

GATI - विधि

-LAW IN ACTION



Legal Updates

SC observes that onerous pre-conditions in an arbitration clause, which render the right to sue illusory or nugatory, cannot be imposed -issue referred for consideration of larger bench

In *M/s Santosh Associate Private Limited v. Haryana State Industrial and Infrastructure Development Corporation Ltd.*, vide judgment dated 17.08.2026 in SLP (C) No. 31245/2025, the Supreme Court has observed that an arbitration clause cannot impose pre-deposit conditions so onerous that it renders the right to sue illusory or nugatory at the threshold and has requested the Chief Justice of India to consider whether this issue warrants a reference to a larger Bench.

In this case, the issue before the Court was the validity of a contractual clause requiring a contractor to deposit 10% of the claim amount as security before invoking arbitration. This clause operated only against the contractor and provided for refund of the deposit after conclusion of the arbitration, subject to adjustment towards costs.

The Court examined the apparent divergence between *S.K. Jain v. State of Haryana* (“**S.K. Jain**”), *ICOMM Tele Ltd. v. Punjab State Water Supply* (“**ICOMM Tele**”), *Lombardi Engineering Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.* (“**Lombardi**”) and the Constitution Bench decision in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (“**CORE**”). The Court in *S.K. Jain* has upheld a refundable pre-deposit requirement as a reasonable measure against frivolous and inflated claims, however, the Court in *ICOMM Tele* has held that a pre-deposit condition could discourage arbitration and lack a rational nexus with curbing frivolous claims. The Court in *Lombardi* has held that party autonomy cannot extend to contractual terms that violate fundamental rights. Further, the Constitution Bench in *CORE* has reiterated the mandatory nature of Section 18 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”), which requires equal treatment of parties at all stages of arbitration.

The Supreme Court expressed a view that a requirement to deposit a substantial percentage of the claim amount as a precondition to arbitration could suppress legitimate claims, deter recourse to alternative dispute resolution and defeat its object. In view thereof, since the decision in *S.K. Jain* was rendered by a three-Judge Bench, the Court directed the Registry to place the petition before the Chief Justice of India for appropriate directions.

Madras High Court holds that availability of civil remedy under the Copyright Act, 1957 does not preclude arbitration

In *Eros Technologies Digital FZE v. Ayngaran International Media Private Limited & Ors.*, vide judgment dated 01.09.2026 in C.S. (Comm. Div.) No. 140/2026, the Madras High Court has held that the availability of a civil remedy does not, by itself, preclude the dispute from being resolved through arbitration where the parties have agreed to arbitrate.

In this case, the issue before the Court was whether a copyright infringement dispute could be referred to arbitration under Section 45 of the A&C Act, despite the civil remedy available under Section 55 of the Copyright Act, 1957 (“**Copyright Act**”) against infringement. The Plaintiff opposed the application of the Defendants under Section 45 of the A&C Act seeking reference of the dispute to arbitration on the ground that copyright infringement was a statutory dispute and therefore non-arbitrable, particularly in view of the civil remedy under Section 55 of the Copyright Act.

The Court found no *prima facie* basis to hold the arbitration agreement to be null, void, inoperative or incapable of performance and referred the parties to arbitration.

Madhya Pradesh High Court observes that foreign arbitral awards can be executed by the High Court as deemed decrees

In *Moshers v. Shri Mittal Agritech Pvt. Ltd.*, vide order dated 21.08.2026 in Arbitration Case No. 56/2024, the Madhya Pradesh High Court has held that a foreign arbitral award, once declared enforceable upon satisfaction of the requirements under Sections 47 and 48 of the A&C Act, become, by virtue of Section 49 of the A&C Act, a deemed decree of the High Court and can be executed by the High Court.

The Court relied on *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356, wherein the Supreme Court has held that there is no requirement for separate proceedings for determining enforceability and thereafter executing a foreign award. Once the Court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same and there is no need to take two separate proceedings resulting in multiplicity of the litigation.

The High Court however clarified that where practical difficulties arise due to the absence of an execution machinery, the award may subsequently be transferred to a competent court under Section 39 of the Code of Civil Procedure, 1908.

Delhi High Court has issued directions on stamp duty compliance in enforcement of arbitral awards

In *M/s URC Construction (P) Ltd. v. Airports Authority of India*, judgment dated 01.09.2026 in OMP (ENF.) (COMM.) No. 155/2026, the Delhi High Court examined the interplay between the A&C Act and the Indian Stamp Act, 1899 (“**Stamp Act**”) in relation to enforcement of arbitral awards. The High Court has held that an arbitral award becomes chargeable to stamp duty upon its execution, and that the award must be stamped before or at the time of execution, or within the statutory 1-month period thereafter. The requirement is not postponed until enforcement proceedings under Section 36 of the A&C Act are initiated. The Court further held that an insufficiently stamped arbitral award attracts the mandatory impounding mechanism under Section 33 of the A&C Act.

The Court accordingly issued *inter alia* the following directions:

- (a) Every enforcement petition under Section 36 of the A&C Act must contain a declaration on its first page specifying the date of the award, date of payment of stamp duty, awarded amount and stamp duty payable.

- (b) Verified proof of sufficient stamp duty and registration, where applicable, must be annexed, otherwise the petition shall not be listed.
- (c) Where an inadequately stamped award is part of a petition filed on or before 13.08.2026, the award shall be impounded and the matter be listed before the Joint Registrar. Where the petition is filed after 13.08.2026, the award shall be impounded and the petition shall be returned under objections.
- (d) An enforcement petition shall not be dismissed solely on account of insufficient stamp duty and the defect must be cured.
- (e) Interim orders passed in pending petitions shall continue until the defect is cured, subject to further orders.
- (f) Pending petitions may be withdrawn and restoration may be sought after complying with the applicable requirements.
- (g) The original award may be required for impounding and determining compliance with stamp-duty requirements.
- (h) Where registration is required, the requisite registration must be completed before the award can be acted upon for enforcement.
- (i) These directions shall not apply to foreign awards.

NCLAT clarifies scope of reliefs available in going-concern liquidation sales

In ***Ravikumar Gaurishankar Patel v. Gajesh Labhchand Jain***, 2026 SCC OnLine NCLAT 1074, vide judgment dated 03.09.2026, the National Company Law Appellate Tribunal (“NCLAT”) has held that Section 60(5)(c) of the IBC confers broad residuary jurisdiction on the Adjudicating Authority to issue incidental, ancillary and consequential directions having a direct nexus with the insolvency or liquidation process, where such directions are necessary to give effective effect to a going-concern sale.

The case arose from the liquidation of Talwalkars Better Value Fitness Ltd., which was sold as a going concern. After payment of the entire consideration and issuance of the Sale Certificate, the successful auction purchaser sought various consequential directions concerning shareholding and listing, regulatory compliances, bank accounts and credit records, MCA status, past liabilities, stamp duty and taxes, and protection under Section 32A of the IBC.

NCLAT also held that the clean-slate principle applies to going-concern sales in liquidation and extended the protection contemplated by Section 32A of the IBC to such sales, subject to statutory conditions. NCLAT clarified that Section 32A protects the new management from prosecution for offences committed prior to the acquisition, subject to the statutory conditions, while preserving the independent statutory powers of authorities in respect of subsequent conduct.

NCLAT thus permitted necessary corporate and regulatory steps to be taken, however, it declined to grant reliefs which would alter the commercial terms voluntarily agreed to by the auction purchaser, including stamp duty and tax waivers. The broad powers under Section 60(5)(c) do not extend to rewriting the commercial terms of the auction.

IBBI has issued a circular on due diligence by Insolvency Professionals regarding misuse of IBC framework

The Insolvency and Bankruptcy Board of India (“IBBI”) has, vide circular dated 09.09.2026, issued directions regarding due diligence by Insolvency Professionals (“IPs”) to identify potential misuse of the insolvency framework under the IBC for purposes other than insolvency resolution or liquidation of the Corporate Debtor (“CD”).

IBBI has identified certain indicative and non-exhaustive circumstances warranting closer examination, including:

- (a) Corporate Insolvency Resolution Process (“CIRP”) initiated by, or debt assigned shortly before initiation to, a single creditor who subsequently dominates the Committee of Creditors (“CoC”), subject to specified exclusions;

- (b) connected CDs having common promoters, addresses, directors or inter-lending, taken into CIRP within a proximate timeframe with overlapping CoC composition;
- (c) minimal competitive participation or a recurring resolution applicant across connected CDs;
- (d) realisation grossly disproportionate to admitted claims without a proper valuation exercise;
- (e) linkage of the CD or its group to regulatory, enforcement or investigative proceedings concerning fraud; and
- (f) substantial loans, advances or investments involving related / group entities in specified circumstances.

Where, upon further enquiry and a holistic and contextual assessment, an IP has reasonable grounds to believe that the CIRP or liquidation may be serving a fraudulent or malicious purpose, the IP shall apply to the Adjudicating Authority (“AA”), setting out the relevant facts, material, indicators and reasons for such view, and seek appropriate directions under the IBC. IBBI circular dated 09.09.2026 can be accessed [here](#).

**IBBI has proposed
strengthening safeguards
in insolvency resolution
process for Personal
Guarantors**

The IBBI has issued a Discussion Paper titled “*Strengthening safeguards in the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors*”, whereby it has proposed amendments to the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

The proposed amendments seek to strengthen safeguards for creditors in the insolvency resolution process of personal guarantors by providing for:

- (a) exclusion of related parties of the personal guarantor from voting on the repayment plan;
- (b) identification and reporting of avoidance transactions, including preferential, undervalued, transactions defrauding creditors and extortionate credit transactions;
- (c) valuation of the personal guarantor’s assets by a registered valuer to determine their face value and realisable value; and
- (d) recording of creditors’ deliberations and reasons for their decision on the repayment plan.

Comments can be submitted by the public by 03.10.2026.

IBBI Discussion Paper can be accessed [here](#).

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