enforce the contractual remedies, including monetary penalties or settlement of disputes through arbitration; however, proceeding directly to the extreme and most severe punitive measure of debarment/blacklisting, without alleging any serious fraud, fault, or *mala fide* intention, is held to be unjustifiable. The Judgment dated 11.08.2026 in *Sai Consulting Engineers Pvt. Ltd. v. National Highways Authority of India & Anr. : W.P. (C) No. 15518/2025* is favourable to contractors / consultants / companies as it requires the conduct to justify the impugned action.

The precedential value of this Judgment passed by the Hon’ble High Court of Delhi for the companies/contractors/consultants dealing with Government Agencies / Bodies lies in its insistence on contractual discipline. It is evident from the Judgment that before imposing a sanction such as debarment affecting access of companies/contractors/consultants to future public work, the authority / employer must identify the conduct warranting to that debarment with a justifiable explanation as to why the circumstantial fact moved beyond an ordinary breach under the contract.

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## ARBITRATION INVOKED BY LIQUIDATOR WITHOUT PRIOR NCLT APPROVAL: CLOCK STARTS FROM APPROVAL

- Sahil Sharma

### Introduction

The Hon'ble High Court of Bombay recently in the judgment of *Tecpro Systems Limited (In Liquidation) v. Reliance Infrastructure Limited*<sup>1</sup> answered one of the critical questions on the interplay of arbitration and insolvency proceedings: whether arbitral proceedings initiated by a liquidator without obtaining approval of the Ld. National Company Law Tribunal (NCLT) are void ab initio, or whether the lapse can be cured if approval is granted subsequently. The Hon'ble Court ruled that the prior approval of the Ld. NCLT is mandatory; however, the absence of such "prior approval" before would not make arbitration proceedings void ab initio, and such arbitration proceedings would only come into effect when the required permission is granted by the Ld. NCLT.

### Factual Background

Tecpro Systems Limited ("**Applicant**") and Reliance Infrastructure Limited ("**Respondent**") entered into a Purchase Order dated 17.01.2018 related to the supply of goods. Clause 17 of the purchase order stated that disputes arising out of the contract would be referred to arbitration under the Arbitration and Conciliation Act, 1996 ("**the Act**"). The Applicant company was going through liquidation under the Insolvency and Bankruptcy Code, 2016

("IBC") and a Liquidator was appointed by the Ld. NCLT, New Delhi. The Liquidator of the Applicant invoked the above arbitration clause by issuing a notice dated 10.03.2022 to the Respondent under Section 21 of the Act.

However, the fact remained undisputed that when the invocation notice was issued, the Liquidator had not obtained prior approval from the Ld. NCLT as required under Section 33(5) of the IBC before issuing the notice under Section 21 of the Act. The Liquidator thereafter approached the Ld. NCLT seeking approval to invoke arbitration proceedings, and the Ld. NCLT granted post facto approval on 23.12.2022.

Applicant filed Section 11 Petition of the 1996 Act on 10.01.2024 for appointment of arbitrator, which was opposed by Respondent alleging that the invocation was invalid as it had been initiated in absence of the mandatory prior approval required under Section 33(5) of the IBC

### Issue(S) Before The Court

After considering the submissions of the parties, the Hon'ble Court framed the following issues for consideration.

<sup>1</sup> Tecpro Systems Limited (In Liquidation) v. Reliance Infrastructure Limited, 2026 SCC OnLine Bom 11178

1. Whether obtaining the “prior approval” from the Adjudicating Authority as stated under section 33(5) is a mandatory pre-requisite for instituting legal proceedings on Corporate Debtor’s behalf

2. If the “prior approval” is a mandatory pre-requisite, what is the impact when the proceedings were initiated without prior approval and the approval Adjudicating Authority is obtained post facto.

### Analysis Of The Judgment

#### **a. Mandatory Nature of “Prior Approval” under Section 33(5) of IBC**

The Applicant argued that “prior approval” absence did not render proceedings void and stated that in such cases proceedings remain ineffective till the Adjudicating Authority’s approval is obtained. In contrast, Respondent argued that Section 33(5) explicitly requires obtaining “prior approval” of the NCLT before instituting any suits or proceedings on behalf of the Corporate Debtor, stating such requirement to be mandatory. Use of the expression “prior approval” by the legislature is deliberate and mandatory.

The Court first examined Section 33(5) of the IBC, which states that “*when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. **Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.***”

Thus, the provision bars any suits or legal proceedings against the Corporate Debtors,

but carves out an exception by permitting the liquidator to institute proceedings on behalf of the corporate debtor, only with the “**prior approval**” of the Adjudicating Authority.

The Court held that the word “prior” carries substantive value. The legislature consciously imposed the condition that approval must ordinarily precede institution of proceedings.

The court had treated the word “prior” as having its own independent statutory impact. In reaching this conclusion, the Court relied upon *Bajaj Hindustan Limited v. State of Uttar Pradesh and Others*<sup>2</sup>, where the Supreme Court explained the distinction between “approval,” “permission,” and “prior approval.” There, the Court had observed that due to the word “approval” being used, approval can be obtained subsequently. Thus, the court had ruled that “approval” includes ratification of an action, thus ex-post facto approvals are included, and that in cases where prior approval is stated to be needed, the word “prior” must be in the particulars of the legislation<sup>3</sup>.

The Court concluded that prior approval under Section 33(5) is mandatory and that issuance of the Section 21 notice without approval amounted to non-compliance with the statutory requirement.

On a conjoint reading of this precedent with *Erach Boman Khavar v. Tukaram Shridhar Bhat and Another*<sup>4</sup>, usage of the word “prior” means that approval is contemplated to be obtained

<sup>2</sup> *Bajaj Hindustan Limited v. State of Uttar Pradesh and Others*, (2016) 12 SCC 613

<sup>3</sup> *Bajaj Hindustan Limited v. State of Uttar Pradesh and Others*, (2016) 12 SCC 613; *Union of India and others v. Vinod Kumar and others*, (1996) 10 SCC 78

<sup>4</sup> *Erach Boman Khavar v. Tukaram Shridhar Bhat and Another*, (2013) 15 SCC 655

prior to undertaking of the proposed action, thus where the statute requires “prior approval” before initiating legal proceedings, the liquidator is legally required to obtain the approval before, and not after, initiating the proceedings.

### **(b) Breach without nullification of proceedings: Whether the Proceedings were liable to be set aside**

With the court deciding on the meaning of “prior approval” and the admitted fact that prior approval was not obtained, the issue before the Court was whether proceedings instituted without prior approval were void from inception in the present case and liable to be set aside.

For answering this issue, the Court turned to *Erach Boman Khavar v. Tukaram Shridhar Bhat & Anr.*<sup>5</sup>(supra). The Supreme Court held that failure to obtain leave prior to institution of proceedings did not automatically render such proceedings void and debar the court from granting it subsequently. Instead, leave could be obtained later, with the impact being on the date of institution of proceedings — the date of commencement of proceedings would be the date on which leave was granted.

The court also observed the two reasons behind the ruling of the case: (1) leave was not held to be a condition precedent as the section does not provide for annulment of proceedings undertaken without the prior leave, and (2) the safeguarding purpose of the section so that claims are adjudicated with knowledge of the court and to avoid unnecessary litigation and avoidable expenditure.

The Bombay High Court observed that the above rationale of the Apex Court was relevant to Section 33(5), which also placed a liquidator’s recourse to litigation under the Adjudicating Authority’s oversight. The requirement of approval ensures that a liquidator does not unnecessarily expose the corporate debtor to litigation and expenditure without oversight of the Adjudicating Authority.

The contention that non-compliance would lead to automatic nullity of proceedings was rejected.

### **(c) Contrast between Section 28(4) and Section 33(5) of the IBC**

In its argument, the Applicant drew support from the scheme of the IBC itself. It pointed out that Section 28(4) expressly declares certain actions undertaken by a Resolution Professional without approval of the Committee of Creditors to be void. In contrast to this observation, Section 33(5) does not prescribe any consequence of voidness.

While analysing, the Court noted that Section 28, similar to Section 33(5), provides a list of actions that can be undertaken by a Resolution Professional with prior approval of the committee of creditors. However, Section 28(4) explicitly provides that any such actions taken without approval of the Committee of Creditors render the action void. In contrast, Section 33(5) does not make an express declaration of nullity of actions taken in absence of “prior approval.”

<sup>5</sup> *Erach Boman Khavar v. Tukaram Shridhar Bhat and Another*, (2013) 15 SCC 655

Per the Court, this silence was deliberate. The Legislature had expressly provided consequences of non-compliance. If the Legislature intended proceedings instituted in violation of the “prior approval” stipulation under Section 33(5) to be void, it could easily have used language similar to Section 28(4). The absence of such language in the section indicates that automatic nullity was not intended, nor can it be supplied judicially.

This distinction formed a central pillar of the Court’s reasoning and substantially weakened the Respondent’s argument that the proceedings were void ab initio.

### **(d) Effect of Post Facto Approval**

The Applicant submitted that once the NCLT had granted approval on 23.12.2022, the notice invoking arbitration became legally effective from the aforesaid date. The Applicant established a clear line of distinction between proceedings that are void and proceedings that are merely incapable of producing legal consequences until a specified condition is fulfilled.

The Respondent had argued that the notice invoking arbitration dated 10.03.2022 was issued without the “prior approval” as mandated under Section 33(5) of the IBC and therefore such invocation of arbitration was not valid. Consequently, the notice dated 10.03.2022 marked commencement of the proceedings. Thus, the initiation of arbitration was contrary to the statutory mandate mentioned in Section 33(5).

However, having held that proceedings in the present case are not void, the Court explicated the effect of post facto approval.

The Court held that proceedings initiated in the absence of prior approval were ineffective for all intents and purposes, until such permission is obtained. On obtaining such approval, the proceedings thereafter are deemed to commence.

The Court declined fresh invocation, as such an approach would not advance the object of Section 33(5) and can create limitation-related issues due the time lost in the intervening proceedings. The construction made by the Court in the present proceeding does not violate statutory provisions or amount to re-writing of legislation; it only postpones the effective invocation date until mandatory approvals are obtained.

### **Conclusion**

The Bombay High Court held that the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act would be deemed effective from 23.12.2022.

The Bombay High Court held that “prior approval” under Section 33(5) is mandatory, yet failure to obtain such does not invalidate proceedings; it only puts them in abeyance till approval is obtained<sup>6</sup>. However, this protection did not extend to any steps taken subsequent to the invocation, which must be taken afresh. Based on this, the Section 11 Application was allowed, and Justice Nitin Jamdar was appointed as the sole arbitrator.

While Section 33(5) has been omitted and Section 33(6) has been added by the

6 Erach Boman Khavar v. Tukaram Shridhar Bhat and Another, (2013) 15 SCC 655; Slimline Realty (P) Ltd v. Jigar Bhatt, (2024) SCC OnLine NCLAT 6895

Insolvency and Bankruptcy Code (Amendment) Act, 2026, wherein any suit or legal proceedings cannot be commenced or proceeded with, if pending at the date of liquidation order, except with the “leave of the Adjudicating Authority”, the ruling is in consonance with the present legislative regime as the present amendment did not add any provision rendering void any commencement of legal proceedings or proceeding with any pending legal proceeding, and Section 28(4) has been left untouched.

However, Liquidators are advised to seek leave/approval prior to issuing notices, since the claim and invocation are preserved, but not any procedural steps taken after invocation. While the direction ensures safeguarding of claims and ensures that the requirement of approval does not vitiate the proceedings, Liquidators may be forced to start afresh all procedural steps subsequent to the invocation, thus burdening the Estate of the Liquidated Corporate Debtor with unnecessary expenses.

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## REMEDILESS NO MORE? EXAMINING THE EFFICACY OF FOREIGN INTERIM RELIEF AS A BAR TO SECTION 9 JURISDICTION

- *Rahul Saraswat & Kushagra Kaul*

For years, parties to international commercial arbitrations seated outside India faced a stark procedural gap; they could not approach Indian courts for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (“A&C Act”). The Supreme Court’s decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552 confined Part I of the Act, including Section 9, to arbitrations seated in India. Where a counterparty’s assets were located in India, but the arbitration was seated abroad, the party seeking interim protection was, for all practical purposes, left without an effective remedy.

The 246th Law Commission Report identified this enforcement vacuum. Foreign interim orders do not qualify as “judgments” or “decrees” under Sections 13 and 44A of the Code of Civil Procedure, making them largely unenforceable in India. The 2015 Amendment responded by introducing a proviso to Section 2(2) of A&C Act, extending Section 9 of A&C Act to international commercial arbitrations seated outside India, subject to two conditions,

- a) No agreement to the contrary,
- b) The resulting award being enforceable under Part II of the A&C Act.

The amendment was pragmatic, but its application raised multiple questions of

jurisdiction, maintainability, and substantive thresholds. Key judicial pronouncements, from the Supreme Court and several High Courts, illuminate these questions.

### The Proviso to Section 2(2): Scope and Application

In *Big Charter Pvt. Ltd. v. Ezen Aviation Pty. Ltd.* 2020 SCC OnLine Del 1713, the arbitration was seated in Singapore. The court held that the proviso to Section 2(2) of A&C Act “changes the goalpost” and makes Section 9 of A&C Act applicable even where the seat is outside India. Fixing Singapore as the seat did not, by itself, divest the Indian court of Section 9 of A&C Act jurisdiction, such exclusion arises only where parties have entered into an agreement to the contrary.

The Supreme Court of India in *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.*, (2021) 7 SCC 1, held that even two Indian parties may validly choose a foreign seat, and Indian courts retain the jurisdiction to grant interim measures in respect of such arbitrations.

In *Goodwill Non-Woven (P) Ltd. v. Xcoal Energy & Resources LLC*, (2020) SCC OnLine Del 631, the Delhi High Court addressed whether Section 9 jurisdiction is “asset-based”, that is, whether a petition is maintainable only if the foreign party holds assets in India. The Court rejected this

contention. Section 9 of A&C Act opens with “A party” and governs interim relief, not enforcement, certain remedies, such as orders concerning bank guarantees or deposits, do not presuppose that the foreign respondent owns Indian assets. Citing the 246th Law Commission Report, the Court observed that the proviso was introduced precisely to “*facilitate parties to move the Court in India, even though the arbitration is seated outside India.*”

### “Agreement to the Contrary”: What Qualifies?

If Section 9 of A&C Act is available by default under the proviso of Section 2(2) of A&C Act, can parties contract out of it? *Big Charter* addressed this squarely. In *Big Charter*, the lease agreement conferred exclusive jurisdiction on Singapore courts, and the respondent contended that this clause constituted an “*agreement to the contrary*” sufficient to exclude Section 9 of A&C Act.

The court rejected this. Since the proviso makes Section 9 applicable to foreign-seated arbitrations, an “*agreement to the contrary*” must be contrary to the applicability of Section 9 of A&C Act itself. Mere submission to the exclusive jurisdiction of Singapore courts is insufficient. If the parties intended to exclude Section 9 of A&C Act, their agreement ought specifically to have said so.

This position has found broad acceptance. In *Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.*, 2016 SCC OnLine Del 5521, one of the earliest post - amendment decisions, the

Delhi High Court held that the choice of a foreign seat, institutional arbitral rules, or foreign governing law did not, either individually or collectively, constitute an implied exclusion of Section 9 of the A&C Act.

The Madras High Court in *Aapico Investment Pte. Limited v. Manickam Mahalingam*, O.A No. 1148 and 1100 of 2019 and A. Nos. 9765, 9766, 9768 and 9769 of 2019, have similarly held that an “*agreement to the contrary*” must be specific, general references to foreign governing law or arbitral rules do not suffice.

### Territorial Jurisdiction: Maintainability Does Not Equal Grant of Relief

Even where a Section 9 of A&C Act petition is maintainable, the petitioner must establish territorial jurisdiction before the specific Indian court is approached. The judgement of *Belvedere Resources DMCC v. OCL Iron and Steel Ltd.* 2025 SCC OnLine Del 4652 is instructive in this regard.

The petitioner approached the Delhi High Court under Section 9 of A&C Act. The respondent had a branch office in Delhi and held shares in a company with a Delhi-registered office. The court held it lacked territorial jurisdiction. Merely maintaining a branch office does not confer jurisdiction when the transaction was handled by the Kolkata office. No part of the cause of action arose in Delhi, parties and offices were outside Delhi, negotiations were conducted through Singapore brokers, goods were supplied from South Africa to Odisha and West Bengal, and the contract was repudiated from Kolkata. The court rejected the argument that assets or shareholdings

connected with Delhi could confer jurisdiction, such a basis may be relevant at execution, but does not establish territorial jurisdiction for a Section 9 petition.

### **Practical Implications for Practitioners**

Read together, these decisions yield a four-part test. A party seeking Section 9 of A&C Act relief in a foreign-seated arbitration must establish:

- a) The applicability of the proviso to Section 2(2) of A&C Act;
- b) The absence of an agreement excluding Section 9 of A&C Act;
- c) Territorial jurisdiction of the Indian court approached; and
- d) The substantive requirements for the particular interim measure sought.

The drafting implications are significant. Parties wishing to exclude Section 9 of A&C Act must do so explicitly, generic exclusive jurisdiction clauses favoring the seat will not suffice. The absence of a foreign party's assets in India is not a bar to maintainability, but territorial jurisdiction still matters, a petitioner cannot approach any Indian court of its choosing.

### **Conclusion**

The proviso to Section 2(2) of A&C Act was a pragmatic legislative response to a real enforcement gap. Indian courts have given it meaningful effect while maintaining safeguards. Section 9 can now be invoked for foreign-seated arbitrations, but this right is not unbounded. The practitioner must navigate jurisdictional requirements, satisfy

substantive thresholds, and demonstrate that the specific court approached has territorial competence.

The gap that remains is whether parties can effectively obtain and enforce interim measures across borders when the seat country's laws do not offer equivalent pre-arbitral remedies. The proviso addresses the Indian side of this equation. Whether similar reforms follow elsewhere will determine if the promise of effective interim relief in international arbitration is fully realized.

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## RECENT UPDATES

### CORPORATE AND DIRECT TAX UPDATE

#### I. INCOME TAX

##### 1. CBDT prescribes registration and filing procedure for Form No. 98 under Rule 160 of the Income Tax Rules, 2026

The CBDT, through Notification No. 3 of 2026 dated 15 September 2026, has prescribed the procedure for registration of reporting persons/entities and filing of Form No. 98 under Rule 160 of the Income-tax Rules, 2026.

##### 1. Applicability

- Applicable to persons/entities covered under Rule 160(2)(a) and (b) that receive declarations in Form No. 97 relating to transactions specified under Rule 159.
- Such persons are required to furnish a statement in Form No. 98.

##### 2. Due Dates for Filing Form No. 98

| Period in which Form No. 97 is received | Due Date for Form No. 98                              |
|-----------------------------------------|-------------------------------------------------------|
| Up to 30 September                      | 31 October of the same year                           |
| Up to 31 March                          | 30 April of the immediately succeeding financial year |

##### 3. Registration and Generation of ITDREIN

- Reporting entities must register through the Income-tax e-Filing Portal by accessing the Reporting Portal.
- Details to be provided:
  - o Form type
  - o Reporting entity category
  - o Address of reporting entity
  - o Details of Principal Officer
- Upon successful registration, an Income Tax Department Reporting Entity Identification Number (ITDREIN) will be generated.
- Confirmation will be sent through email and SMS to the Principal Officer.
- ITDREIN once generated cannot be deactivated.

##### 4. Existing Registrations

- Entities already registered for compliance of erstwhile Form 61 are not required to re-register.
- Existing ITDREIN and Principal Officer details will continue to remain valid.
- The Principal Officer will act as the Designated Director for verification purposes.

##### 5. Filing of Form No. 98

- Form No. 98 must be filed electronically through the Reporting Portal.

- o Schema
- o Report Generation and Validation Utility
- o Generic Submission Utility
- The statement must be:
  - o Digitally signed; and
  - o Uploaded using the Principal Officer's PAN and password credentials.

### 6. Correction Statements

- If inaccuracies or defects are identified after filing:
  - o A Correction Statement must be filed.
  - o Defects may be communicated through a Data Quality Report (DQR).
- The reporting entity must rectify all defects until the Reports Requiring Correction (RRC) count becomes zero within the prescribed timeframe.

### 7. Deletion of Incorrectly Submitted Reports

- Incorrectly filed reports can be removed through a Deletion Statement.
- The deletion statement must contain the exact details as originally filed.
- The filing process is similar to that of a correction statement.

### 8. Information Security and Record Retention Requirements

Reporting entities must establish and maintain:

- Information security policies and procedures.
- Clearly defined roles and responsibilities.

- Archival and retrieval policies for submitted information and supporting documents.
- Mechanisms to ensure prompt availability of records to competent authorities when required.

### 9. Effective Date

- The notification is effective from 15 September 2026.

### 10. Transition Provision

- Reporting for FY 2025-26 and earlier years, including correction and deletion statements, will continue under:
  - o The Income-tax Act, 1961;
  - o The Income-tax Rules, 1962; and
  - o Form No. 61 in accordance with CBDT Notification No. 2/2018 dated 05 April 2018.
- Form No. 98 will apply prospectively under the Income-tax Rules, 2026.

<https://www.incometaxindia.gov.in/document/s/d/guest/notification-3-of-2026-pdf>

## 2. Income Tax Department prescribes SFT-2518 reporting framework for mutual fund transactions by RTAs

The Income Tax Department has issued a notification prescribing the format, procedure, and guidelines for furnishing the Statement of Financial Transactions (SFT-2518) in respect of mutual fund transactions undertaken by Registrars and Share Transfer Agents (RTAs). The notification has been issued under sub-rule (6) of rule 237 of the Income-tax Rules, 2026, read with section 508(1) of the Income-tax Act, 2025, to facilitate the reporting of information

relating to capital gains arising from the transfer of mutual fund units for the purpose of pre-filing income tax returns. Accordingly, all Registrars and Share Transfer Agents registered under section 12(1) of the Securities and Exchange Board of India Act, 1992 are required to generate the prescribed data file from their internal systems and submit the same through the designated SFTP server using login credentials that will be communicated separately.

[https://www.incometaxindia.gov.in/document/s/d/guest/notification\\_2\\_sft-pdf](https://www.incometaxindia.gov.in/document/s/d/guest/notification_2_sft-pdf)

### 3. Income Tax Department notifies SFT-2517 reporting framework for depository transactions

The Income Tax Department has issued a notification prescribing the format, procedure, and guidelines for the filing of Statement of Financial Transactions (SFT-2517) pertaining to depository transactions under section 508(1) of the Income-tax Act, 2025, read with sub-rule (6) of rule 237 of the Income-tax Rules, 2026. Section 508 and rule 237 mandate specified reporting entities to furnish statements of financial transactions, and the notification requires reporting of information relating to capital gains arising from the transfer of listed securities and mutual fund units for the purpose of pre-filing income tax returns.

The notification further sets out the requirements for preparation and submission of the SFT in Annexures A and B, the format of the control statement to be furnished by the Designated Director in Annexure C, and the prescribed data

structure and validation rules in Annexures D and E. Accordingly, all Depositories as defined under section 2(1)(e) of the Depositories Act, 1996 are required to generate the prescribed data file from their internal systems and submit the same through the designated SFTP server using login credentials that will be communicated separately.

[https://www.incometaxindia.gov.in/document/s/d/guest/notification\\_1\\_sft-pdf](https://www.incometaxindia.gov.in/document/s/d/guest/notification_1_sft-pdf)

### 4. The Central Board of Direct Taxes (CBDT) has notified the Income Tax (Fifth Amendment) Rules, 2026, with effect from 1 October 2026

The Central Board of Direct Taxes (CBDT) has notified the Income Tax (Fifth Amendment) Rules, 2026, with effect from 1 October 2026, further amending the Income Tax Rules, 2026.

The amendments introduce changes to Rules 215, 218 and 219, as well as Appendix III, primarily in relation to tax deduction at source (TDS) under section 393(2) of the Income-tax Act, 2025, where a resident individual or Hindu Undivided Family (HUF) is required to deduct tax on consideration paid or credited for the transfer of immovable property. Rule 215 has been amended to specifically cover such deductions, with corresponding procedural and reporting changes incorporated in Rules 218 and 219.

Form No. 132 has also been revised to include transfers of immovable property by a non-resident to a resident individual or HUF, along with related changes to references and explanatory notes. Further, Form No. 141 has

amended to cover transactions under section 393(2) and introduces a new Schedule E for reporting TDS on consideration for the transfer of immovable property. Schedule E requires details such as particulars of the property, buyer and non-resident seller, stamp duty value, sale consideration, instalment details, capital gains, applicable TDS rate, certificates under section 395 and the amount of tax deducted. The amended reporting requirements also include contact and overseas address details, tax residency certificates and tax identification numbers of non-resident deductees.

The detailed notification is attached herewith.

<https://www.incometaxindia.gov.in/documents/d/guest/notification-no-121-2026-pdf>

### 5. The CBDT has notified the Income Tax (Fourth Amendment) Rules, 2026

CBDT has notified the Income Tax (Fourth Amendment) Rules, 2026, making certain technical and procedural amendments to Rules 160, 176 and 225, including changes relating to electronic communication and omission of specified provisions. Further, the timelines prescribed under Rules 246(4) and 256(4) have been extended from 30 September 2026 to 31 March 2027. The notification also provides for the substitution of Form No. 169 with a revised form. The amendments under Rules 160, 176 and 225 are deemed effective from 1 April 2026, while the remaining amendments take effect from the date of publication in the Official Gazette.

The detailed notification is attached herewith.

<https://www.incometaxindia.gov.in/documents/d/guest/notification-no-120-2026-pdf>

## II. THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

### 1. IBBI proposes stronger creditor safeguards for personal guarantor insolvency

The Insolvency and Bankruptcy Board of India (IBBI) has released a discussion paper proposing significant amendments to the regulations governing the insolvency resolution process for personal guarantors to corporate debtors. The paper identifies four key gaps where creditor protections available in corporate insolvency (CIRP) are notably absent in the personal guarantor framework and seeks to close them.

The proposed changes include:

- 1) excluding related parties of the guarantor from voting on repayment plans;
- 2) requiring resolution professionals to identify and report avoidance transactions such as preferential, undervalued, fraudulent, and extortionate credit transactions during the resolution process itself;
- 3) mandating independent valuation of the guarantor's assets before creditors vote; and
- 4) requiring detailed recording of creditors' deliberations and commercial rationale when approving a repayment plan.

Public comments are open until October 3, 2026.

### 2. IBBI directs insolvency professionals to guard against misuse of IBBI framework

On September 9, 2026, the Insolvency and Bankruptcy Board of India (IBBI) issued Circular No. IBBI/CIRP/105/2026, directing insolvency professionals (IPs) to exercise heightened due diligence against misuse of the Insolvency and Bankruptcy Code, 2016 (IBC). The IBBI noted that, based on inputs from law enforcement and regulatory agencies, the IBC framework is being exploited in certain cases to mitigate tax liabilities, circumvent regulatory scrutiny in company closures or mergers, evade investigations and prosecutions, and ring-fence assets.

The Circular sets out illustrative red-flag indicators that IPs must watch for, including CIRP initiation dominated by a single non-institutional creditor, clusters of related corporate debtors entering CIRP simultaneously, minimal competitive participation in resolution, grossly disproportionate realizations, and unexplained related-party transactions.

Where an IP, upon reasonable review, concludes that the process may be serving a fraudulent or malicious purpose, the IP is required to file an application before the Adjudicating Authority seeking appropriate directions.

Practical takeaway: IPs must now proactively monitor for process abuse throughout CIRP and liquidation, with a clear obligation to

escalate suspicious cases to the NCLT raising the compliance bar significantly for all insolvency practitioners.

<https://ibbi.gov.in/uploads/whatsnew/832e58d2371048cebf5c2a43a55e7dfc.pdf>

### 3. IBBI Issues Twin Circulars on Personal Guarantor Insolvency Forms and Liquidation Filing Fees

The Insolvency and Bankruptcy Board of India (IBBI) issued two circulars on September 24, 2026, relevant to insolvency professionals and stakeholders in the restructuring space.

**a. Filing Deadline Extended for Personal Guarantor Forms:** Via Circular No. IBBI/II/108/2026, IBBI has further extended the deadline for filing electronic forms PGIRP-1 through PGIRP-6 used to monitor insolvency resolution processes for personal guarantors to corporate debtors to **December 31, 2026**. The extension follows continued feedback from insolvency professionals citing practical difficulties with the e-filing platform. Penalties for delayed submission will now apply only after the revised deadline.

**b. Late Filing Fees for Liquidation Forms Now in Effect:** Separately, Circular No. IBBI/LIQ/107/2026 notifies that revised liquidation forms due on or before **September 30, 2026**, if filed late, will attract a fee of ₹500 per month (plus GST) for each month of delay.

The detailed circulars are attached herewith:

[file:///C:/Users/Jatin.k/Downloads/a207bc1032e33472c1175e676e204742%20\(1\).pdf](file:///C:/Users/Jatin.k/Downloads/a207bc1032e33472c1175e676e204742%20(1).pdf)

[file:///C:/Users/Jatin.k/Downloads/67d6969ee8c81b22d63aa09ea06e000b%20\(2\).pdf](file:///C:/Users/Jatin.k/Downloads/67d6969ee8c81b22d63aa09ea06e000b%20(2).pdf)

### 2. Liquidation Process (Fifth Amendment) Regulations, 2026 (effective September 22, 2026)

The Insolvency and Bankruptcy Board of India (IBBI) has notified the Liquidation Process (Fifth Amendment) Regulations, 2026 (effective September 22, 2026), streamlining how liquidators update the list of stakeholders during a corporate liquidation. Under the amended Regulation 31, a liquidator may now modify any entry in the stakeholder list upon receiving additional information that warrants the change and is required only to intimate the Adjudicating Authority (NCLT) within thirty days of making the modification.

The revised framework replaces the earlier sub-regulations (3) and (4) with a single, consolidated provision, reducing procedural layers and giving liquidators greater operational flexibility.

Web link of the detailed regulation:

<https://ibbi.gov.in/uploads/legalframework/c2021ea672482d462f94d71b8fb29338.pdf>

### 3. Circular No. IBBI/II/106/2026 (dated September 21, 2026) flagging two significant High Court rulings from the Bombay High Court (*Tata Capital Financial Services Ltd. v. Neel Motors LLP*) and the Delhi High Court (*IDBI Trusteeship Services Ltd. v. Manish Jain*)

The Insolvency and Bankruptcy Board of India (IBBI) has issued Circular No. IBBI/II/106/2026 (dated September 21, 2026) flagging two significant High Court rulings from the Bombay High Court (*Tata Capital Financial Services Ltd. v. Neel Motors LLP*) and the Delhi High Court (*IDBI Trusteeship Services Ltd. v. Manish Jain*) confirming that the interim moratorium protection for personal guarantors to corporate debtors has ceased to operate effective May 26, 2026.

**Key takeaway:** The IBC (Amendment) Act, 2026 inserted sub-section (4) in Sections 96 and 124, stripping interim moratorium protection from personal guarantors to corporate debtors. Both High Courts held that this change is "retroactive" meaning it applies not only to new filings but also to applications already pending before the Adjudicating Authority as of May 26, 2026. Creditors can now pursue recovery actions against personal guarantors even where insolvency applications were filed before the amendment took effect.

- Lenders and creditors can immediately resume or initiate enforcement and recovery proceedings (including arbitration petitions and commercial suits) against personal guarantors to corporate debtors, without being blocked by the moratorium.
- Promoters and directors who have given personal guarantees for corporate debt face significantly increased exposure as the shield of interim moratorium is gone, including pending cases.

- Compliance and risk teams should review guarantee portfolios and update internal risk assessments and litigation strategy in light of this development.

Web link of the detailed circular:  
[file:///C:/Users/Jatin.k/Downloads/778e13b82df050c20c0c13dfa3e8ea16%20\(1\).pdf](file:///C:/Users/Jatin.k/Downloads/778e13b82df050c20c0c13dfa3e8ea16%20(1).pdf)

III. THE SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. SEBI, through its circular dated 9 September 2026, has revised client level position limits and introduced a stricter penalty regime for breaches in the commodity derivatives segment. The changes are aimed at strengthening market surveillance and ensuring effective risk management.

1) Revised Penalty Structure for Position Limit Breaches

- Breaches exceeding 2% of the prescribed position limit will attract a penalty of 2% of the excess position value, subject to a cap of INR 2 lakh per day.
- Breaches of up to 2% will continue to attract the existing penalty of INR 10,000 per day.

2) Mandatory Squaring-off of Excess Positions

- Clients must bring positions within prescribed limits by the next trading day.
- Failure to comply may result in exchanges squaring off excess positions without further notice.

3) Consequences for Repeated Breaches

- More than two major breaches in the same commodity within a month may trigger exchange action, including square-off measures.
- More than three breaches in total may attract an additional penalty equal to the original penalty, except where breaches arise solely due to position-building limits.

4) Revised Commodity Classification Framework A commodity will qualify as a Broad Commodity if its five-year average deliverable supply is at least:

- 10 lakh MT, or
- INR 5,000 crores.

| Commodity Category  | Position Limit | Basis                     |
|---------------------|----------------|---------------------------|
| Broad Commodity     | 2%             | Annual Deliverable Supply |
| Narrow Commodity    | 1%             | Annual Deliverable Supply |
| Sensitive Commodity | 0.50%          | Annual Deliverable Supply |

5) Transition for Reclassified Commodities

- Commodities moving from Narrow to Broad category will continue at the 1% limit for one year.
- Exchanges may increase the limit to 2% after a review.

### 6) Implementation Requirements

- Exchanges are required to update their systems, operational rules, and notify market participants regarding the revised framework.

#### Action Points for Market Participants

- Review existing commodity derivative exposures against the revised limits.
- Strengthen monitoring and escalation mechanisms for position-limit compliance.
- Update internal risk management systems and automated alerts.
- Reassess penalty exposure and governance processes to avoid repeated breaches.

**Effective Date:** The revised framework is effective immediately from 9 September 2026.

[https://www.sebi.gov.in/legal/circulars/sep-2026/review-of-position-limits-for-clients-and-penalty-provisions-for-violation-breach-of-position-limits-for-commodity-derivatives-segment\\_104387.html](https://www.sebi.gov.in/legal/circulars/sep-2026/review-of-position-limits-for-clients-and-penalty-provisions-for-violation-breach-of-position-limits-for-commodity-derivatives-segment_104387.html)

2. 1. SEBI has issued a circular easing compliance requirements for Foreign Portfolio Investors (FPIs) investing exclusively in Government Securities. Such FPIs are no longer required to furnish investor group details, whether investing through the Fully Accessible Route or the General Route. Depositories, custodians and Designated Depository Participants are required to update their systems accordingly. The circular is effective immediately from 7 September 2026

[https://www.sebi.gov.in/legal/circulars/sep-2026/ease-of-regulatory-compliances-for-fpis-investing-only-in-government-securities\\_104319.html](https://www.sebi.gov.in/legal/circulars/sep-2026/ease-of-regulatory-compliances-for-fpis-investing-only-in-government-securities_104319.html)

## IV. THE RESERVE BANK OF INDIA (RBI)

1. On 22 September 2026, the Reserve Bank of India issued a set of substantially identical amendment directions for different categories of regulated entities, principally to introduce specific and uniform valuation rules for units and other unquoted instruments of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs). The amendments operate by inserting dedicated provisions into the respective RBI Investment Portfolio Directions, 2025.

The core legal change is that quoted InvIT/REIT securities and units continue to be valued under the existing rules applicable to quoted securities, while unquoted units must generally be valued at the NAV disclosed by the relevant InvIT/REIT. If the InvIT or REIT does not compute and disclose NAV in the manner and frequency required under the applicable SEBI regulations, the units are to be treated as having a value of ₹1 for the purposes of the RBI

**Directions.** The same ₹1 treatment expressly applies to InvIT/REIT units classified as 'infrequently traded' under the relevant SEBI regulations.

The amendments also clarify that other unquoted instruments issued by an InvIT or REIT are to be valued in accordance with the

methodology already prescribed for that type of instrument in the relevant RBI Directions. All six amendments take effect from the date of issue, i.e. 22 September 2026.

| Sr. | Regulated Entity                         | Notification / Amendment                                  | Existing Directions | Inserted Provisions     |
|-----|------------------------------------------|-----------------------------------------------------------|---------------------|-------------------------|
| 1   | All India Financial Institutions (AIFIs) | RBI/2026-27/268;<br>DOR.MRG.REC.No .232/00-00-017/2026-27 | 28 Nov. 2025        | 58A (InvIT); 58B (REIT) |
| 2   | Commercial Banks                         | RBI/2026-27/264;<br>DOR.MRG.REC.No .228/00-00-001/2026-27 | 28 Nov. 2025        | 84A (InvIT); 84B (REIT) |
| 3   | Local Area Banks                         | RBI/2026-27/265;<br>DOR.MRG.REC.No .229/00-00-001/2026-27 | 28 Nov. 2025        | 83A (InvIT); 83B (REIT) |
| 4   | Payments Banks                           | RBI/2026-27/267;<br>DOR.MRG.REC.No .231/00-00-001/2026-27 | 28 Nov. 2025        | 83A (InvIT); 83B (REIT) |
| 5   | Small Finance Banks                      | RBI/2026-27/266;<br>DOR.MRG.REC.No .230/00-00-001/2026-27 | 28 Nov. 2025        | 82A (InvIT); 82B (REIT) |
| 6   | Source document duplicated in upload     | Same AIFI amendment as item 1                             | 28 Nov. 2025        | 58A; 58B                |

## ARCHITECTURE OF THE AMENDMENTS

### Purpose of the amendments

Each notification states that the relevant 2025 Investment Portfolio Directions already contain provisions concerning market/fair

valuation of investments and that an amendment is required to ensure clarity and uniform practices in valuation of InvIT and REIT units. The stated regulatory objective is therefore standardisation of valuation treatment across the respective regulated entities.

### Statutory authority

For the AIFI amendment, RBI invokes Section 45L of the Reserve Bank of India Act, 1934. For the Commercial Bank, Local Area Bank, Payments Bank and Small Finance Bank amendments, RBI invokes Section 35A of the Banking Regulation Act, 1949. Each notification additionally refers to other enabling laws and records RBI's satisfaction that the amendment is necessary and expedient in the public interest.

### Effective date

All six notifications provide that the amendment directions come into effect from the date of issue. Accordingly, the operative date specified in each document is 22 September 2026.

## SUBSTANTIVE CHANGES

### Quoted InvIT securities and units

The newly inserted InvIT provision provides that quoted securities issued by InvITs and units of InvITs shall be valued *mutatis mutandis* in accordance with the instructions contained in the relevant RBI Directions for quoted securities.

*Effect: the amendment does not create a separate valuation formula for quoted InvIT units; instead, it expressly links their valuation to the existing quoted-security valuation framework applicable to the relevant regulated entity.*

### Unquoted InvIT units

Unquoted InvIT units are to be valued at the

NAV disclosed by the InvIT. This is the primary specific valuation rule introduced by the amendments.

Fallback rule: where the InvIT fails to compute and disclose NAV in the manner and frequency specified under the SEBI (Infrastructure Investment Trusts) Regulations, 2014, the value of its units shall be treated as ₹1 for the purposes of the relevant RBI Directions. The same treatment expressly applies where the InvIT units are classified as infrequently traded under the cited SEBI Regulations.

### Other unquoted instruments issued by an InvIT

The amendment does not prescribe a new standalone valuation formula for every other unquoted instrument. Instead, such instruments are to be valued in accordance with the methodology specified elsewhere in the relevant RBI Directions for that particular type of instrument.

### Quoted REIT securities and units

Quoted securities issued by REITs and units of REITs are to be valued *mutatis mutandis* in accordance with the instructions applicable to quoted securities under the relevant RBI Directions.

### Unquoted REIT units

Unquoted REIT units are to be valued at the NAV disclosed by the REIT. If the REIT fails to compute and disclose NAV in the manner and frequency specified under the SEBI (Real Estate Investment Trusts) Regulations, 2014, the units are to be treated as valued at

₹1 for purposes of the relevant RBI Directions. The ₹1 treatment also applies to REIT units classified as infrequently traded under those SEBI Regulations.

### Other unquoted REIT instruments

Other unquoted instruments issued by a REIT continue to be valued using the methodology specified for that class of instrument in the existing RBI Directions.

### ENTITY-WISE POSITION

| Regulated Entity    | Legal Basis                               | Inserted Clauses | Substantive Position                    |
|---------------------|-------------------------------------------|------------------|-----------------------------------------|
| AIFIs               | Section 45L, RBI Act, 1934                | 58A / 58B        | InvIT/REIT valuation rules as described |
| Commercial Banks    | Section 35A, Banking Regulation Act, 1949 | 84A / 84B        | Same substantive InvIT/REIT valuation   |
| Local Area Banks    | Section 35A, Banking Regulation Act, 1949 | 83A / 83B        | Same substantive InvIT/REIT valuation   |
| Payments Banks      | Section 35A, Banking Regulation Act, 1949 | 83A / 83B        | Same substantive InvIT/REIT valuation   |
| Small Finance Banks | Section 35A, Banking Regulation Act, 1949 | 82A / 82B        | Same substantive InvIT/REIT valuation   |

### INTERPRETATION / CONSEQUENCES

- Uniform valuation benchmark:** The principal regulatory consequence is a common valuation architecture for InvIT and REIT units across the categories of regulated entities covered by the six notifications.
- NAV dependency:** For unquoted units, the relevant regulated entity must use the NAV disclosed by the InvIT/REIT as the valuation reference.
- ₹1 regulatory fallback:** Failure by the InvIT/REIT to calculate and disclose NAV in the manner and frequency required under the cited SEBI regulations triggers a prescribed ₹1 value for purposes of the RBI Directions. This is a regulatory valuation treatment; the notification does not state that the economic or market value of the underlying investment is ₹1.
- Infrequently traded units:** The same ₹1 treatment expressly applies to units

classified as infrequently traded under the cited SEBI framework.

5. **Cross-regulatory linkage:** The RBI valuation treatment expressly depends on compliance with the relevant SEBI InvIT/REIT regulations concerning NAV computation and disclosure. Consequently, RBI-regulated entities need to consider the SEBI-status/disclosure position of the InvIT/REIT when performing valuation.

5. **Other instruments:** The amendments preserve the existing instrument-specific valuation methodology for other unquoted instruments rather than creating a universal NAV rule for every instrument issued by an InvIT/REIT.

6. **Effective immediately:** Because the amendments take effect from the date of issue, the new provisions are operative from 22 September 2026.

### COMPLIANCE / REVIEW CHECKLIST FOR REGULATED ENTITIES

1. Identify all holdings of InvIT and REIT units and classify them as quoted, unquoted or otherwise covered by the relevant investment-portfolio framework.
2. For unquoted InvIT/REIT units, obtain and retain the latest NAV disclosure from the relevant InvIT/REIT.
3. Verify whether the InvIT/REIT has computed and disclosed NAV in the manner and frequency specified under the applicable SEBI regulations.

4. Check whether any units are classified as 'infrequently traded' under the applicable SEBI regulations and apply the prescribed RBI treatment.

5. Where the NAV disclosure condition is not satisfied, apply the ₹1 valuation treatment prescribed by the amendment for purposes of the relevant RBI Directions.

6. For other unquoted instruments issued by an InvIT/REIT, identify the applicable instrument-specific valuation methodology already contained in the relevant RBI Directions.

7. Update internal investment-valuation policies, valuation worksheets, accounting controls and documentation, as applicable, to reflect the amendments from 22 September 2026.

8. Maintain an audit trail evidencing the NAV source, frequency/date of disclosure, trading classification and valuation methodology applied.

The Commercial Bank notification states that it is issued under Section 35A of the Banking Regulation Act, 1949 and is effective from the date of issue. It inserts paragraphs 84A and 84B.

The Local Area Bank notification inserts paragraphs 83A and 83B; the Payments Bank notification inserts paragraphs 83A and 83B; and the Small Finance Bank notification inserts paragraphs 82A and 82B. Each adopts the same quoted/unquoted, NAV, ₹1 fallback, infrequently traded and other-instrument framework.

### 2. RBI (Commercial Banks – Minimum Capital Requirements for Market Risk) Directions, 2026

**Notification: RBI/DOR/2026-27/472 dated 21 September 2026**

**Effective from: 1 April 2027**

**Applicable to:** Commercial Banks, excluding Small Finance Banks, Payments Banks and Local Area Banks.

#### Key Regulatory Update

RBI has introduced a standalone framework for minimum capital requirements for market risk, covering the treatment and capital requirements for interest rate risk, equity risk, foreign exchange risk and option risks. The framework also establishes detailed rules governing the boundary between the trading book and banking book and the treatment of internal risk transfers.

#### Trading Book / Banking Book

- **Trading Book:** Primarily comprises instruments classified as Held for Trading (HFT) under the RBI Investment Portfolio Directions, 2025.
- **Banking Book:** Includes HTM, AFS, FVTPL (non-HFT) and investments in own subsidiaries/JVs/associates.
- Reclassification between books cannot be undertaken for regulatory arbitrage.
- Where reclassification reduces the capital requirement, the difference must be maintained as a disclosed Pillar 1 capital surcharge.

#### Internal Risk Transfers

The framework permits internal transfer of:

- Credit risk from banking book to trading book;
- General Interest Rate Risk (GIRR); and
- CVA risk.

Recognition is subject to prescribed conditions, including documentation, matching external hedges and, for GIRR, a dedicated GIRR Internal Risk Transfer Desk approved by RBI's Department of Supervision.

#### Structural Foreign Exchange Positions

Banks may exclude specified structural foreign-currency positions from their Net Open Position, including certain investments in overseas subsidiaries, JVs, associates, branches, IFSC Banking Units and Offshore Banking Units.

The exclusion is subject to conditions relating to capital-ratio sensitivity, minimum six-month application, consistency, documentation and supervisory review. The eligible exemption is to be recalculated quarterly.

#### Market-Risk Capital Framework

Banks must use the Simplified Standardised Approach (SSA) for calculating market-risk RWAs. The framework covers:

| Risk Category      | Key Treatment                  |
|--------------------|--------------------------------|
| Interest Rate Risk | Specific + general market risk |
| Equity Risk        | Specific + general market risk |
| FX Risk            | Trading and banking book       |
| Options            | Additional non-delta risks     |

Market-risk capital requirements must be maintained continuously, at the close of each business day.

### Debt Mutual Funds / ETFs

A specific methodology is prescribed for debt MFs/ETFs where at least 90% of AUM is invested in debt instruments, constituent details and modified duration are available monthly, and NAV is available daily.

Funds failing these conditions, including funds with less than 90% debt exposure, are generally treated on par with equity for market-risk capital computation. Specified CDMDF and other investments attract a 9% capital charge.

### Securitization & Credit Derivatives

Securitization exposures in the trading book are subject to separate capital treatment depending on the date of the transaction. For post-24 September 2021 transactions, the revised securitization methodology under the 2025 Capital Adequacy Directions applies.

The framework also provides specified

100%, 80% and limited offset mechanisms for positions hedged through credit derivatives, depending on the degree of matching between the hedge and underlying exposure.

### Options & Disclosures

Banks with options exposure may use the prescribed simplified, delta-plus or scenario approaches, depending on the nature and scale of their options activities.

The Directions also introduce specified Pillar 3 market-risk disclosures, comprising qualitative and quantitative information, with the prescribed format set out in Annex I.

<https://www.rbi.org.in/Scripts/NotificationUse.aspx?Id=13705&Mode=0>

## V. OTHER UPDATES

### 1. The Telecom Consumers Protection (Thirteenth Amendment) Regulations, 2026

The Telecom Consumers Protection (Thirteenth Amendment) Regulations, 2026

were notified by Telecom Regulatory Authority of India (TRAI) on 22<sup>nd</sup> September 2026 to ensure that consumers who only require Voice and SMS services have affordable and meaningful recharge options, without being compelled to buy data bundles.

### Key Amendment

The amendment replaces the earlier requirement of offering at least one Voice-and-SMS-only Special Tariff Voucher (STV) with a more comprehensive framework. Telecom Service Providers (TSPs) must now offer Voice-and-SMS-only STVs with an appropriate tariff reduction for the following categories:

#### 1. Short validity STVs

- For every bundled Voice+SMS+Data STV with a validity of **30 days** or less, a corresponding Voice-and-SMS-only STV must be available.

#### 2. Monthly renewable STVs

- At least one Voice-and-SMS-only STV that renews on the **same date every month**.
- If that date does not exist in a particular month, renewal will occur on the **last day of that month**.

#### 3. Longer validity STVs

- At least one Voice-and-SMS-only STV with validity longer than the categories above, corresponding to longer-validity bundled STVs offered by the operator.

### Consumer Benefits

The amendment aims to:

- Increase consumer choice by providing Voice-and-SMS-only plans across more validity options.
- Reduce the need to pay for data services that some users do not require.
- Improve affordability for low-income consumers through shorter-duration recharge options.
- Ensure more transparent and fair tariff offerings.
- Support users of feature phones and consumers with limited internet usage.

[https://www.trai.gov.in/sites/default/files/2026-09/Amendment\\_22092026.pdf](https://www.trai.gov.in/sites/default/files/2026-09/Amendment_22092026.pdf)

## 2. The Telecom Commercial Communications Customer Preference (Third Amendment) Regulations, 2026

The Telecom Commercial Communications Customer Preference (Third Amendment) Regulations, 2026 were notified by Telecom Regulatory Authority of India (TRAI) on 18 September 2026 to strengthen controls against Unsolicited Commercial Communications (UCC), commonly known as spam calls and spam messages. The amendment introduces technology-driven enforcement, tighter accountability for businesses and telemarketers, and stronger consumer protection measures.

### Key Changes

#### 1. AI/ML-based Spam Detection Becomes Part of the Regulatory Framework

- Telecom Service Providers (TSPs) must use AI/ML systems to identify mobile numbers (CLIs) suspected of sending spam.

- TSPs are required to share such intelligence with other operators.
- If 5 or more caller IDs linked to the same sender are identified within 10 days, operators can initiate escalating actions such as:
  - o KYC re-verification,
  - o Physical verification,
  - o Restriction of outgoing services,
  - o Disconnection for repeat offenders.

## **2. Tougher Action on Complaints**

- Earlier, regulatory action generally required a higher complaint threshold.
- Now, action can begin when there are 3 or more unique complaints within 10 days, provided the sender is also flagged through AI-based detection.

## **3. Regulation of Robocalls and Automated Calls (A2P Calls)**

- Businesses using Application-to-Person (A2P) calls, auto-dialers, or pre-recorded voice calls must declare these to their telecom provider in advance.
- Undeclared automated calls will be treated as spam/UCC.
- A termination charge of up to ₹0.05 per minute may apply to such calls.

## **4. Stronger Controls on Telemarketers and Senders**

- Misuse of headers, templates, or telecom resources attracts stricter penalties.
- Offending telemarketers may face suspension, disconnection, and blacklisting across operators.

## **5. Better Consumer Protection**

- Consumers dissatisfied with complaint resolution can file an appeal within 15 days.
- This introduces a formal grievance escalation mechanism.

[https://www.trai.gov.in/sites/default/files/2026-09/Regulation\\_18092026.pdf](https://www.trai.gov.in/sites/default/files/2026-09/Regulation_18092026.pdf)

1. The International Financial Services Centres Authority (IFSCA) has notified the International Financial Services Centres Authority (Fund Management) (Second Amendment) Regulations, 2026. The following are pertinent amendments:

In regulation 2 of the principal regulations, in sub-regulation (1), for clause (d), the following clause shall be substituted, namely: -

“(d) “associate” means-

- i. a person, in which a director or partner or trustee of the FME or the FME or any fiduciaries as appointed in terms of sub-regulation (2) of regulation 17 of these Regulations, either individually or collectively, holds twenty per cent. (20%) or more of the paid-up equity share capital or partnership interest or such other equivalent direct economic interest, by whatever name called, as the case may be;
- ii. a person, either individually or collectively, holds twenty per cent. (20%) or more of the paid-up equity share capital or

partnership interest or such other equivalent direct economic interest, by whatever name called, as the case may be, in the FME; or

iii. any other person, in which the person referred to in sub-clause (ii) holds twenty per cent. (20%) or more of the paid-up equity share capital or partnership interest or such other equivalent direct economic interest, by whatever name called, as the case may be.

Provided that a person appointed as a fiduciary of a scheme, in terms of sub-regulation (2) of regulation 17 of these regulations, shall not be deemed to be an associate of the FME, unless such person holds any direct economic interest or control in such FME.

In regulation 23 of the principal regulations, in sub-regulation (3), the following proviso shall be inserted,

namely: -

*“Provided that a Venture Capital scheme may further invest during the subsequent round(s) of fund raising in such Investee Companies where ten (10) years have elapsed since incorporation of such companies, subject to the following conditions:*

i. The subsequent investment(s) in such Investee Companies shall be in accordance with the investment objectives and investment strategy of the scheme, provisions of its placement memorandum and internal policies of the FME in this matter;

- ii. In case of exclusion of an investor in an Investee Company, either by choice of the investor or the FME, in accordance with the placement memorandum and contribution agreement, such investor shall not be allowed to participate in the subsequent round(s) of investment in such company; and
- iii. The contribution by the scheme in any subsequent round should be limited to the extent that the post-issue beneficial interest (on a fully diluted basis) of the scheme in such Investee Company does not exceed its pre-issue beneficial interest (on a fully diluted basis) therein.”

[https://egazette.gov.in/\(S\(uwxt0op0ovue15jd m0dyrxc b\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(uwxt0op0ovue15jd m0dyrxc b))/ViewPDF.aspx)

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### INTELLECTUAL PROPERTY UPDATES

- **Public consultation on AI's impact on copyright, patent in Singapore ongoing**

A public consultation on the impact of AI on copyrights and patents is ongoing in Singapore.

The Ministry of Law and the Intellectual Property Office of Singapore launched the public consultation on August 26, 2026 at the Global Forum on Intellectual Property during Singapore IP Week.

Part II of the consultation paper titled Public Consultation on Artificial Intelligence and Singapore's Intellectual Property Regime reads: "This consultation focuses on copyright and patents, where AI raises the most immediate policy questions. Copyright law has been at the centre of global litigation and debate over AI training, AI-generated output and human authorship. Patent law faces questions about how human contribution should be assessed where AI is used to generate, evaluate or refine technical solutions, and how AI-generated disclosures should be treated as prior art."

More specifically, the public consultation focuses on three areas for copyright and two areas for patents. These are:

#### Copyright

- How to foster greater certainty and accountability in AI training
- Copyright risk management in AI deployment and use
- The nature of human creativity in AI-assisted works

#### Patents

- How existing inventorship principles should apply across the spectrum of human-AI interactions in the inventive process
- How the large-scale publication of AI-generated technical disclosures may affect the prior art landscape

- **CNIPA, EPO launch new bilateral patent fast-track**

CNIPA and the European Patent Office (EPO) have launched a new bilateral Patent Prosecution Highway (PPH) pilot programme, effective 1 August 2026, enabling applicants to request accelerated examination in one office based on positive examination results from the other. The initiative is expected to reduce prosecution timelines and costs for applicants seeking patent protection in both jurisdictions, while further strengthening international patent cooperation and supporting China's broader efforts to enhance examination efficiency and global integration of its patent system.

- **India's Draft Patent Manual**

The Indian Patent Office (IPO) has recently released the Draft Manual of Patent Office Practice and Procedure, 2026 for public consultation and has invited comments and suggestions from stakeholders within 30 days.

This is a significant development, especially following the recent changes to India's patent

laws and regulations. The draft manual is expected to offer clearer guidance on patent examination and procedural practices, helping applicants and practitioners better understand the Patent Office's approach. Overall, it is a positive step towards greater transparency, consistency, and predictability in the Indian patent system.

### • **IPO to Issue Design FERs Only Through Electronic Mode from 2 October 2026**

The Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) has announced a significant procedural change regarding the communication of First Examination Reports (FERs) in design applications.

With a view to promoting paperless administration and supporting the Government of India's Digital India initiative, the Patent Office has decided that FERs for Design Applications will ordinarily be communicated only through electronic mode with effect from 2 October 2026.

### **Key Highlights**

- FERs in Design applications will be sent to the email address provided in Form-1 under the "Address for Service in India".
- The Design e-Filing system will serve as the primary platform for receiving official communications and filing responses.
- Physical dispatch of FERs by post will ordinarily be discontinued from 2 October 2026.
- Physical communication may be resorted to only in exceptional cases where the Controller considers it necessary in the interest of justice or due to administrative exigencies.

### **Advisory to Applicants and Agents**

The Patent Office has advised applicants, registered patent agents, advocates and other stakeholders to:

- Ensure that the email address entered in the Design e-Filing Portal or Form-1 is accurate and remains active throughout the prosecution of the application.
- Regularly monitor registered email accounts, including Spam/Junk folders, to avoid missing official communications.
- Periodically check the status of design applications for updates such as: *"Application Under Process, Case is Waiting for Examination Report Reply (FER generated on date...)"*
- Promptly update any changes in contact details, including email address and mobile number, in accordance with the provisions of the Designs Act, 2000 and the Designs Rules, 2001.

### **Practical Implications**

This change places greater responsibility on applicants and their representatives to actively monitor electronic communications and application status. Failure to track emails or portal notifications may result in missed deadlines and adverse consequences during prosecution. Firms handling design portfolios should therefore review and update client contact information and establish robust monitoring mechanisms for Design FER communications.

**Effective Date: 2 October 2026**

All stakeholders are advised to take note of this change and implement appropriate measures to ensure timely receipt and response to Design FERs.

### • India IPO Issues Public Notice on Unauthorized Use of Official Logo

The Indian Patent Office (IPO) has issued a public notice prohibiting the unauthorized use of the IPO/Intellectual Property India logo, name, trade dress, and DPIIT insignia by individuals, firms, patent/trademark agents, legal practitioners, and online platforms.

#### Key Highlights:

- Unauthorized use of the IPO logo or similar identifiers on websites, social media, advertisements, stationery, and promotional materials is strictly prohibited.
- Entities currently using the IPO logo or deceptively similar designs have been directed to remove them within 7 days.
- Non-compliance may attract action under the Emblems and Names (Prevention of Improper Use) Act, 1950, Trade Marks Act, 1999, Copyright Act, 1957, and Information Technology Act, 2000.
- The IPO has advised startups, MSMEs, and applicants to verify service providers' credentials and rely only on the official IP India portal ([www.ipindia.gov.in](http://www.ipindia.gov.in)) for filings and communications.

**Impact:** Patent and trademark agents, law firms, and IP service providers should review their websites and marketing materials to ensure compliance and avoid any representation suggesting official government affiliation or endorsement.

### • India IPO Launches GI e-Filing Portal and Publishes Draft GI Guidelines

The Department for Promotion of Industry and Internal Trade (DPIIT) officially launched the Geographical Indications (GI) e-Filing Portal on 15 September 2026 (GI Day). The new portal enables online filing of GI applications, offering a streamlined and user-friendly digital platform for applicants and stakeholders. Alongside the launch, the Draft Guidelines for Geographical Indications have been published to provide greater clarity on the GI registration process. Stakeholders are invited to submit feedback on both the portal and the draft guidelines through the designated channels.

**Impact:** The initiative is expected to enhance digitization, improve filing efficiency, and provide clearer procedural guidance for GI applicants and practitioners

### • Status Report on Ayush Related Inventions in India

The Status Report on AYUSH Related Inventions in India was published by the Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM), and a detailed review and analysis of the report was undertaken during the week. The report highlights the growth of the AYUSH innovation ecosystem, recording 4,077 patent applications and 711 granted patents between FY 2014-15 and FY 2025-26, with a significant increase in patenting activity during the post-COVID period.

Further, key findings relating to patent filing and grant trends, applicant demographics,

policy developments, research outputs, and the research-to-IP ecosystem were consolidated into a presentation format. Strategic recommendations concerning institutional IP capacity, technology transfer, startup support, and commercialization pathways were also reviewed and summarized for stakeholder engagement.

- **Iraq-Baghdad: Legalized Power of Attorney is Required for Annuity Payments via New Agents**

The Iraqi Patent Office now strictly requires a newly legalized POA for all patent and industrial design annuity payments when the agent processing the renewal is not the original agent of record. Consequently, any newly appointed agent handling a renewal fee must submit an original, fully legalized POA and pay an additional official filing fee of **100,000 Iraqi Dinars (85 USD)** to record the new POA in the existing file.

To facilitate compliance while maintaining rights, the Iraqi Patent Office has introduced a revised operational mechanism regarding annuity payments under which the renewal application can now be submitted within the statutory deadline without submitting the legalized POA upfront, thereby safeguarding the registration against immediate cancellation for non-renewal. However, the official renewal fee payment will remain blocked until the original, fully legalized POA is submitted, which must be completed within a strict 30-day window from the initial renewal filing date.

- **Iraq-Kurdistan: Trademark Validity Terms**

The Directorate of Trademarks in Kurdistan has refined its administrative implementation

policies, establishing the original filing date of a trademark as the sole benchmark for determining its legal protection term. Under this updated operational practice, trademark applications filed on or after January 1, 2023, receive a 15-year validity period upon registration and will be eligible for 15-year terms upon future renewal. Conversely, all trademarks filed prior to January 1, 2023, will continue to receive 10-year registration certificates, and all renewal certificates currently being processed remain restricted to a 10-year protection term. This administrative mechanism remains in effect pending formal legislative action by the regional parliament.

- **Gaza: TM Renewal Penalty-Free Window Extended to 17 October 2026**

Palestinian Ministry of National Economy has issued a third administrative circular (Administrative Decision No. 154 of 2026, dated 16 September 2026, published 17 September 2026), further extending the penalty-free renewal window for Gaza trademarks **until 17 October 2026**.

It should be noted that this Penalty-Free Window is meant only for the trademarks that were due for renewal when the TM office was not operational which run from 07 October 2026 till 2 July 2026. As previously highlighted, the Palestinian trademarks law maintains a statutory one-month grace period, and in practice, trademarks remain renewable even after the penalty-free window closes, until the Registrar formally serves a mandatory cancellation notice on the applicant or their recorded agent of service, with a final one-month response window running from the date of notification.

- **Zambia: Transition to Digital Issuance of Intellectual Property Registration Certificates**

Effective August 19, 2026, the Patents and Companies Registration Agency (PACRA) in Zambia has officially discontinued the issuance and printing of physical certificates of all new registration certificates across all major intellectual property categories, namely Copyrights, Trade Marks, Patents, and Industrial Designs. Henceforth, all registration certificates will be generated electronically which will be accredited by the Zambian TM Registry in its electronic form. Meanwhile, this transition to digital format applies strictly to original certificates of registration as PACRA still issues certificates for renewals and documents pertaining to recordals in the standard printed format for the time being.

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