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## Legal Updates

**Supreme Court holds that relief under Section 9 of the AC Act is maintainable at the post-award stage at the instance of an unsuccessful party**

In *National Projects Construction Corporation Ltd. v. Ishvakoo (India) Pvt. Ltd.*, Civil Appeal No. 5819/2025, vide judgment dated 11.08.2026, the Supreme Court of India has held that an application under Section 9 of the Arbitration and Conciliation Act, 1996 ("**AC Act**") is maintainable even at the post-award stage at the instance of an unsuccessful party, although the threshold for granting such relief is higher.

Disputes arose between the parties pursuant to an understanding under which the Respondent received a mobilisation advance against bank guarantees. High Court directed that bank guarantees must be kept alive till the arbitration award and, if challenged, till the disposal thereof. Appellant could invoke the guarantees if the award ultimately required recovery. The Appellant invoked the guarantees before the award when the Respondent failed to keep them alive. Ultimately, the Respondent's claim was dismissed however, the Appellant had not filed any counterclaim. In a challenge against the award, the High Court directed the Appellant to deposit the amount with the Court, which was upheld by the Division Bench.

The Appellant contended that Section 9 of the AC Act cannot be used to grant relief which effectively amounts to final adjudication of rights pending under Section 34 of the AC Act and post-award relief under Section 9 of the AC Act is ordinarily intended to protect the fruits of an award. The Respondent contended that the Appellant had not filed a counterclaim for recovery of the mobilisation advance and Section 9 of the AC Act confers sufficiently wide powers to grant such interim protection.

The Supreme Court has held as follows:

(a) Section 9 of the AC Act is maintainable even at the post-award stage at the instance of an unsuccessful party, although the threshold for granting such relief is higher.

(b) In such cases, relief should ordinarily be granted only in rare and compelling cases to prevent irreparable prejudice and preserve the efficacy of the proceedings under Section 34 of the AC Act.

(c) The relevant considerations include (a) existence of a *prima facie* case, (b) balance of convenience, (c) irreparable harm/injury, and (d) reasonable expedition in approaching the Court.

(d) Section 9 of the AC Act permits the Court to grant a broad range of interim measures, including measures under the residuary "just and convenient" power. However, this discretion must be exercised judiciously and not arbitrarily, with the underlying purpose of promoting the efficacy of arbitration.

Applying these principles, the Supreme Court dismissed the appeal and upheld the direction to deposit the money as it found that the Respondent had made out a rare and compelling case warranting protection under Section 9 of the AC Act.

The judgment dated 11.08.2026 can be accessed *here*.

**Supreme Court holds that uncrystallized damages cannot be treated as 'operational debt' for the purpose of adjudication under Section 9 of the IBC**

In *Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt. Ltd.*, Civil Appeal No. 876/2021, vide judgment dated 12.08.2026, the Supreme Court has *inter alia* held that claims arising from suspension, idling and demobilisation of works under an EPC contract are in the nature of damages and cannot be treated as 'operational debt' under Section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") unless such claims have been adjudicated and crystallised by way of adjudication by a court of competent jurisdiction.

The dispute arose out of an EPC contract for a gas-based power station, under which the contractor i.e., the Respondent, alleged non-payment of contractual dues. The EPC activities were stopped, and contracts were terminated with the vendors and sub-contractors however, the EPC contract was not terminated. The respondent issued a statutory demand notice under Section 8 of the IBC and thereafter filed an application under Section 9 of the IBC, which was admitted by the National Company Law Tribunal ("**NCLT**") and Corporate Insolvency Resolution Process ("**CIRP**") was initiated. This was upheld by the National Company Law Appellate Tribunal ("**NCLAT**"). The Supreme Court set aside the said orders, with liberty to the Respondent to approach the appropriate dispute-resolution forum under the EPC contract for adjudication of its claims.

The Supreme Court has held as follows:

(a) The EPC contract continued to subsist as neither party exercised the contractual termination mechanism. There is a distinction between Efflux of time (natural mode by which a contract may come to an end) and frustration under Section 56 of the Contract Act (supervening, unforeseen event making performance impossible or unlawful). There is no concept of "frustration due to efflux of time".

(b) The amounts payable under the EPC payment schedule constituted operational debt however, suspension, idling and demobilisation charges are essentially damages arising from alleged contractual breach. Liquidated or unliquidated damages do not constitute operational debt unless they have been adjudicated and crystallised by a competent court or tribunal.

(c) Application under Section 9 of the IBC is barred where there is a genuine pre-existing dispute relating to the debt. Silence by itself does not necessarily establish absence of dispute however, prolonged silence is strong evidence against a a pre-existing dispute.

(d) The right to apply under Section 9 of the IBC accrues when the default occurs i.e., when a debt becomes due and payable and is not paid. The subsistence of the EPC contract does not create a continuing cause of action for an already committed payment default. Repeated legal notices do not extend limitation in the absence of a written acknowledgment of liability. Mere service of a notice of demand would neither revive a time-barred claim nor would give rise to a fresh cause of action.

The judgment dated 12.08.2026 can be accessed *here*.

**Bombay High Court holds that absence of prior approval of the NCLT under Section 33(5) of the IBC prior to initiation of arbitration does not render it *void ab initio***

In *Tecpro Systems Limited (In Liquidation) v. Reliance Infrastructure Limited*, Commercial Arbitration Application No. 245/2026, vide judgment dated 22.07.2026, the Bombay High Court has held that prior approval from NCLT under Section 33(5) of the IBC is mandatory before a liquidator initiates arbitration on behalf of the corporate debtor however, the absence of such prior approval does not render it *void ab initio*.

In this case, the parties entered into a Purchase Order for supply of goods. The Petitioner went into liquidation and a liquidator was appointed, subsequent to which the liquidator issued a notice under Section 21 of AC Act to the Respondent without the prior approval of the NCLT. The NCLT subsequently granted post facto approval, after which the Petitioner filed an application for appointment of an arbitrator. It was contented by the Respondent that prior NCLT approval under Section 33(5) of the IBC is mandatory. Notice under Section 21 of the AC Act constitutes the commencement of arbitral proceedings and thus, since the notice was issued without prior approval, the arbitration proceedings were initiated in breach of Section 33(5).

The High Court has held as follows:

(a) Section 33(5) of the IBC contains expressly provides that after a liquidation order, no legal proceeding can be instituted by the corporate debtor, except by the Liquidator '*with the prior approval of the Adjudicating Authority*'.

(b) The word '*prior*' has significance and accordingly, the Liquidator must obtain NCLT approval before instituting legal proceedings.

(c) There is a distinction between mandatory requirement of prior approval and legal consequence of non-compliance with that requirement.

(d) Section 28(4) of the IBC expressly provides that certain actions undertaken without the required prior approval of the Committee of Creditors are void. However, Section 33(5) of the IBC does not contain any such equivalent provision declaring legal proceedings initiated without prior NCLT approval to be void.

(e) Although prior approval under Section 33(5) is mandatory, absence of prior approval does not render the proceedings *void ab initio*. Instead, the proceedings remain ineffective until the requisite approval is obtained.

The Court thus held that the arbitration commenced from the date on which approval was granted and any procedural steps taken before the grant of approval must be undertaken afresh.

The judgment dated 22.07.2026 can be accessed *here*.

**Bombay High Court has held that finding on existence of an arbitration agreement under Section 16 of the AC Act does not constitute an interim award**

In *I.A. & I.C. Private Limited & Ors. v. Atul & Arkade Realty*, Commercial Arbitration Petition (L) No. 2846/2025, vide judgment dated 27.07.2026, the Bombay High Court has held that finding on existence of an arbitration agreement under Section 16 of the AC Act does not constitute an interim award and thus, a Petition under Section 34 of the AC Act is not maintainable.

In this case, the arbitrator passed an order holding that the concerned Joint Venture Agreement was a legal and valid instrument and not vitiated by fraud or forgery and thus, an arbitration agreement existed between the parties. This order was challenged under Section 34 of the AC Act on the ground that it was an interim award under Section 31(6) of the AC Act.

The High Court has held as follows:

(a) The character of the order must be determined by examining the stage of the arbitration, the nature of the proceedings and issue referred for determination and the substance of the findings.

(b) An award must involve the final determination of a claim, part of a claim or counterclaim submitted to arbitration.

(c) The nature of the proceedings and the substance of the determination, rather than merely the finality of the findings, determine whether an order is an interim award.

(d) Where the existence or validity of the arbitration agreement is determined as a jurisdictional issue under Section 16, the decision can be challenged only along with the final award.

The judgment dated 27.07.2026 can be accessed *here*.

**Delhi High Court holds that issuance of a fresh notice under Section 21 of the AC Act is not mandatory prior to filing a petition for the appointment of a new arbitrator after a previous award has been set aside**

In *Cosmo Retail Solutions Private Limited v. Sumant Agarwal & Ors.*, ARB.P. 293/2026, vide judgment dated 16.07.2026, the Delhi High Court has held that when an arbitral award is set aside on the ground of unilateral appointment of the arbitrator, the issuance of a fresh notice under Section 21 of the AC Act is not mandatory prior to filing a petition for the appointment of a new arbitrator.

In this case, the Petitioner unilaterally appointed an arbitrator, subsequent to which an award was passed by the arbitrator. The award was set aside on the ground that the unilateral appointment of the arbitrator was impermissible. Thereafter, the Petitioner filed a Petition seeking appointment of an arbitrator to recommence adjudication, wherein the Respondents raised a preliminary objection that the petition was maintainable only if preceded by a fresh invocation notice under Section 21 of the AC Act. The said contention was rejected by the High Court.

The High Court has held as follows:

(a) Section 21 of the AC Act is principally concerned with determining when arbitration commences, particularly for purposes of limitation. The notice under Section 21 of the AC Act had already been issued and that the dispute had consequently been validly commenced.

(b) Once the disputes have already been commenced by issuance of a notice under Section 21 of the AC Act, there is no requirement to re-commence the same dispute merely because the previous award was set aside.

(c) Section 43(4) of the AC Act, which provides for the exclusion of time spent between the commencement of arbitration and the setting aside of an award for computing limitation, does not mandate the re-initiation of arbitration proceedings through a fresh notice.

(d) The term '*commencement of proceedings*' in Section 43(4) of the AC Act encompasses various legal remedies, including civil suits or institutional arbitrations. It does not elevate a fresh notice under Section 21 to a jurisdictional bar.

(e) Setting aside of an award restores the parties to their original position without extinguishing the underlying reference.

The judgment dated 16.07.2026 can be accessed *here*.

**NCLAT holds that suspended directors must cooperate in identification and recovery of corporate debtor's assets**

In *Akshay Singhal & Anr. v. Keshav Khaneja & Ors.*, 2026 SCC OnLine NCLAT 983, vide judgment dated 06.08.2026, the NCLAT has upheld the jurisdiction of the Adjudicating Authority under Section 60(5) of the IBC to direct suspended directors of a corporate debtor to cooperate in the identification and recovery of assets belonging to another corporate debtor undergoing CIRP.

The case arose from the CIRP of Log 9 Mobility Pvt. Ltd. ("**Log 9**"). The Appellants are suspended Directors of Log 9. Log 9 had entered into a lease agreement with Gensol EV Lease Ltd. ("**Gensol**") for Electric Vehicles ("**EVs**"). Gensol was also undergoing CIRP and its Resolution Professional ("**RP**") sought recovery of the EVs. Gensol's RP filed an application under Section 60(5) of the IBC *inter alia* seeking directions for return and recovery of certain EVs located in Faridabad. The Adjudicating Authority *inter alia* directed the Appellants to be present in the RP's office and to take all necessary steps for identification and recovery of EVs. The Appellants filed an appeal against the said order on the ground that the directions were coercive and impermissible as they had no privity of contract with Gensol and were no longer part of Log 9's management, which was dismissed by the NCLAT.

The NCLAT has held as follows:

(a) Section 60(5) of the IBC confers wide jurisdiction on the Adjudicating Authority to entertain applications and decide questions of law or fact arising out of or in relation to the insolvency resolution of a corporate debtor. Such jurisdiction extends to issuing directions which facilitate speedy resolution and prevent frustration of the objective of preserving the maximum value of the corporate debtor's assets.

(b) Gensol's RP was statutorily empowered under the IBC to take custody and control of the EVs, which admittedly belonged to the corporate debtor. The Appellants, being part of Log 9's suspended management, could not avoid their obligation to assist the RP merely because Log 9 had itself entered CIRP, particularly in view of their acceptance of their responsibility of providing information concerning the EVs and their recovery.

(c) The ambit and scope of the Adjudicating Authority is wide enough for it to have directed the Appellants to continue to cooperate in the identification and recovery of EVs with the RP in the discharge of his duties for taking control and custody of assets over which the corporate debtor had ownership rights. The said direction had clear nexus with the insolvency resolution proceedings of the corporate debtor.

The judgment dated 06.08.2026 can be accessed *here*.

**IBBI invites comments on the draft circular for identifying and addressing potential instances of fraudulent or malicious initiation of the CIRP**

The Insolvency and Bankruptcy Board of India ("**IBBI**") has, vide Discussion Paper dated 14.08.2026, invited stakeholder comments on the draft circular pertaining to guidance to Insolvency Professionals ("**IPs**") for due diligence to identify fraudulent or malicious initiation of the CIRP and the recourse available under Sections 60(5) and 65 of the IBC.

IBC provides a legal framework for resolution of distressed assets in a time-bound manner however, this framework is required to be continuously reviewed. The objective of the Discussion Paper is to enhance the integrity of the CIRP, with specific reference to the fraudulent or malicious initiation of CIRP under Section 65 of the IBC. Section 65(1) provides for penalty where the CIRP has been initiated fraudulently or with malicious intent for any purpose other than the resolution of insolvency or liquidation.

In view of information received by IBBI regarding instances of misuse of the CIRP framework and delayed invocation of Section 65 of the IBC, IBBI has proposed to issue a circular to strengthen the framework for identifying and addressing potential instances of fraudulent or malicious initiation of the CIRP. The circular sets out an illustrative and non-exhaustive list of indicators that may suggest fraudulent or malicious initiation of CIRP, including negligible operations or assets, unusual related-party exposures, regulatory or enforcement proceedings concerning diversion of funds, CIRP initiated by or debt assigned to a single creditor shortly before commencement, connected entities entering CIRP within a proximate period and limited competition in the resolution process.

Where an IP forms an opinion that the CIRP has been initiated fraudulently or with malicious intent, the draft circular provides that the IP shall file an application before the Adjudicating Authority under Section 60(5) read with Section 65 of the IBC, in addition to any application that may be warranted under Sections 43, 45, 50 or 66 of the IBC.

The comments can be submitted by 24.08.2026.

The Discussion Paper along with the Draft Circular can be accessed *here*.

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