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Editorial



Manoj K Singh

Dear Friends,

We are pleased to present the October 2026 Edition of our monthly newsletter "Indian Legal Impetus". This edition brings together five articles that explore the recent key developments in arbitration and commercial litigation and how courts are defining the limits of judicial intervention and the consequences of the parties' own conduct.

Our first article opens looking at the Supreme Court's decision in *Modern Asset v. KNK Construction Private Limited,* which addresses whether a Successful Resolution Applicant can pursue pre-insolvency arbitral claims against an Operational Creditor whose claim was severely haircut during CIRP. It highlights that while the arbitration remains open, the Operational Creditor may raise a counterclaim for set-off only, preventing the clean slate principle from becoming a one-way street.

The second article examines the Supreme Court's guidelines for summary judgment under Order XIII-A CPC in *Reliance Eminent Trading & Commercial Pvt. Ltd. v. Delhi Development Authority.* It highlights that courts must "grasp the nettle" where the record permits a fair decision, without conducting a mini trial or sending a dispute to trial merely because a factual issue is raised.

Our third article analyses the Delhi High Court's partial setting aside of an arbitral award in *State Bank of India v. K.R. Anand,* reaffirming that formula-based damages such as the Emden Formula cannot substitute for proof of actual loss, while upholding the contractor's entitlement to interest for delayed payments and refunds.

Our fourth article, discusses the Supreme Court's ruling in *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd.* The Supreme Court held that a court appointing a substitute arbitrator under Section 15 of the Arbitration and Conciliation Act, 1996 cannot declare prior arbitral proceedings a nullity, as challenges must be pursued only through Sections 34 and 37.

Our fifth article closes the edition looking at *Rajiv Gaddh v. Subodh Parkash,* where the Supreme Court applied the principles of Order XXIII Rule 1 CPC to Section 11 proceedings, holding that a party which abandons arbitral proceedings cannot seek appointment of a fresh arbitrator on the same cause of action, drawing a firm line between res judicata and the procedural bar arising from abandonment.

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 occasion of Diwali. May this festival 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

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COMMERCIAL EQUITY IN POST-RESOLUTION ARBITRATIONS: AN ANALYSIS OF MODERN ASSET V. KNK CONSTRUCTION PVT. LTD.

- *Rajdutt Shekhar Singh & Parul Jain*

The intersection of the Insolvency and Bankruptcy Code, 2016 ('IBC') and the Arbitration and Conciliation Act, 1996 ('Act') presents complex legal dilemmas. In ***Modern Asset v. KNK Construction Private Limited (2026 SCC OnLine SC 2088),*** the Supreme Court of India addressed the following question of equity: *"Can a Successful Resolution Applicant ('SRA')independently pursue pre-insolvency arbitral claims against an Operational Creditor ('OC') who has already suffered a financial haircut on the same contract during the Corporate Insolvency Resolution Process ('CIRP')"*. The Court answered that the arbitration remains open to the Successful Resolution Applicants ('SRA'), but that the OC may raise its own claim as a counterclaim, to be set off against the claims of the SRA.

Brief Facts

The Appellant and the Respondent entered into a contract dated 09.08.2018, for construction work worth Rs.133.68 Crore. Following dispute, the Appellant terminated the contract on 25.02.2020. However, before this termination, the Respondent had already been admitted into CIRP on 11.12.2019.

The Appellant approached the Resolution Professional ('RP') with an operational claim of Rs.12,26,30,840. Under the Resolution Plan submitted by the erstwhile promoters of the Respondent, the Appellant's claim was subjected to a massive haircut, with only 0.72%, i.e., Rs.8,82,942 with interest, being admitted and settled. The National Company Law Tribunal ('NCLT') approved this plan on 05.04.2022, and the erstwhile promoters returned to management as the SRA and the payment under the approved plan has already been made to the Appellant.

Post-CIRP, the Respondent (now managed by the SRA) invoked the contract's arbitration clause, seeking recovery of amounts allegedly due from the Appellant under the construction agreement dated 09.07.2018. Neither the RP nor the promoters had raised any such claim of the Corporate Debtor during the CIRP. On 20.06.2023, the Respondent filed an application under Section 11 before the High Court of Karnataka for amounts allegedly payable to the Respondent under the same contract, on which the Appellant had already raised a claim before the RP and received only Rs.8,82,942 after haircut. The Karnataka High Court allowed the Section 11 application and appointed an arbitrator, against which the Appellant appealed to the Supreme Court.

Issue before the Court

1. Does an arbitration agreement survive the completion of CIRP under Section 31 of the IBC, and can an SRA invoke it to recover pre-CIRP dues?

2. Does the statutory "clean slate" principle operate as a threshold jurisdictional bar under Section 11 of the Act, or is it a substantive defence to be adjudicated by the Arbitral Tribunal under Section 16 of the Act; and can the OC whose claim stands extinguished raise it in the arbitration?

Judgment

The Supreme Court sustained the High Court's appointment of the arbitrator. Effectively, the arbitration is open to the parties. The High Court, relying on *SBI General Insurance v. Krish Spinning,* (2024) 12 SCC 1, had held that a Section 11 referral court is confined to a prima *facie* examination of the existence of an arbitration agreement, and that, **due to the doctrine of separability, the arbitration clause survives both the termination of the underlying contract and the approval of a resolution plan under Section 31(1) of the IBC. The** Supreme Court left the consequences flowing from the "clean slate" principle to be determined by the Arbitral Tribunal under Section 16 of the Act and found no ground to interfere with that appointment, and affirmed that Section 31 extinguishes the claims of creditors against the Corporate Debtor but keeps alive the claims due to the Corporate Debtor, so that the SRA is entitled to proceed against the Corporate Debtor's debtors, including by arbitration, to realise its dues.

To balance the clean slate principle with commercial fairness, the Supreme Court, following *Ujaas Energy Ltd. v. West Bengal Power Development Corporation Ltd.,* 2026 SCC OnLine SC 453, modified the impugned order and held that the Appellant is entitled to **raise a counterclaim before the Arbitral Tribunal only for the purpose of set-off** to the extent of the entire claim originally raised by the Appellant before the RP and the **Appellant would not derive any positive or affirmative relief of recovery based on the counterclaim,** as its claim stands extinguished against the Corporate Debtor and the SRA.

Conclusion

Modern Asset v. KNK Construction stands as a landmark judgment that **preserves the structural integrity of bilateral arbitration within the rigid confines of insolvency legislation.** The principal takeaway is that arbitration remains available to the parties even after the company is restructured under the IBC regime. Therefore, the SRA can commence arbitration against the OC to recover the Corporate Debtor's dues, and the OC can raise its extinguished claim as a counterclaim, to be set off against the SRA's claims. At the same time, by limiting the OC's counterclaim to set-off and denying it any positive recovery, the Court upheld the *"clean slate"* principle to ensure that no liability is pinned on the SRA. The Court, therefore, instead of permitting the IBC's *clean slate principle* to be weaponised into a one-way street, used *equitable set-off* to restore balance in the dispute resolution process. In doing so, it safeguarded the revival of distressed companies while ensuring that the protections of the insolvency law do not supersede basic contractual fairness and commercial integrity.

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"GRASP THE NETTLE": THE SUPREME COURT SETS GUIDELINES FOR SUMMARY JUDGMENT UNDER ORDER XIII-A CPC

- Nikhat Jamal & Stuti Jain

Introduction

In Reliance Eminent Trading & Commercial Pvt. Ltd. vs Delhi Development Authority[1], the Apex Court has dealt with a question '*When should a commercial dispute proceed to trial, and when should the court decide it on the available record?'* by setting out guidelines for Summary Judgment under Order XIII-A CPC. This article summarizes the guidelines enumerated and their application to the refund claim against Delhi Development Authority ("DDA"), further emphasizing the balance between efficient disposal and fair adjudication.

Background

The DDA auctioned the freehold commercial land plot No. 13 in Jasola, New Delhi in the month of March 2007. The appellant successfully bid for the said land plot with an offer amounting to Rs. 164.91 crore, which was duly paid by him till 12th July 2007.

In 2015, the former owner of the property, Simla Devi, filed an application before the Delhi High Court claiming a declaration that the acquisition lapsed due to non-payment of compensation within five years of making the award as stipulated in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. On 15 November 2016, the High Court declared that the acquisition lapsed since the award had exceeded five years and the payment of compensation had not been made. On 4 May 2017, the appeal filed by the DDA in the Supreme Court was dismissed, directing the appellant to take steps to acquire the property once again within six months, failing which the possession was to be restored back to the owner.

The plaintiff instituted an action for refund in the year 2020 and filed an application for summary judgment pursuant to Order XIII-A. It was contended by DDA that possession of the premises be restored before instituting such an action and that this action is barred by limitation and that the original owner had not been impleaded. The High Court rejected this application on 9th June 2025.

The Framework

Order XIII-A was framed against the backdrop of the broader drive towards efficiency in commercial litigation and emphasized principles of proportionality, affordability, and expedition. According to rule 3, the question posed is whether the claim or defense lacks a realistic prospect of success and whether there is any other reason for a trial. The phrase "realistic prospect" was read by the Court to mean

1 2026 INSC 436

something that is not merely an arguable one. The Court observed that there is a distinction between a summary judgment and the rejection of a plaint on the ground that a res judicata applies to it. The ambit of inquiry will thus be larger than that under Order VII, Rule 11, and it is an adversarial process.

If a neat legal issue is raised, and the court is armed with all the necessary evidence, then it must *"grasp the nettle"* and make its decision. The defendant cannot simply claim that something might arise at trial. They must identify documentary evidence available in the court files or at least prove that it will be probable that it will exist at trial. The Court does not need to conduct a miniature trial; but does not have to believe everything either.

Guidelines

The Supreme Court set out the following non-exhaustive guidelines for deciding applications for summary judgment under Order XIII-A CPC.

Procedure: The procedural requirements of Order XIII-A must be strictly followed. Apply after service of summons but before issues are framed, expressly seeking summary judgment and identifying the material facts, legal issues, documents and passages relied on, relief sought and why the opposing claim or defence has no real prospect of success. Give at least thirty days' notice of the hearing and claim to be decided. The respondent may reply within thirty days of notice of the application or hearing, whichever is earlier, identifying supporting material, proposed trial issues and further evidence unavailable at this stage. Comply with Rule 5 for additional documents. The process is adversarial, and orders under Rule 6 require reasons.

Real prospect: Examine the substance of the claim or defence, prospects must be real and substantial, not merely arguable or speculative. Summary judgment requires no real prospect of success and no other compelling reason for trial.

No other compelling reason for trial: The Courts must separately consider whether a compelling reason requires oral evidence, including the need to weigh evidence, assess credibility or draw inferences through trial. Summary judgment is appropriate only if both limbs of Rule 3 are satisfied.

Neither blind acceptance nor a mini trial: The court may analyze assertions contradicted by contemporaneous documents but must not engage themselves in a lengthy examination of disputed facts that substitute for trial without discovery or cross-examination. The inquiry requires to address whether a genuine chance of success and need for trial exists rather than to resolve controversies requiring oral evidence.

The real versus the fanciful: The Court must distinguish between substantial claims or defenses and those that rest on speculation or are undermined by the Party's own supporting material. No trial is required if proving all the proposed facts would still not establish entitlement to relief. The Courts must not dismiss complex factual disputes as fanciful by conducting a mini trial.

Grasping the nettle: A short point of law or interpretation should be decided wherein all necessary evidence is presented, and the parties have had an ample opportunity to argue it. A defendant cannot merely suggest that something may emerge at trial; it must clearly identify the existing documents or relevant evidence reasonably expected to become available.

Evidence is reasonably expected at trial: The Court may consider both the evidence on record as well as evidence reasonably expected to emerge at trial, provided that any party relying on future evidence is required to give a credible basis for expecting it. Under Rule 4, the defendant should identify further evidence unavailable at this stage and explain why the existing record does not justify summary disposal.

Exceptional power: Summary Judgement is an exceptional power which requires the Courts to resolve the disputes fairly and speedily without oral evidence or full trial. The focus remains on the Statutory Test, and that the Summary Judgement is apt only where the Courts can reach a fair determination while advancing affordability and proportionality. The question is not whether a trial can be avoided, but whether justice can be delivered without one.

When a trial is more appropriate: The Courts must prefer trial only in case where justice requires weighing evidence, assessing credibility or drawing inferences through the trial process. A mere request to examine assertions is not sufficient where the essential material is available and no legitimate issue requires oral examination. The Summary disposal should preserve the safeguards needed for fair and just determination.

Applying The Test

The Court held that the dispute related to possession has no bearing on the Appellant's refund claim. The acquisition had been conclusively lapsed, and title reverted to the original owners, and therefore DDA had no right to retain the bid amount or demand possession before refund. The Court also rejected the argument of *"counter-restitution impossibility"* because the appellant held no right, title or benefit restorable to DDA. Any independent possession claims could be pursued separately, making non-joinders of the original owners irrelevant.

The Court has also reached a similar conclusion on Limitation. Although the question of Limitation often involves mixed questions of law and fact, the materials facts in this case were not disputed. The Court held that the right to seek a refund did not arise when the acquisition lapsed in 2016, but only when the 6-month period granted to DDA to initiate fresh acquisition proceedings expired on 4 November 2017. It was well within the prescribed limitation period, as the suit was filed on 2 November 2020. The issue was suitable to be determined through summary judgment as no factual controversy requiring further inquiry or oral evidence was present.

Conclusion

The Apex Court's verdict demonstrates when summary judgment can fairly resolve a commercial dispute without trial. In the

instant case, the Court ordered a refund of Rs. 164.91 crore with interest at 7.5% from 12 July 2007 until payment, rather than the 12% sought, following withdrawal of stamp duty and property tax claims and further annulled the Conveyance Deed under Article 142 and permitted withdrawal of the Rs. 186 crore fixed deposit held with the Delhi High Court.

In sum, the Court's ruling calls for the courts to *"grasp the nettle"* where the records and evidence permit a fair decision, rather than referring a dispute to a full-fledged trial merely because a factual issue is raised. The Parties avoiding a summary judgment must show an actual chance of success or identify a compelling reason for trial, backed by existing evidence or evidence reasonably expected to become available. The Courts must also scrutinize those grounds without conducting a mini trial, preserving oral evidence and credibility assessment where genuinely necessary. The guidelines listed and the Court's decision thus advances efficient adjudication without forgoing procedural fairness.

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WIN SOME, LOSE SOME: CONTRACTOR CLAIMS UNDER THE LENS OF SBI V. K.R. ANAND

- *Sahil Sharma & Ritisha Sinha*

Introduction

Construction contracts give rise to a myriad set of disputes. There are disputes concerning delays, overhead expenditure, price escalation claims, delayed payments, release of security deposits, retention money, and interest, among others. These disputes become highly complicated when the parties disagree over who is responsible for the delay and financial consequences attributable to such delays the financial consequences attributable to such delays. While contractors seek compensation for losses arising from prolonged execution, employers often rely on contractual provisions to challenge claims that go beyond what was originally agreed. The major challenge lies in figuring out the legitimate contractual entitlements from claims that remain unsupported by facts and sufficient evidence. The decision of the Delhi High Court in ***State Bank of India v. K.R. Anand*** [1], decided on 15th September, 2026, is a useful illustration of the approach that courts are adopting lately.

The arose out of a construction contract awarded by the State Bank of India, SBI, for the construction of residential flats for its officers at Noida. The contractor, K.R. Anand, was initially successful before the arbitral tribunal on several claims. However, the award was partially set aside under Section 34 of the Arbitration and Conciliation Act, 1996 **('Act')** [2].Notably, the Court set aside the awards relating to prolongation overheads and part of the Price Variation Adjustment (PVA) claim, while upholding interest for delayed payment of bills and delayed refund of security deposits.

What makes the judgment noteworthy is not just the outcome, but the larger lesson it offers on contractor claims. The decision shows that proving a delay in the execution of a project is only part of the equation. A contractor must also demonstrate the contractual basis of its claim and support it with credible evidence. Damages cannot be awarded without proof of loss, escalation costs cannot be recovered in the absence of a contractual foundation, and arbitral tribunals must clearly explain the reasons behind their decisions. At the same time, the Court makes it equally clear that employers cannot escape responsibility where they have failed to honour their contractual payment commitments.

Factual Background

The dispute arose from a construction contract awarded by – State Bank of India to M/s K.R. Anand for the construction of 76 residential flats for bank officers in Sector 62, Noida. Awarded in December, 2012 and

1 State Bank of India v. K.R. Anand, 2026 SCC OnLine Del 7097

2 Section 34, Arbitration and Conciliation Act, 1996

formalised in January, 2013, the contract was valued at approximately ₹19.81 crores.

Although the project was originally scheduled for completion by 15th January, 2015, delays resulted in three extensions of time. While the first two extensions carried the benefit of Price Variation Adjustment (PVA), the final extension, granted until 28th January, 2016, did not. The contractor completed the work on 23rd January 2016, and the final bill was paid only in June, 2017.

Disagreement pertaining to delay in completion of the work began, wherein the Contract alleged SBI's failure to provide drawings and approval in timely manner which was the cause of prolongation. In contrast, SBI contended that approval was dependent on architectural and design requirements which could not be expedited. After Contractor claim was rejected as being time barred, Clause 38 of the GCC was invoked.

Legal Analysis

1. The Overhead Claim and the Limits of Formula-Based Damages

One of the key issues before the Court was the contractor's claim for compensation towards overhead expenses allegedly incurred due to the prolonged duration of the project.

The arbitrator concluded that neither party was solely responsible for the delay. After examining the facts, it was found that out of the overall period of delay, 175 days were attributable to SBI, while the remaining 205 days were attributable to the contractor. Proceeding on this basis, the arbitrator awarded compensation for the overhead costs corresponding to the portion of the delay attributed to SBI. For this purpose, reliance was placed on the *Emden Formula*, a method frequently used in construction and infrastructure disputes to estimate unabsorbed overhead losses resulting from project delays. Applying overheads at 7.5% of the prime cost of the tender for 5.75 months, the arbitrator awarded ₹30,27,231 against a claim of ₹65,80,940.

The High Court, however, was not convinced that the award could be sustained. In its view, there is an important distinction between proving that a contractual breach has occurred and proving the loss that flows from such a breach. The Court reiterated that, under Section 73 of the Indian Contract Act, 1872[3], damages do not automatically follow from a finding of breach. A claimant must still establish that it suffered an actual loss as a result of the breach, except in situations where the nature of the loss makes exact proof impracticable.

The Court further observed that the use of a recognised formula, such as the Emden Formula, cannot by itself justify an award of damages. While such formulae may assist in quantifying a claim, they do not dispense with the fundamental requirement of proving that a loss was in fact suffered. In other words, mathematical calculations cannot substitute evidence of loss. Since the arbitrator proceeded directly to quantify the claim on the basis of the Emden Formula without the contractor discharging the onus

3 Section 73, Indian Contract Act, 1872

The court relied on ***Kailash Nath Associates v. Delhi Development Authority*** [4] and ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd.*** [5] to reiterate that merely because a claim has been quantified, compensation cannot be awarded solely based on that and that proving the evidentiary foundation of the claim remains essential.

The Court also relied on the Supreme Court's decision in ***Unibros v. All India Radio*** [6]**,** which concerned Hudson's formula, and applied the same reasoning to the Emden Formula: such formulae are only tools for quantification. They cannot substitute for credible evidence substantiating the loss actually suffered owing to the prolongation.

Therefore, in our view, the judgment rejects the fatal assumption that if the delay is employer-induced, the contractor is automatically entitled to receive compensation. Unless formula-based calculations are supported by evidence of actual loss and are backed with the proof of increased costs, idle resources or lost opportunities, they remain speculative.

The Court was also critical of the arbitrator's reasoning. Although the Emden Formula was adopted to quantify the claim, the award did not explain why its application was justified or why direct proof of loss was unavailable. Section 31(3) of the Arbitration Act [7] requires an award to contain reasons that are intelligible and adequate, though not an elaborate judgment ***(Dyna Technologies Pvt. Ltd.*** v. Crompton Greaves Ltd., (2019) 20 SCC 1). Even on a fair reading of the award as a whole, no reason emerged for accepting the Emden Formula calculation,

2. Price Variation Adjustment: Documentary over Verbal

Clause 44.3 of the GCC provides that PVA would be restricted to work executed during the contract period, including authorised extensions. While SBI granted the first two extensions with PVA, in contrast the third extension was granted post facto without any PVA. Despite this, in the arbitrator award of ₹1,00,65,360, ₹43,81,068 as PVA for the third extension period was also awarded.

The Court observed that the arbitrator relied solely upon the answer to Question 44 given by the architect during cross-examination, wherein the architect stated that he tried to convince the bank but could not, as he could not explain to the bank the delay on the part of the contractor. The Court held that this answer cannot be construed as an admission that the third extension carried PVA, especially as the architect's letter dated 11.11.2015 recommended the extension "without any monetary benefit and without PVA". Such documentary evidence on record could not be ignored on the basis of an alleged admission in cross-examination.

The Court further observed that, although the total delay of 380 days was apportioned between the parties under Claim 1, there was no discussion under either Claim 1 or Claim 3 of which period of delay was attributable to which party. The arbitrator's conclusion that SBI was responsible for the

4 Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136

5 State of Rajasthan v. Ferro Concrete Construction (P) Ltd., (2009) 12 SCC 1

6 Unibros v. All India Radio, 2023 SCC OnLine SC 1366

7 Section 31(3), Arbitration and Conciliation Act, 1996

third extension was therefore held to be without any basis and perverse. Additionally, PVA for the third extension could have been awarded only if a contractual clause provided for it or evidence established the contractor's entitlement, and neither was present.

Noting that it had no power to modify the award, the Court applied the power of severance recognised in ***Gayatri Balasamy v. ISG Novasoft Technologies Limited***.[8] As the two PVA components were not interconnected and were dealt with on separate reasoning, the Court set aside only the PVA for the third extension, leaving the PVA awarded for the first two extensions intact.

3. Delayed Payment of Bills: A Contractor's Successful Claim

The Court upheld the award of interest for delayed payment of the running account bills and the final bill. Considering Clause 37 of the GCC, which provides for payment within fourteen working days from the date of the certificate issued by the Architect/consultant, the arbitrator found that payments were not made within the contractual timeline and awarded *₹4,21,385* as interest for the delay. The High Court held that the view taken by the arbitrator was a plausible view that could not be interfered with under Section 34 of the Act. As held by the Supreme Court, a plausible view taken by an arbitrator is not to be interfered with unless the conclusion arrived at is perverse.[9]

SBI's contention that the running bills are in the nature of advance payments, and that delay in clearing them does not entitle the contractor to interest, was rejected. SBI's reliance on ***State of Manipur v. Shangreihan Muivah***[10] was of no avail, as the clause in that case specifically provided that intermediary payments were to be treated as advances against the final payment and not as payment for work actually done and completed. No such clause exists in the present contract, and the case was distinguished.

SBI's contention against Arbitrator's jurisdiction under Section 31(7) was also rejected, as no clause was brought to the notice of the Court or the arbitrator that provided that hindered arbitrator's power to award interest on delayed payment of the running bills or the final bill. The reliance placed by SBI on J***ai Prakash Associates Limited (JAL) v. Tehri Hydro Development Corporation (India) Limited (THDC)***[11] was misplaced, as that contract in the case had a specific contractual clause that barred on awarding interest, which is absent in present facts. Moreover, the Court noted that the terms of the agreement govern the arbitrator's power to award pendente lite interest.

4. Security Deposits and Delayed Refunds

Interest for delayed release of the security deposit was also claimed. Under Clause 6.1 of the GCC, the security deposit was to be

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

9 Prakash Atlanta v. National HighFs Authority of India, 2026 INSC 76

10 State of Manipur and others v. Shangreihan Muivah, (2002) 10 SCC 516

11 Jai Prakash Associates Limited (JAL) v. Tehri Hydro Development Corporation (India) Limited (THDC), (2019) 17 SCC 786

released in two stages (50% on virtual completion along with the final payment, and the balance after the end of the defect liability period), while Clause 6.2 stipulated that no interest was payable on the amount retained by the bank as security deposit. The work was completed on 23rd January, 2016 and the defect liability period ended on 23rd January, 2017, yet the first 50% was released only on 18th June, 2017 (a delay of 321 days) and the balance on 21st March, 2018 (a delay of 424 days). The Court held that the arbitrator rightly awarded interest for the delayed period.

SBI's reliance on Clause 6.2 was rejected by the Court on two grounds. *Firstly,* SBI had not pleaded Clause 6.2 in its Statement of Defence before the Tribunal, and a plea not raised before the arbitrator cannot be raised for the first time under Section 34[12]. *Secondly,* Clause 6.2 cannot be read in isolation and must be read with Clause 6.1, which sets out the conditions for release of the security deposit. As the deposit was refunded beyond the period prescribed in Clause 6.1, Clause 6.2 did not apply.

Conclusion

The court held awards against Claim 1 and 3 as unsustainable and set them aside, however award against Claim 7 and 10 were upheld. Citing the power of severability provided in ***Gayatri Balasamy v. ISG Novasoft Technologies Limited***[13] and stating that award regarding Claim 1 and 3 is not intricately connected with Claim 7 and 10, Court set aside the impugned award only to the Extent of Claim 1 and the amount awarded towards PVA for third Extension of time under Claim 3 only.

The case presents various practical lessons that should be kept in mind by counsels and arbitrators during arbitration proceedings.

For counsels, mere application of a formula, and its acceptance in isolation by the Tribunal, is insufficient; the contractor must prove the actual loss suffered or show that it is difficult or impossible to prove such loss. Claims such as price escalation must be based on contractual provisions and contemporaneous documents rather than ambiguous answers in cross-examination. Additionally, all available pleas and contractual bars must be raised in the Statement of Defence itself.

Arbitrators, for their part, must give reasons for the award, including why a formula is being accepted and either the proof of loss or why loss cannot be proved. In claims regarding delay, the award must clarify which period of delay is attributable to which party. Additionally, arbitrators should address distinct components of claims with distinct reasoning, as courts may sever the flawed part of an award while preserving the rest, as seen in the present case.

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12 Union of India v. Susaka Private Limited, (2018) 2 SCC 182

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

JURISDICTION TO SUBSTITUTE IS NOT JURISDICTION TO NULLIFY: DEFINING THE LIMITS OF ARBITRAL REVIEW

- *Vineet Priyadarshi and Ishan Aryan*

Introduction

In the recent case of Ankhim Holdings Pvt. Ltd v Zaveri Construction Pvt. Ltd[1], the Apex court held that the court has limited jurisdiction while appointing a substitute arbitrator and it cannot traverse beyond its jurisdiction and invalidated the already conducted arbitral proceedings. The court highlighted that the Arbitration and Conciliation Act, 1996 specifically provides remedies for challenging orders of the arbitral tribunal and these should not be circumvented via proceedings under a different provision of the Act. The Supreme Court held that the Bombay High Court overreached its jurisdiction by nullifying the arbitral proceedings already conducted and further reiterated that arbitration should ordinarily continue from the stage already reached.

Background Of The Case

The dispute arose out of a partnership venture named "M/S Anmol Alliance" between Ankhim Holdings Pvt. Ltd. and Zaveri Construction Pvt. Ltd. for the development of an SRA project (a real estate development project) in Mumbai. Following disputes between the parties, the Bombay High Court appointed an arbitrator to adjudicate their claims. During the pendency of the arbitration, Zaveri Construction Pvt. Ltd. was admitted into the Corporate Insolvency Resolution Process **('CIRP')**, and a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 **('IBC')** came into effect. Despite the moratorium, the arbitral tribunal continued to pass several orders, including orders under Sections 16 and 17 of the Arbitration and Conciliation Act, 1996.

The appellants approached the Bombay High Court under Section 15(2) of the Arbitration and Conciliation Act, 1996 for appointment of a substitute arbitrator after the end of the mandate of existing arbitrator. The High Court appointed a substitute arbitrator but while doing so, went a step ahead and nullified the proceedings undertaken by the arbitral tribunal during the period when the moratorium was imposed. The High Court further held that the parties at liberty to revive the proceedings before the substituted arbitrator. The appellants being aggrieved by the holdings of the High Court approached the Supreme Court.

The principal question before the Supreme Court was whether a court, while exercising its limited jurisdiction to substitute an arbitrator, could invalidate prior arbitral proceedings and orders via the limited Jurisdiction under Section 15 of the said Act. The Court held that the High Court had travelled beyond its jurisdiction by

The Court's Reconstruction Of Section 15

The Bombay High Court during the proceedings held under Section 15(2) retrospectively assessed the validity of the orders passed by the existing arbitrator. This approach was categorically rejected by the Supreme Court. The judgment rendered by the Supreme Court gives a combined reading of Section 15(2), 15(3) and 15 (4) of the Act. The court treated these provisions as encompassing a legislative policy of continuity rather than recommencement.

The ambit of Section 15(3) provides for rehearing only in a few circumstances and it is primarily based on the agreement of the parties, failing which, the reconstituted arbitral tribunal holds the discretion to decide. Section 15(4) specifically provides that prior orders or ruling of the arbitral tribunal do not become invalid merely because there has been substitution. Reading the provisions of Section 15 together, it can be understood that the essence of the provisions is to ensure continuity of the arbitral proceedings regardless of a disruption in the mandate of the arbitral tribunal.

The High Court, by declaring the prior orders and rulings null, undermined the legislative intent behind the provision by forcing de facto to restart the proceedings. The Supreme Court held that the decision of the Bombay High Court to suspend the arbitration altogether was contrary to settled law and incompatible with the provision of Section 15.

Reaffirming the principle of procedural continuity in arbitration, the Supreme Court held that a substitute arbitrator appointed under Section 15(2) should generally proceed from the point at which the earlier arbitrator left off, rather than restart the arbitration de novo. The Court observed that requiring a fresh hearing in every case would lead to unnecessary duplication, increased costs, and significant delays, thereby frustrating the very purpose for which parties choose arbitration over traditional litigation. The Court placed relied on *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*[2] and *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*[3], both of which highlight the importance of preserving the continuity of arbitral proceedings despite a change in the tribunal's composition.

The Centrality Of Section 37

Arbitration and Conciliation Act in section 37 clearly gives appellate remedies against specific arbitral orders. This provision does not have a judicial review mechanism. The respondent had contended that the moratorium under the IBC deprived the arbitral tribunal of jurisdiction to continue the proceedings. The tribunal rejected this contention and chose to proceed with the arbitration.

Legislative intent of the drafters of this Act is not that any rejection shall be immediately appealable. This Section does not permit an appeal against every jurisdictional determination made by a tribunal. While an appeal may be filed where a tribunal accepts a jurisdictional objection and declines jurisdiction, no equivalent appeal is available where the tribunal rejects the objection and

assumes jurisdiction. This legislative choice reflects a conscious policy decision aimed at preventing excessive judicial interference during the arbitral process

Section 37 permits an appeal when a tribunal accepts jurisdictional objection and declines jurisdiction, but it does not provide an appeal where the tribunal rejects the objection and assumes jurisdiction.

Against this statutory backdrop, the Apex court observed that Maharashtra High Court's declaration of nullity effectively achieved indirectly what the Act does not permit directly. By holding that the tribunal lacked authority to proceed during the moratorium period, the High Court reversed the tribunal's Section 16 determination without following the appellate structure contemplated under the Act and later Apex Court held that the High Court was acted beyond the statutory jurisdiction.

Section 34 And The Principle Of Deferred Judicial Review

Section 34 of the Arbitration and Conciliation Act is not just a provision for setting aside arbitral awards, The Section strikes a balance between respecting the awards of arbitral tribunals and preserving the courts' supervisory function. To achieve this, it discourages judicial interference during the course of arbitration and instead postpones court review until the tribunal has concluded the proceedings and given its final award.

Arbitration and Conciliation Act follows an organized approach. Any issues with respect to jurisdiction are first decided by the arbitral tribunal itself under Section 16 of the act, in line with the principle of Kompetenz-Kompetenz. If the tribunal rejects the objection and upholds its jurisdiction, the arbitration must proceed without any immediate court intervention. Parties must ordinarily wait until the final award is rendered, after which they can seek judicial review under Section 34. This framework is designed to avoid piecemeal challenges and unnecessary court proceedings, thereby ensuring that the arbitral process remains efficient, uninterrupted, and capable of reaching a final resolution without avoidable delays. In the case of Trustee v. Sachindra Nath Chatterjee [1], the Apex Court held that a court has jurisdiction only to grant reliefs expressly authorized by law; and jurisdiction over the subject matter does not give the court power to decide every issue or pass every order sought. Any act which confers limited powers, the court cannot assume additional powers and cannot pass any order passed beyond the scope of such authority is not just erroneous but void for lack of jurisdiction.

Conclusion

In ***Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd,*** Court reaffirmed that the role of a court under Section 15 of the Arbitration and Conciliation Act, 1996 is limited to appointing a substitute arbitrator. It cannot go beyond the power which is conferred to them under the statute. The Court held that any challenge to the tribunal's decisions must be pursued through the remedies specifically provided under Sections 34 and 37 of the Act. The

1 Official Trustee v . Sachindra Nath Chatterjee, 1968 SCC Online SC 103

decision therefore reinforces the Act's underlying objective of minimal judicial interference of the legislative intent of the drafters while framing the act.

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REAGITATING ABANDONED CLAIM IN ARBITRATION: THE APPLICABILITY OF ORDER XXIII RULE 1 CPC TO SECTION 11 PROCEEDINGS

- *Reet Kaur*

Introduction

The right to invoke arbitration cannot be separated from the procedure that accompanies it. The **A&C Act, 1996** seeks to ensure efficient dispute resolution with minimum judicial interventions, and parties remain bound by the consequences of their conduct during the arbitral proceedings. Any party to arbitration cannot renounce its claims or return to court for appointment of fresh arbitrator for the same issue if the party has voluntarily withdrawn or given up on their claims.

This article focuses on the case of ***Rajiv Gaddh v. Subodh Parkash***[1] ***("Rajiv Gaddh")***, where the issue pertains to the applicability of the Order XXIII Rule 1 of the Code of Civil Procedure, 1908 ("CPC") in the context of applications filed under Section 11(6) of the Act. This judgement *per se* becomes important as it distinguishes the doctrine of res judicata from the procedural bar arising out of abandonment.

Factual Background:

In the case of *Rajiv Gaddh,* the parties jointly participated in an auction for 550 marlas of land in Hoshiarpur, Punjab, held by Jammu & Kashmir Bank. An amount of INR 4.30 Crore loaned by HDFC Bank, secured by mortgages on several properties, was borrowed for the acquisition. A tripartite agreement was signed between the parties and the bank on 20.03.2013. Due to differences in their rights under the agreement in 2015, the respondent invoked the arbitration clause. Both parties pursued their claims before the tribunal, but the respondent ceased the participation in the proceedings, raised the allegation of bias of the arbitrator and withdrew from the proceedings and sought termination of the mandate of the arbitrator through a civil suit.

The arbitrator passed an award decreeing the appellant's claims and dismissed the respondent's claim. While giving the respondent a final opportunity to revive its claim by filing an amended statement of claim within three months, the arbitrator made it clear that non-filing of an amended statement of claim would lead to termination of the proceedings in regard to the claim of the respondent. However, the respondent did not file an amended statement of claim.

Meanwhile, in separate proceedings, the Supreme Court upheld the validity of the auction and held that both parties, i.e. concerned only with the Respondent, were entitled to the land. Relying on this decision, the Respondent filed a new notice referring to the arbitration on 1.09.2021 and filed an application under section 11, seeking the

1 *Rajiv Gaddh* v. Subodh Parkash, 2026 SCC OnLine SC 507 : 2026 INSC 302 (decided on 1 April 2026) (P.S. Narasimha and Alok Aradhe, JJ.; judgment delivered by Alok Aradhe, J.).

appointment of an arbitrator. The Punjab and Haryana High Court allowed the subsequent application leaving the question of res judicata to be examined by the arbitral tribunal. The Supreme Court had to decide the above issue, i.e. whether the party that had abandoned earlier arbitral proceedings were barred from filing a fresh Section 11 Application?

Issue(s) Before the Court

The principal issue before the Court:

1. Whether a party that had abandoned earlier arbitral proceedings could subsequently seek appointment of a fresh arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996?
2. Whether the Order XXIII Rule 1 CPC apply to Section 11 proceedings?

Analysis

1. Abandonment to be Established Through Clear Conduct of the Parties

The law is well-settled that abandonment of arbitral proceedings cannot be readily inferred. As observed by Division Bench in the matter of ***DaniWooltex Corporation v Sheil Properties Pvt. Ltd.***[2], an inference in this regard can be drawn only when the conduct of claimant clearly admits that the claimant has consciously relinquished or given up the claim.

Applying arbitral principles to the facts of the present matter the Respondent had himself invoked the arbitration agreement by issuing a notice dated 06.05.2015 and thereafter filing a petition under Section 11(6) of the Act on 03.07.2015, pursuant to which the High Court appointed an Arbitrator. However, the Respondent's subsequent communication dated 29.08.2019 to the learned Arbitrator, expressly stating that he would not participate in the arbitral proceedings, suggests that he had abandoned the proceedings. Consequently, the conduct unequivocally evinced an intention to discontinue and forgo the arbitral process initiated.

2. Application of Order XXIII Rule 1 CPC

The main principal lies in the Supreme Court's application of Order XXIII Rule 1 CPC to proceedings under Section 11(6) of the Act. Any party who willingly withdraws or abandons the proceedings without being granted permission to commence fresh arbitration cannot re-agitate the same cause of action through new proceedings.

The Court observed that while a petition filed under Section 11 is not a "suit", Order XXIII Rule 1 is not confined to "suit" alone in any given circumstances. Instead, it is a more comprehensive facet of procedure that aims to prevent parties from repeatedly invoking judicial process for the same issue and disputes.

The Supreme Court in the case of ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad***[3]***.,*** applied the rationale of Order XXIII Rule 1 to the situation of abandonment before an arbitral tribunal. The principle is that a party cannot avoid the consequences of

2 *Dani Wooltex Corporation v. Sheil Properties Pvt.(P) Ltd.*, (2024) 7 SCC 1.

3 *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad,* 2024 SCC OnLine SC 3190.

abandoning an earlier proceeding merely by initiating a fresh appointment application based on the same cause of action. Although, arbitration is based on the principle of party autonomy and consent, a party cannot invoke the judicial mechanism for appointment of an arbitrator and disregard the consequences of its abandonment of previous proceedings.

Limitation & Scope for Section 11

Despite Section 11 primarily focuses on the existence of an arbitration agreement, the Court considered maintainability considering the parties prior conduct, actions, considering the procedural prohibitions against repetitive litigation.

Relying on ***Indian Oil Corporation Ltd. v. SPS Engineering Ltd.,*** the Court accepted that substantive res judicata falls outside Section 11.

Thus, the judgment appears to distinguish: *first*, whether the substantive claim is barred by the doctrine of *res judicata;* and *second,* whether the institution of fresh proceedings is prohibited on account of the applicant having abandoned earlier proceedings without liberty to re-agitate the same cause. The former falls outside the scope of Section 11. The latter concerns the maintainability, and may be relevant in such circumstances. A party cannot rely on the limited scope of Section 11 to avoid the consequences of its own decision to abandon earlier proceedings and restarting them on the same cause of action.

Two further points deserve emphasis. First, ***IOC v. SPS Engineering*** was decided in 2011, before the Arbitration and Conciliation (Amendment) Act, 2015 inserted Section 11(6-A). Since then, the seven-Judge Bench in ***Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899,***[4] and the three-Judge Bench in ***SBI General Insurance Co. Ltd. v. Krish Spinning***[5], have held that the referral court's examination under Section 11(6-A) is limited to the *prima facie existence* of an arbitration agreement, and that issues such as accord, satisfaction and the limitation of the underlying claims are to be left to the arbitral tribunal. *Rajiv Gaddh* does not refer to either decision.

Secondly, even after *Krish Spinning,* requires scrutiny of the application's limitation, distinct from claim limitation. The bar on abandonment in *HPCL Bio-Fuels and Rajiv Gaddh* similarly targets the application and not the claim. Because of the fact-sensitive nature of abandonment, courts should require clear record evidence, such as express written repudiation, avoiding contested, evidence-heavy inquiries discouraged by *Interplay* and *Krish Spinning*.

3. Whether the Subsequent Application can create fresh cause of action

The Court in the *Rajiv Gaddh* held that the subsequent application under Section 11(6) of the Act was based on the very same cause of action and therefore was barred by the rules incorporated in Order XXIII Rule 1. The Court reasoned that the only issue

4 Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899 (2024) 6 SCC 1.

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

sub judice in Civil Appeal No. 1599 of 2011, filed by the landowners, was the validity of the auction, and that the dispute between the parties was not its subject matter; its dismissal therefore gave rise to no fresh cause of action. Furthermore, there is a significance in distinguishing between a subsequent occurrence relating to the circumstances of an existing dispute and one that creates an independent claim. Thus, court held that "it is axiomatic that the subsequent application filed under Section 11(6) was based on the same cause of action and was barred on theprinciples contained in Order XXIII Rule 1 CPC is founded on Public Policy (para 19).

Conclusion:

The same cause of action that had been the focus of the earlier arbitral proceedings which the respondent had abandoned was the basis for the respondent's subsequent application under Section 11. In such circumstances, the principles governing Order XXIII Rule 1 CPC bar the respondent from seeking a fresh appointment of an arbitrator and reminds that withdrawal from arbitral proceedings may have consequences and that the Act does not permit abuse of process.

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RECENT UPDATES

CORPORATE AND DIRECT TAX UPDATE

I. SEBI

1. Introduction of Credit Risk-o-Meter for Debt Securities

SEBI has introduced a mandatory "Credit Risk-o-Meter" to provide investors with a colour-coded visual representation of the credit risk associated with a debt security. The requirement applies to listed and proposed-to-be-listed NCS, Commercial Papers, Securitised Debt Instruments, Security Receipts and Structured Debt/Market Linked Debentures, whether issued through public issue or private placement.

The Credit Risk-o-Meter is required to be disclosed in the offer document, abridged prospectus, private placement memorandum, advertisements and OBPP web/mobile platforms. The risk level will be mapped against the applicable credit rating, ranging from "Lowest Credit Risk" (AAA/A1+) to "High to Very High Risk of Default" (B/C/D and A4/D), using prescribed colour codes.

Where multiple credit ratings exist, the Credit Risk-o-Meter will reflect the lowest rating, although all ratings may be disclosed. Specific disclosures are also prescribed for unsecured instruments and cases where the CRA reports "Issuer is Not Cooperating" (INC).

For Online Bond Platform Providers (OBPPs), the circular additionally requires updates to the Credit Risk-o-Meter within 24 hours of receiving a rating-change intimation, prominent display before investment action buttons, prescribed disclosure in rating-related advertisements, and appropriate web/mobile visualisation. OBPPs are also required to maintain automated updates, prohibit manual overrides and maintain audit trails.

Effective date: The requirements will come into force 45 days from October 7, 2026.

SEBI | Introduction of Credit Risk-o-Meter as an additional disclosure mechanism for debt securities

2. Exemption from Mandatory Merchant Banker Appointment for Certain Private Placements

SEBI has relaxed the mandatory requirement for appointment of a Merchant Banker for private placement of debt securities by certain eligible issuers.

An issuer may dispense with the appointment of a Merchant Banker where all prescribed conditions are satisfied, including that:

- the issuer is regulated by SEBI, RBI, IRDAI or PFRDA;
- the issuer has been listed on a recognised stock exchange for at least one year and has no pending SEBI/stock exchange fines or penalties relating to LODR compliance;
- there has been no default during the preceding three financial years and the current financial year in respect of specified debt-related payment obligations, supported by a statutory auditor certificate;
- the debt security is unsubordinated/senior and secured by a first or pari passu charge on identifiable assets, subject to the specified exception for CPSEs/PSUs and statutory bodies; and
- the debt security is rated AA- or above, with the lowest rating being considered where multiple ratings exist.

The relaxation is intended to facilitate ease of debt issuance and expand access to high-rated securities. Stock exchanges may prescribe additional operational requirements, including disclosure formats and submissions.

Effective date: Immediate.

SEBI | Exemption from the requirement of mandatory merchant banker appointment for debt issued through private placement by certain listed issuers

3. Increase in Permissible ISINs for Privately Placed Debt Securities

SEBI has revised the framework governing the number of ISINs that may mature in a financial year for debt securities issued through private placement, with the objective of facilitating fundraising and improving issuers' asset-liability management.

The revised framework provides:

Category	**Permitted ISINs maturing in a financial year**
Overall limit	17 ISINs
Capital gains tax debt securities under Section 54EC	Additional 6 ISINs
Plain vanilla debt securities	12 ISINs
Structured debt / MLDs / FRBs / ZCBs / Tier II bonds	5 ISINs
Issuer exclusively issuing structured/MLD/FRB/ZCB/Tier II securities	12 ISINs

For plain debt securities, once the outstanding amount maturing in a financial year reaches ₹15,000 crore, one additional ISIN may be permitted for every additional ₹3,000 crore.

Further, ISINs relating to GoI-serviced/EBR bonds and ESG debt securities will be excluded while calculating the applicable ISIN limits. Existing ISINs for certain legacy FRBs, ZCBs and Tier II bonds are also grandfathered subject to the conditions specified in the circular.

Effective date: Immediate.

https://www.sebi.gov.in/legal/circulars/oct-2026/review-of-provisions-related-to-international-securities-identification-number-isin-for-debt-securities-issued-on-private-placement-basis_105076.html

II. MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE)

The Ministry of New and Renewable Energy (MNRE) has released an official guideline regarding the Standard Operating Procedure (SOP) for Updating Model Numbers of Solar PV Modules in Bureau of Indian Standards (BIS) Registration.

The key points of this notification issued by the Ministry of New and Renewable Energy (MNRE) outline a mandatory system to improve sourcing traceability:

1. **Mandatory Country-Coded Suffix:** All new and existing solar PV module model numbers registered with the Bureau of Indian Standards (BIS) must append a four-character country identifier suffix using the format **"MMCC"**.
   - **MM:** Represents the 2-letter ISO country code of where the **module manufacturing unit** is located.
   - **CC:** Represents the 2-letter ISO country code of where the **solar cells** were manufactured.

   Example: A module assembled in India using solar cells made in China will have the suffix - **INCN.**
2. **Separation of Bills of Materials (BOM):** If a single original module model uses cells from multiple countries, manufacturers must create distinct, separate model numbers for each country-specific configuration. A single model number can no longer cover cells from multiple countries.
3. **180-Day Compliance Window:** Existing BIS-registered module manufacturers are given a 180-day grace period from the date of issue to submit applications and register their revised country-coded model numbers.
4. **No Fresh Physical Testing Fees:** If the update only involves separating or removing already-approved solar cells within the existing BOM (without adding new components or design changes), no fresh physical testing is required. The laboratory will issue a supplementary test report following a documentary verification.
5. **Consistent Universal Documentation:** The newly approved country-coded model numbers must be used uniformly across all product markings, labels, datasheets, test reports, and BIS certificates.

This directive establishes the formal guidelines for modifying registered model numbers, effective from October 5, 2026, through April 4, 2027

https://cdnbbsr.s3waas.gov.in/s3716e1b8c6cd17b771da77391355749f3/uploads/2026/10/20261005188912354 8.pdf

III. INCOME TAX

1. CBDT notifies revised form no. 161 for waiver of penalty under the Income Tax Act, 2025.

The Central Board of Direct Taxes (CBDT), vide Notification No. 134/2026-Income Tax dated 8 October 2026, has notified the Income Tax (Sixth Amendment) Rules, 2026, under Section 533 read with Section 440 of the Income-tax Act, 2025. The amendment takes effect from the date of its publication in the Official Gazette. It amends Rule 231 of the Income Tax Rules, 2026, by inserting the words "or waiver" after the word "imposition" and substitutes Form No. 161 with a revised form for filing an application seeking waiver of penalty under Section 440(2).

The revised form requires applicants to provide personal details, including name, PAN, address and contact information, as well as particulars of the assessment or reassessment order, tax year, document identification number, assessed income and under-reported income. It also differentiates between under-reporting attributable to specified categories of misreporting under Section 439(11) and other cases of under-reporting. Further, the form contains provisions for computing tax and interest, additional income tax payable in lieu of penalty, the aggregate amount payable for availing the waiver and the relevant challan payment details. Applicants are also required to furnish a verification confirming the accuracy of the information provided, the status of any appeal and their authority to submit the application.

The accompanying instructions specify the details required regarding names and addresses, clarify the payment requirements and indicate that certain information may be pre-filled. Accordingly, the amendment updates the prescribed procedural requirements and application format for seeking penalty waiver under the Income Tax Act, 2025.

https://www.incometaxindia.gov.in/documents/d/guest/notification-no-134-2026-pdf

2. The Government of India has notified the India-Mauritius DTAA Protocol signed on 7 March 2024, which came into force on 10 August 2026.

Key changes:

- The treaty preamble has been revised to emphasize that the agreement is intended to prevent double taxation without creating opportunities for tax evasion, tax avoidance, or treaty shopping
- A new Article 27B (Entitlement to Benefits) introduces the Principal Purpose Test (PPT).
- Treaty benefits can be denied if obtaining the benefit was one of the principal purposes of an arrangement or transaction, unless the taxpayer can demonstrate that the benefit is consistent with the treaty's object and purpose.
- The amendment strengthens anti-abuse provisions and aligns the India-Mauritius treaty with international OECD BEPS standards.

Effective Date: The provisions apply from 10 August 2026.

https://www.incometaxindia.gov.in/documents/d/guest/notification-no-135-2026-pdf

IV. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. SEBI REVISES THE CLOSING AUCTION SESSION: WHAT CHANGES AND WHEN

On October 15, 2026, SEBI issued a circular (No. HO/47/11/11(3)2025-MRD-POD2/I/23843/2026) revising the Closing Auction Session ("CAS"), the end-of-day auction that has set the closing price of F&O stocks since August 3, 2026. In brief:

- the auction becomes shorter and later: 3:30 p.m. to 3:40 p.m. instead of 3:15 p.m. to 3:35 p.m.;
- on expiry day, F&O contracts will no longer settle at the auction price; they will settle at the average price of trades in the last 30 minutes of normal trading;
- derivatives trade until 3:45 p.m., but expiring index contracts stop at 3:30 p.m. on expiry day; and
- pending iceberg orders will move into the auction, fully disclosed, unless the investor opts out.

Most changes apply from December 7, 2026; the iceberg order changes apply from February 8, 2027.

Most changes apply from December 7, 2026; the iceberg order changes apply from February 8, 2027.

V. RESERVE BANK OF INDIA (RBI)

1. Risk Management and Inter-Bank Dealings

The RBI has amended the Risk Management and Inter-Bank Dealings framework with respect to INR derivative transactions. Key changes are as follows:

- Non-Deliverable Derivative Contracts (NDDCs) involving INR may now be offered to non-resident users only for hedging purposes. Earlier, such transactions could be undertaken without any purpose restriction.
- Authorised Dealers (ADs) are now required to maintain a Foreign Exchange Risk Reserve (FERR) for foreign exchange derivative contracts involving INR entered into for hedging their own currency risk exposures.
- The FERR shall be applicable where the AD is purchasing foreign currency against INR and shall be maintained at 20% of the INR equivalent of the notional contract value.
- The reserve must be maintained in the form of cash deposits with the RBI on a daily basis and shall continue until the contract is terminated.
- These directions will apply prospectively to derivative contracts entered into after the issuance of the notification.

The amendments are intended to strengthen risk management practices and ensure that INR derivative transactions with non-residents are undertaken primarily for genuine hedging requirements.

VI. MISCELLANEOUS

2. EPFO Amnesty Scheme, 2026

Amnesty Scheme, 2026, launched by the Employees' Provident Fund Organisation (EPFO) under the Ministry of Labour & Employment. It offers a one-time opportunity for specific Provident Fund (PF) Trusts to regularise their exemption status.

Here is the key information from the release:

Objective & Eligibility

- Target Audience: PF Trusts that are already recognized under the Income Tax Act, 1961, but lack a formal exemption order under the EPF&MP Act, 1952, or the Code on Social Security (CoSS), 2020.
- Purpose: Provides retrospective regularisation of their exempt status.

Key Dates & Deadlines

- Scheme Notification: 29 June 2026.
- Operational Guidelines Issued: 11 July 2026.
- Application Deadline: 28 December 2026 (the scheme is open for exactly six months).

Key Benefits

- Statutory Waivers: Eligible trusts are waived from CoSS, 2020 requirements, including minimum employee headcount, corpus size, and the 3-year compliance rule.
- Operational Flexibility: Post-regularisation, establishments gain the complete flexibility to operate either as an exempt or an unexempt establishment.
- Tax Continuity: Regularisation ensures the continuance of income tax benefits available to tax-recognized trusts.

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INTELLECTUAL PROPERTY UPDATES

- **Supreme Court to Examine Patent Term Adjustment Under Section 53 of the Patents Act**

The Supreme Court of India has issued notice in a significant matter concerning the interpretation of Section 53 of the Patents Act, 1970, and whether patentees should receive additional protection where substantial delays in patent grant reduce the effective term of a patent.

The case challenges the existing framework under which a patent term is calculated as 20 years from the filing date, regardless of the time taken by the Patent Office to grant the patent. The petitioner's patent application, filed in 2005, was granted only in 2012, resulting in a considerable reduction in the post-grant exclusivity period.

The petitioner has urged the Court to consider a Patent Term Adjustment (PTA) mechanism, similar to that available in the United States, to compensate for delays attributable to the Patent Office. The matter arises from a challenge to a Calcutta High Court judgment that upheld the validity of Section 53.

Why it matters: The Supreme Court's decision could have far-reaching implications for patent holders in India, particularly in sectors where lengthy prosecution delays may substantially erode the effective commercial life of patented inventions.

- **Supreme Court Upholds Delhi High Court Ruling in Ilaiyaraaja v. Saregama Copyright Dispute**

The Supreme Court has refused to interfere with the Delhi High Court ruling holding that composer Ilaiyaraaja does not own the copyright in the lyrics and sound recording of the song En Iniya Pon Nilave. The Court upheld the finding that Saregama owns the copyright in the sound recording, while Ilaiyaraaja's rights are limited to the musical composition.

The decision reiterates the distinction between copyright in a musical work and copyright in the corresponding sound recording, emphasizing the importance of chain of title and assignment agreement.

- **Draft Guidelines for Registration of Designs Relating to GUI & Icons Released for Public Consultation**

The Indian Designs Office has released the Draft Guidelines for Registration of Designs Relating to GUI & ICON etc. and invited comments from stakeholders. Comments/suggestions may be submitted to controllerdesign@ipo.nic.in and cgoffice.in@gov.in within 30 days from the date of publication of the Public Notice.

- **Delhi HC Grants Pre-Release Anti-Piracy Protection for Drishyam: The Conclusion**

The Delhi High Court has granted an ad interim ex parte injunction restraining nine rogue websites from hosting, streaming,

rogue websites from hosting, streaming, communicating, or making Drishyam: The Conclusion available for viewing or downloading without authorization. The Court held that the producer had established a prima facie case and that the potential harm caused by piracy could not be adequately compensated through monetary damages.

The Court further directed Domain Name Registrars (DNRs), ISPs, and other concerned intermediaries to suspend, block, disable, or deactivate the infringing domain names within 72 hours of receiving notice from the plaintiff. It also granted liberty to the plaintiff to seek similar action against any newly identified websites engaged in piracy of the film.

- **Mrs. Shakti Sagar v. The Delhi Law House & Ors. (Delhi High Court)**

The Delhi High Court dismissed the plaintiff's application for interim injunction in a copyright dispute concerning 47 literary works. The Court held that the plaintiff had failed to establish a prima facie case of ownership over the asserted copyrights. Issues relating to authorship, assignment deeds, wills, and other title documents were found to require detailed examination at trial. The Court also noted that the plaintiff had not demonstrated any substantial concern regarding monetary losses and held that the balance of convenience favoured the defendants. Accordingly, the application for interim relief was rejected

- **Supreme Court Examines Patent Term Calculation**

The Supreme Court of India has issued notice in *Gunjan Sinha v. Union of India* and appointed an amicus curiae to assist in examining concerns regarding the calculation of patent term from the filing date, particularly where grant delays reduce the effective period of patent protection. The Court has not made any ruling on the issue yet. As of now, the law remains unchanged, and patents in India continue to enjoy a 20-year term from the filing date under the Patents Act, 1970.

- **Levi Strauss & Co. v. Rakesh Kumar & Anr. (Delhi District Court)**

In an ex parte trademark infringement and passing-off action, the Delhi District Court granted a permanent injunction in favour of Levi Strauss & Co. against the defendants' use of deceptively similar “LEVI'S” marks on clothing products. The Court held that the impugned marks and goods were likely to cause consumer confusion and amount to infringement and passing off.

The Court directed the defendants to cease use of the infringing marks and ordered the surrender and destruction of the infringing goods and materials. Taking note of the recovery of approximately 680 pairs of infringing jeans, the Court awarded compensatory damages of ₹75,000 in favour of the plaintiff. However, the Court declined to grant aggravated damages or a decree for rendition of accounts.

- **Delhi High Court Protects ‘BENNE’ Restaurant Trademark**

The Delhi High Court has granted an interim injunction in favour of Shimow Hospitality Private Limited, restraining a Delhi-based restaurant, Benne Delhi, from using the

trademarks "BENNE", "BENNE DELHI" or any other identical or deceptively similar marks in relation to restaurant and food services. The Court held that the plaintiff, which operates multiple South Indian restaurants under the "BENNE" brand, had established a prima facie case of trademark infringement and passing off, and that continued use of the impugned mark was likely to cause consumer confusion and irreparable harm to its goodwill and reputation. The injunction will remain in force pending further proceedings, reaffirming the protection available to prior users and brand owners against unauthorized adoption of identical marks in the hospitality sector.

- **Bombay High Court Refuses Interim Injunction Against JioStar in 'Queen Forever' Dispute**

  The Bombay High Court has refused to grant interim relief to Phantom Studios in its ₹250 crore suit against JioStar India concerning the proposed film Queen Forever. Phantom Studios alleged that the film is an unauthorized sequel to the 2014 film Queen and infringes its claimed joint ownership and derivative intellectual property rights. However, the Court declined to restrain JioStar India from producing, promoting, or releasing the film at this stage, while leaving the substantive issues relating to ownership and exploitation of sequel and derivative rights to be decided in the pending proceedings.

- **Bengaluru Court Grants John Doe Injunction in Favour of Ranabaali Producers**

  A Bengaluru Court has granted an ex parte interim John Doe injunction in favour of Mythri Movie Makers, producers of the film Ranabaali, restraining both identified defendants and unknown persons from publishing, circulating, or disseminating allegedly false and defamatory content concerning the film. The order was passed in response to allegations of a coordinated online disparagement campaign, including manipulated ratings and negative publicity purportedly aimed at affecting the film's reputation and commercial prospects ahead of its release. The matter is scheduled for further hearing on 6 November 2026, with the injunction remaining in force pending consideration of the dispute.

- **Delhi High Court Imposes ₹1 Cost on Niva Bupa for Misuse of IP Jurisdiction**

  The Delhi High Court has held that mere reference to a company's trademark while criticising its products or services does not amount to trademark infringement. In a suit filed by Niva Bupa Health Insurance Company Limited against social media influencer Vishal Rattewal, the Court ruled that the influencer's use of the insurer's name in critical social media posts was not "use in the course of trade" under the Trade Marks Act, 1999, and therefore did not constitute an intellectual property dispute. Observing that the matter was improperly brought before the Intellectual Property Division, the Court termed it a misuse of the Division's special jurisdiction and permitted withdrawal of the suit with liberty to pursue appropriate civil remedies, subject to payment of a nominal cost of ₹1 to the defendant. The ruling underscores that trademark law cannot be invoked to stifle consumer criticism or commentary where there is no commercial use of the mark.

- **Delhi High Court Grants Permanent Injunction Protecting 'ANANTARA' Trademark**

  In a significant trademark enforcement ruling, the Delhi High Court Grants Permanent Injunction Protecting 'ANANTARA' Trademark Against Infringing Real Estate Projects decision permanently restrained the defendants from using "ANANTARA" and its variants, including "ANANTARA DOWNTOWN" and" ANANTARA RESIDENTIAL RESORT," for real estate and allied services. The Court held that the adoption of the plaintiffs' trademark in its entirety was likely to cause consumer confusion and create a false association with the well-known ANANTARA hospitality brand.

  Adding descriptive suffixes to a reputed trademark does not negate infringement where the dominant and essential feature of the mark remains identical. The ruling reinforces robust protection for well-known brands against unauthorized use in allied sectors such as real estate.

- **Delhi High Court Grants Ex Parte Injunction to UPL Against Agro Orbit Hub in Agrochemical Trademark Dispute**

  The Delhi High Court has granted an ex parte ad interim injunction in favour of UPL Limited and UPL Sustainable Agri Solutions Limited, restraining Agro Orbit Hub Pvt. Ltd. from selling, advertising, or promoting agrochemical products bearing UPL's registered trademarks without authorization.

  The Court observed that UPL had established prima facie rights in its marks, along with significant goodwill and reputation. Rejecting Agro Orbit Hub's contention that it was merely an intermediary platform, the Court noted that the company actively promoted the disputed products through sections such as "Popular Brand" and "Flash Deals." The Court further held that the defendants' conduct appeared prima facie dishonest and likely to cause consumer confusion.

  Accordingly, the Court directed the removal of the infringing listings and restrained the defendants from dealing in products bearing UPL's trademarks without requisite authorization and regulatory compliance, reinforcing the protection available to trademark owners against unauthorized online sale of agrochemical products.

- **Bombay High Court Protects NATURAL Ice Cream Trademark Against Fake Franchise Scam**

  The Bombay High Court has granted ad-interim relief in favour of **Siddhant Ice Creams LLP**, proprietor of the well-known **NATURAL** ice cream brand, restraining unknown parties from misusing its trademarks, copyrights, websites, and branding to operate fraudulent franchise schemes. The Court found a strong prima facie case of trademark infringement and passing off, noting the brand's significant goodwill and market presence since 1984. The defendants were restrained from using the **NATURAL** mark or any deceptively similar variations through websites, domain names, emails, and social media platforms.

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