

Legal Updates

Supreme Court has requested the Law Commission of India to undertake a focused study of the statutory and procedural framework governing the enforcement and execution of arbitral awards

In *M/s Royal Construction Company Pvt. Ltd. v. M/s National Projects Construction Corporation*, Civil Appeal arising out of SLP (C) No. 14005/2026, judgment dated 28.10.2026, the Supreme Court has examined the scope of its earlier judgment dated 10.10.2023 in proceedings concerning the enforcement of an arbitral award.

The dispute arose from an internationally seated arbitration. During the execution proceedings, the award debtor contended that the principal amount had already been paid in 2009 pursuant to orders passed by the Delhi High Court. The High Court granted the parties liberty to seek clarification from the Supreme Court regarding the alleged payment.

The Supreme Court has held as follows:

(a) The earlier proceedings pertained to answering the substantial question of law referred to it by the High Court concerning the date for conversion of the awarded amount into Indian Rupees. Having answered that question, the scope of the earlier proceedings stood exhausted.

(b) The Court cannot be called upon, under the guise of seeking clarification, to assume a supervisory role over continuing execution proceedings or adjudicate factual questions concerning amounts deposited or subsequently withdrawn. Such questions were required to be determined by the competent executing court in accordance with law.

(c) The efficacy of arbitration must also be assessed by the ability of the successful party to realise the fruits of an arbitral award within a reasonable time.

(d) Section 36 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") provides for enforcement of arbitral awards in the same manner as a decree of the Court, relying on the ordinary execution machinery under the Code of Civil Procedure, 1908.

The Court accordingly requested the Law Commission of India to undertake a focused study of the statutory and procedural framework governing the enforcement and execution of arbitral awards, including the identification of practical impediments to timely recovery and examination of enforcement mechanisms in other jurisdictions.

Supreme Court has clarified the jurisdiction of courts to extend the mandate of an arbitral tribunal under Section 29A of the A&C Act

In *South Bihar Power Distribution Company Ltd. v. India Power Corporation Ltd. & Anr.,* Civil Appeal No. 9313/2026, judgment dated 28.10.2026, the Supreme Court has examined the jurisdiction of courts to extend the mandate of an arbitral tribunal under Section 29A of the A&C Act.

The dispute arose from a Distribution Franchisee Agreement, which provided for resolution of disputes by a three-member arbitral tribunal. However, with the consent of the parties, the Patna High Court appointed a sole arbitrator and subsequently appointed another sole arbitrator to continue the proceedings. The appellant thereafter objected to the constitution of the tribunal and challenged the High Court's jurisdiction to extend the arbitrator's mandate.

The Supreme Court has held as follows:

(a) The appellant had waived its objection to the appointment of a sole arbitrator, having consented to the appointments, participated in the arbitral proceedings, agreed to an extension of time for arbitration and filed counter-claims and supplementary counter-claims.

(b) The appellant had not challenged either of the High Court's orders appointing the sole arbitrators, which had consequently attained finality. Such conduct amounted to acquiescence and waiver under Section 4 read with Section 16 of the A&C Act, thereby precluding the appellant from belatedly challenging the constitution of the tribunal.

(c) The moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") does not necessarily prohibit a corporate debtor from initiating proceedings for recovery of its dues, including arbitral proceedings. The moratorium is intended to prevent recovery actions against the corporate debtor and does not impair claims pursued by the corporate debtor which, if successful, may strengthen its financial position. The resolution professional had authorised the continuation of the arbitral proceedings, with the approval of the Committee of Creditors ("**CoC**").

(d) The power to extend the mandate of an arbitral tribunal vests in the "Court" as defined under Section 2(1)(e) of the A&C Act, namely, the principal civil court of original jurisdiction in a district or a High Court exercising ordinary original civil jurisdiction, subject to the requisite jurisdiction over the subject matter. The High Court or its designate exercising powers under Section 11 for appointment of an arbitrator does not thereby acquire jurisdiction to extend the arbitrator's mandate under Section 29A.

Delhi High Court has held that SERC has exclusive jurisdiction to grant interim relief in disputes between licensees and generating companies

In *Enerica Infra 3 Private Limited v. NTPC Vidyut Vyapar Nigam Limited & Anr.,* O.M.P.(I) (COMM.) 346/2026, judgment dated 14.10.2026, the Delhi High Court considered whether it could exercise jurisdiction under Section 9 of the A&C Act to restrain the invocation of bank guarantees furnished in connection with a Battery Energy Storage System (BESS) project.

In this case, the Power Purchase Agreement ("**PPA**") was terminated on the ground that the respondents had failed to provide the entire parcel of land within the stipulated period under the PPA. The Petitioner approached the High Court seeking protection against the invocation of its Performance Bank Guarantee, Viability Gap Funding Bank Guarantee and Connectivity Bank Guarantees. The respondents challenged the maintainability of the petition, contending that disputes between the parties fell within the exclusive jurisdiction of the State Electricity Regulatory Commission ("**SERC**") under the Electricity Act, 2003.

The Delhi High Court has held as follows:

(a) Section 86(1)(f) constitutes a special provision governing the adjudication of disputes between licensees and generating companies and overrides the general mechanism under Section 11 of the A&C Act.

(b) SERC has the discretion either to adjudicate such disputes itself or to refer them to arbitration by an arbitrator appointed by it. The jurisdiction to adjudicate the disputes in the present case vested with the SERC, and the High Court was denuded of jurisdiction to entertain the petition under Section 9 of the A&C Act.

(c) By virtue of Section 94(2) read with Sections 86(1)(f) and 158, the SERC is empowered to grant interim protection akin to the relief available under Section 9 of the A&C Act. A party relegated to the jurisdiction of the SERC cannot be left without an effective remedy for urgent interim protection pending adjudication of the dispute or appointment of an arbitrator.

(d) The dispute in the present case exceeded the prescribed threshold under the PPA and could not be brought within the arbitration mechanism merely because the Petitioner was seeking injunctive relief rather than recovery of money. The arbitration mechanism under the PPA was available for disputes not exceeding Rs. 25 crores.

Bombay High Court has held that use of a credit card may constitute acceptance of an arbitration agreement even in the absence of a physical or digital signature

In *Kotak Mahindra Bank Limited v. Maulin Niranjan Patel*, Arbitration Application (L) No. 25878/2026, judgment dated 04.11.2026, the Bombay High Court considered whether an arbitration agreement could be said to exist between a bank and a credit cardholder despite the absence of the cardholder's physical or digital signature on the credit card application.

The Bank contended that the respondents had obtained and used credit card facilities and had thereby accepted the terms of the Cardholder Agreement, which contained an arbitration clause.

The Court observed that the A&C Act does not require every arbitration agreement to bear the physical or digital signatures of both parties. However, the requirement that an arbitration agreement be in writing must still be satisfied, and the absence of a signature does not dispense with the need to establish the parties' consent through material on record. The Court examined the Cardholder Agreement, under which use of the credit card constituted acceptance of the terms and disputes arising out of or relating to the agreement were referable to arbitration.

Relying on a judgment of the Supreme Court, the High Court reiterated that an arbitration agreement may be established through conduct or other written records, provided the material demonstrates the parties' intention to submit disputes to arbitration.

In the present case, although the Bank had not produced the original digital applications or the electronic audit trail evidencing acceptance, the Court held that the Cardholder Agreement, the statement of account and the affidavit of the Bank's authorised representative, when considered together, constituted *prima facie* material demonstrating acceptance of the agreement through use of the credit cards. Accordingly, the Court held that the absence of physical or digital signatures did not preclude reference of the disputes to arbitration and appointed a sole arbitrator.

Madhya Pradesh High Court has held that limitation for execution of an arbitral award runs from the date it becomes enforceable and the doctrine of merger does not apply

In *Ashok Kumar v. Bhupendra Kumar Lunkad and Others*, Civil Revision No. 1152/2026, order dated 23.10.2026, the Madhya Pradesh High Court considered the limitation period for execution of a domestic arbitral award under Article 136 of the Limitation Act, 1963, and whether the doctrine of merger applies to an arbitral award.

In the present case, the dispute arose from an award directing delivery of possession of the subject land to the award holder, which led to a decree being passed in terms of the award. The objections under Section 34 of the A&C Act were rejected by the Civil Court. In the second

appeal, the High Court held that the Civil Court had become functus officio upon referring the dispute to arbitration and the subsequent proceedings, including the rejection of the objections, were non-est. Liberty was granted to challenge the award afresh; however, those proceedings remained pending. The award holder's first execution petition was declined for insufficient stamping. Following payment of deficit stamp duty, a fresh execution petition was filed, which the judgment debtor opposed as barred by the 12-year limitation period under Article 136 of the Limitation Act.

The High Court has held as follows:

(a) Section 36 of the A&C Act creates a legal fiction by which a domestic arbitral award is enforceable in the same manner as a decree of a court, but this fiction is limited to the purpose of enforcement.
(b) An arbitral award does not become a decree of a civil court for all purposes, and arbitral proceedings are distinct from court proceedings.
(c) The doctrine of merger does not apply to arbitral awards, since no appeal is provided against an arbitral award and proceedings under Sections 34 and 37 of the A&C Act do not result in the award merging into an order of the court.
(d) Accordingly, the limitation period for execution of an arbitral award commences from the date on which the award becomes enforceable.

In the present case, the Court held that the award became enforceable when the objections were rejected by the Civil Court. Since the award had not been stayed during the subsequent appellate proceedings, the award holder was required to initiate execution within 12 years from that date, i.e., on or before 06.01.2014. The execution proceedings were, however, initiated for the first time in 2024 and were therefore held to be barred by limitation.

IBBI has introduced a revised Form CA for submission of claims by real estate allottees

The Insolvency and Bankruptcy Board of India ("**IBBI**") has, *vide* circular dated 30.10.2026, revised Form CA (Submission of Claim by Financial Creditors in a Class) ("**Form CA**") under Regulation 8A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in partial modification of circular dated 02.06.2026.

The revision seeks to simplify claim submission by homebuyers, facilitate verification of claims and enable collection of project-level information for preparation of the information memorandum and formulation of resolution plans.

The revised Form CA is divided into two parts – Part I has to be completed by financial creditors in a class other than real estate allottees, and Part II has been specifically introduced for real estate allottees. Part II requires details relating to the allottee, the real estate project and the allotted unit, purchase value, payments made and amounts claimed, possession status, and supporting documents. It also requires allottees to indicate their preferred relief, namely possession, execution of a conveyance deed or transfer of title, refund, or any other relief. Such preference is for information only and does not confer any right on the allottee or bind the successful resolution applicant. The relief available to an allottee will be governed by the terms of the resolution plan as approved by the Adjudicating Authority.

The revised Form CA is to be used by financial creditors in a class, including real estate allottees, for claims filed on or after 30.10.2026. Claims already filed in the earlier Form CA before that date are not required to be resubmitted.

The circular dated 30.10.2026 can be accessed *here*.

The IBBI has, *vide* circular dated 30.10.2026, issued directions concerning compliance with the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") and disclosure of the

IBBI has directed insolvency professionals to ensure RERA compliance and disclose CIRP at project and office sites of real estate corporate debtors

Corporate Insolvency Resolution Process ("**CIRP**") in respect of corporate debtors ("**CD**") having one or more real estate projects.

The circular notes that information on project registration, sanctioned plans, statutory approvals, designated bank accounts and construction progress is available on the web portal of the concerned RERA, but is often unavailable, incomplete or inconsistent in the records of the CD. It also highlights that stakeholders visiting the project sites and offices of the CD may not know that the CD is undergoing CIRP.

The following directions have been given:

(a) The interim resolution professional ("**IRP**") or resolution professional ("**RP**"), as the case may be, must ensure compliance with the applicable provisions of RERA and the rules and regulations made thereunder during the CIRP.

(b) Upon commencement of the CIRP, the IRP/RP must obtain, if available, project-wise information from the concerned RERA's web portal, including project registration details, sanctioned plans, approved project configurations, allottee records, status of the separate bank account, and relevant approvals and compliances. Such information may be used for preparing the Information Memorandum, verifying claims and assessing the project status.

(c) Where the CD's records are incomplete, unavailable or inconsistent, the IRP/RP may rely on RERA records as an important source of information, subject to due verification and reconciliation.

(d) The IRP/RP must ensure that the commencement of CIRP is prominently disclosed within seven days of appointment through signboards at the main entrance or another prominent location at each project site, and notice boards at the registered office, corporate office, site office, sales office and any other office of the CD accessible to stakeholders. These disclosures must state that the CD is undergoing CIRP and provide the name and contact details of the IRP/RP. The signboards and notice boards must remain displayed until the conclusion of CIRP and be updated forthwith upon any change in the IRP/RP.

(e) The RP can invite the concerned RERA to furnish its written views on the regulatory compliance, feasibility and implementation aspects of resolution plans under consideration by the CoC. Any views furnished by RERA must be placed before the CoC and made available to prospective resolution applicants.

The circular dated 30.10.2026 can be accessed *here*.

IBBI has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2026

The IBBI has, *vide* notification dated 30.10.2026, notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2026 ("**Amendment Regulations**") to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**").

The Amendment Regulations came into force on 30.10.2026 and introduce several project-specific requirements for CIRP of CDs having one or more real estate projects.

The key amendments are as follows:

(a) **Project-wise management and assessment (Regulations 4D, 4E, 4F and 4G)**

- Regulation 4D now requires the IRP/RP to maintain separate bank accounts for each project, place project-wise statements of receipts and payments before the CoC and ensure compliance with RERA fund utilisation requirements.
- An Explanation to Regulation 4E permits the CoC to grant in-principle approval for the RP to process allottee requests as and when received.
- New Regulation 4F requires project-wise details to be placed before the CoC at its first meeting. The CoC may, by a 66% vote, recommend exclusion of a project from CIRP, subject to an application to the Adjudicating Authority.

- New Regulation 4G requires an independent project-wise technical and cost-to-complete assessment, with prior CoC approval, before inviting expressions of interest. The assessment forms part of the information memorandum, and its cost forms part of CIRP costs.

(b) **Information memorandum, monitoring committee and resolution plan (Regulations 36, 38 and 38A)**

- The information memorandum must contain detailed project-wise information, including unit inventory, construction status, approvals, encumbrances, litigation, RERA account balance, cost-to-complete assessment and details of allottees who have not filed claims, along with their preferred relief.
- The provision requiring disclosure of fair value under Regulation 36(2)(ka) has been omitted.
- The monitoring committee will include an authorised representative of the creditors in a class or another allottee representative chosen by majority vote, and, where applicable and subject to their agreement, representatives of RERA and the competent authority.
- Regulation 38A now requires resolution plans to provide project-wise details of units, treatment of allottee claims, completion and possession timelines, and periodic progress reports to the monitoring committee.

(c) **Authorised representatives (Regulations 6, 16A and 24)**

- The public announcement must provide the profiles of three proposed authorised representatives and a brief description of their role.
- Authorised representatives must submit class-meeting minutes to the RP for placement before the CoC, and the CoC minutes must record their views on behalf of the class.

(d) **Other amendments (Regulations 30A and 35)**

- The RP must continue discharging CIRP responsibilities until the Adjudicating Authority decides the withdrawal application under Section 12A of the IBC.
- The confidentiality requirement under Regulation 35(3) has also been extended to valuation reports, in addition to fair value and liquidation value.

The Amendment Regulations can be accessed *here*.

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