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Mutual set-off prevents the initiation of insolvency proceedings

Future Consumer Ltd v. Aussee Oats India Ltd

National Company Law Tribunal, Mumbai | Company Petition (Insolvency) No. 538 of 2024

The National Company Law Tribunal, Mumbai (**NCLT**) rejected the initiation of insolvency in a case where the financial creditor owed a larger amount to the corporate debtor than its claimed default. The judgment rightly clarifies that insolvency under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) is not intended to serve as a recovery mechanism, particularly where mutual financial dealings exist and legally sustainable set-offs are in place.

The decision also affirms that a valid and legally enforceable set-off can override even the unconditional or absolute nature of a repayment obligation. Where mutual claims are supported by clear financial documentation, such as admitted, audited statements and internal acknowledgements, the existence of debt cannot be viewed in isolation. Such an approach introduces an essential element of equity into insolvency jurisprudence, which is crucial when the outcome involves depriving a company of its management and operations. The principle may also apply where a financial creditor's own default, such as failure to disburse sanctioned funds, causes financial strain on the corporate debtor. This ruling highlights the importance for debtors to maintain robust financial documentation, assert valid set-offs clearly and in a timely manner, and ensure consistency across disclosures and records to effectively safeguard against premature or unwarranted insolvency proceedings.

SUMMARY OF FACTS

Aussee Oats India Ltd (AOIL) was formed as a joint venture between the Future Group and the Gupta Group. Future Consumer Ltd (FCL), through its associate company FCL Tradevest Pvt Ltd, held a majority stake in AOIL, with the remaining shares held by SVA, which is owned by the Gupta Group. Members of FCL were appointed as nominee directors in AOIL.

FCL, responsible for debt funding and marketing, extended financial assistance of INR 2 crore under an Inter-Corporate Deposit (ICD) to AOIL. As AOIL did not repay the entire amount, FCL filed a petition under Section 7 of the Code seeking the initiation of insolvency evidenced by a term sheet and promissory note.

AOIL contended that the outstanding amount had been legally set off against dues payable by FCL under other commercial arrangements, including unpaid invoices and losses on custom packaging materials. AOIL also highlighted that FCL itself had not reported any receivables from related parties in its own disclosures.

DECISION OF THE TRIBUNAL

The NCLT dismissed the Section 7 petition despite an admitted debt and default since FCL owed a larger (admitted) amount to AOIL.

The ICD's provision stipulating that AOIL's obligation to repay the outstanding amount along with interest was absolute, unconditional, and not dependent on or linked to any other transaction, would not take away AOIL's right to claim appropriation of the amount receivable from FCL. As such, it would be inequitable to initiate insolvency in such a case.

The audited financials of AOIL, which did not reflect any outstanding liability, had been signed by its nominee director, who was also serving as the chief financial officer of FCL. This suggested knowledge and implied acceptance of AOIL's position that the due amount had been set off against AOIL's claims.

Ex post facto Environmental Clearance is not permissible

Vanashakti v. Union of India

Supreme Court of India | 2025 SCC OnLine SC 1139

In a significant decision for the real estate, infrastructure, and power sectors, the Supreme Court prohibited the grant of *ex post facto* Environmental Clearance (**EC**), mandating the requirement of prior EC for various projects and activities. This ruling follows another recent decision wherein the Supreme Court reaffirmed that unauthorised constructions must be demolished without leniency, and Courts should not entertain requests for regularisation, as doing so undermines the rule of law and promotes a culture of impunity.[1] This decision signals a decisive shift in judicial attitude toward environmental violations, placing developers under heightened scrutiny. Prior EC is now a strict legal requirement, not a *post facto* formality, as violations will not be excused through regularisation. Companies should reinforce internal environmental governance frameworks and engage early with the Environmental Impact Assessment (**EIA**) process to mitigate legal, financial, and reputational risks.

SUMMARY OF FACTS

On September 14, 2006, the Ministry of Environment, Forest, and Climate Change (MoEFCC, previously Ministry of Environment and Forests) had issued a notification mandating prior EC for certain categories of projects and activities including mining, power generation, material production and processing, manufacturing, transportation, storage, and infrastructure (EIA Notification).

In 2017, another notification was issued enabling the *ex post facto* grant of EC to projects existing as on March 14, 2017, as a 'one-time measure' (2017 Notification).

In 2021, the MoEFCC issued an Office Memorandum (2021 OM) providing a Standard Operating Procedure (SOP) for grant of *ex post facto* EC, providing for demolition of projects that would not have been eligible for grant of prior EC, and temporary closure of projects that would be so eligible until the EC has been granted.

A non-profit organisation, Vanashakti, challenged the validity of the 2017 Notification and the 2021 OM before the Supreme Court of India as being violative of the EIA Notification as well as the fundamental right to a clean environment guaranteed under the Constitution of India.

DECISION OF THE COURT

The Supreme Court set aside the 2017 Notification and the 2021 OM and held that *post facto* grant of EC is not a concept permissible under environmental law as the grant of an EC requires a careful application of mind, entailing public hearing, screening, scoping, and appraisal, to appropriately consider the environmental consequences of an activity. Further, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment.

The 2017 Notification was issued as a one-time measure to protect defaulters of the EIA Notification, which had been in existence since 2006.

Similarly, though the Government had been directed to formulate an SOP for grant of *ex post facto* EC under the 2017 Notification (a 'one-time measure'), the 2021 OM essentially allowed the Government to consider the grant of *ex post facto* EC for all projects and not just those that were subject to the 2017 Notification.

The Court noted this ulterior objective underlying the 2017 Notification and the 2021 OM to protect the industries that wilfully violated the EIA Notification by bringing in an overarching *ex post facto* regime.

While preserving the ECs that had already been granted, the Court barred the Government from granting any further retrospective EC or introducing any legal framework that provides for the same, and reiterated the compelling necessity to adopt a strict stance on environmental violations.

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[1] Kaniz Ahmed v. Sabuddin, 2025 SCC OnLine SC 995

MSMEs cannot seek interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, during conciliation proceedings

Dhananjai Lifestyle Ltd v. Sanvie Retail Pvt Ltd

Calcutta High Court | Arbitration Petition (Commercial) No. 980 of 2024

In an important ruling for MSMEs, the Calcutta High Court held that in the absence of an arbitration agreement, a MSME cannot seek relief under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) until the conciliation proceedings under the Micro, Small and Medium Enterprises Development Act, 2006 (**MSMED Act**) fails and the matter is formally referred to arbitration. During this stage, the party may seek interim relief before the Civil Courts under the Code of Civil Procedure, 1908 (**CPC**).

While the dispute resolution framework under the MSMED Act mandatorily requires reference of the dispute to arbitration upon failure of conciliation proceedings, the invocation of Section 9 of the Arbitration Act for seeking interim relief prior to such reference and in the absence of an arbitration agreement would clearly violate the principle of party autonomy. By recognising the existence of an equally efficacious and alternative remedy under the CPC, the judgment rightly bars recourse Section 9 at the conciliation stage of the dispute. To ensure the availability of arbitration as a dispute resolution mechanism and recourse to Section 9 for interim relief, MSMEs would be well advised to include an express arbitration clause in their agreements

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SUMMARY OF FACTS

Dhananjai Lifestyle Ltd (DLL) entered into an agreement with Sanvie Retail Pvt Ltd (SRPL) for the supply of apparel.

SRPL failed to clear outstanding dues despite repeated reminders and the parties agreed to a reduced settlement, in furtherance of which SRPL issued a cheque of INR 51 lakh. However, this cheque was dishonoured and returned.

DLL then initiated conciliation proceedings under the MSMED Act, claiming a total sum of INR 1.36 crore, inclusive of compound interest at the rate specified under Section 16.

Apprehending alienation of assets and siphoning off of funds by SRPL, DLL approached the Calcutta High Court seeking interim relief under Section 9 of the Arbitration Act. SRPL opposed this on the ground that in the absence of any arbitration agreement between the parties, the provisions of the Arbitration Act relating to arbitration, including Section 9, could not be invoked during the pendency of conciliation proceedings.

DECISION OF THE COURT

The Court held that DLL, not being a party to an arbitration agreement with SRPL, was not entitled to seek relief under Section 9 of the Arbitration Act at the conciliation stage.

Upon a reference to the MSME Facilitation Council, the provisions of Sections 61 to 81 of the Arbitration Act relating to conciliation become applicable. Section 77 imposes a bar on arbitral and judicial proceedings during conciliation, except when such proceedings are necessary to preserve a party's rights. However, in the absence of an arbitration agreement, the Court concluded that this exception to Section 77 (to preserve a party's rights) is limited to judicial proceedings under the CPC. As such, DLL could not have invoked the arbitration remedy under Section 9 of the Arbitration Act to seek interim relief during the pendency of conciliation proceedings.

The Court clarified that arbitration proceedings are contemplated only after conciliation fails. It is at this stage that the remaining provisions of the Arbitration Act, including remedies under Section 9, become applicable, and the parties are deemed to be signatories to an arbitration agreement.

Service bond clauses in employment contracts are valid

Vijaya Bank v. Prashant B Narnaware

Supreme Court of India | 2025 SCC OnLine SC 1107

In a significant decision for the employment sector, the Supreme Court upheld the validity of employment bonds requiring the payment of a reasonable sum on the breach of the clause providing for a minimum service period. The judgment provides a balanced approach by recognising the legitimate business interest of employers in safeguarding investments made in recruitment and training, while still requiring that such clauses remain reasonable and not oppressive. It reinforces that public policy considerations support such retention clauses in employment contracts, especially in sectors where high employee attrition can lead to operational inefficiencies. This ruling is likely to strengthen the enforceability of employment bonds in India, provided they are proportionate and tied to demonstrable costs. Importantly, the ruling encourages employers to adopt transparent and reasonable processes for recruitment and training, which will help ensure that any such employment bond can withstand judicial scrutiny if challenged in the future.

SUMMARY OF FACTS

Narnaware joined Vijaya Bank in 1999 and was later promoted to Middle Management Grade (MMG) II.

In 2007, he applied for the position of MMG III and was issued an appointment letter stipulating a service bond of INR 2 lakh for a minimum service period of 3 years. Narnaware accepted the condition, signed the indemnity bond, and was re-appointed as Senior Manager, MMG III.

In 2009, he resigned to join IDBI Bank and paid a sum of INR 2 lakh under protest.

He challenged the service bond clause as violative of his fundamental right to freedom of occupation as well as provisions of the Indian Contract Act, 1872 (Contract Act). The High Court ruled in his favour.

Aggrieved, Vijaya Bank approached the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court upheld the validity of the minimum service period clause and allowed Vijaya Bank to recover INR 2 lakh.

The Court found the restriction to be valid and reasonable, and held that the object of the restrictive covenant was in furtherance of the employment contract and not to restrain future employment.

Since such exclusivity clauses operate during employment and not post-termination, they do not violate Section 27 of the Contract Act, which prohibits agreements restricting someone from exercising a lawful profession, trade, or business.

The Court observed that employment bonds are designed to protect employers from losses incurred during the hiring and training of new employees. As a Public Sector Undertaking, Vijaya Bank could not resort to private or ad hoc appointments, and an untimely resignation would lead to an expensive recruitment process to ensure a fair and competitive procedure.

As Narnaware was serving in a Senior Manager position, having a lucrative pay package, the quantum of liquidated damages was not so high as to render the possibility of resignation illusory.

An arbitral award cannot be set aside for lack of jurisdiction if no such objection was raised before the tribunal

Gayatri Project Ltd v. Madhya Pradesh Road Development Corporation Ltd

Supreme Court of India | 2025 SCC OnLine SC 1136

The Supreme Court clarified that an arbitral award cannot be set aside solely on the ground of lack of jurisdiction if no timely objection was raised before the tribunal. This judgment reinforces India's pro-arbitration stance by upholding the finality of arbitral awards and limiting judicial interference on belated procedural grounds. The Supreme Court has rightly emphasised that jurisdictional objections must be raised before the tribunal in a timely manner, failing which parties cannot later seek to nullify an adverse award. This approach safeguards the integrity and autonomy of the arbitral process, deters strategic litigation, and ensures that arbitration is not reduced to a procedural formality. By reinforcing procedural discipline and adherence to statutory mandates, the Court strengthens India's credibility as an arbitration-friendly jurisdiction and advances the alignment of domestic practice with global standards.

SUMMARY OF FACTS

Gayatri Project Ltd (GPL) entered into a public works contract with Madhya Pradesh Road Development Corporation Ltd (MPRDCL) containing an arbitration clause.

Disputes arose between the parties. GPL initiated arbitration which culminated in a unanimous award in its favour (Award).

MPRDCL challenged the Award primarily on merits under Section 34 of the Act, and subsequently amended its petition to challenge the jurisdiction of the arbitral tribunal on the ground that all arbitrations in respect of works contracts in Madhya Pradesh must be governed by the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (MP Act).

The challenge was allowed, and the arbitral award was set aside on a lack of jurisdiction.

Aggrieved, MPRDCL approached the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that an arbitral award cannot be set aside on the ground of lack of jurisdiction when no such plea was raised before the arbitral tribunal; and therefore, a party that fails to timely raise such objections cannot later challenge the award on that basis.

Further, clarifying the conflict between the Act and the MP Act, the Court set out the following guidelines for arbitrations relating to works contracts in Madhya Pradesh, which are likely to have a similar impact on corresponding statutes in other States:

- Where the arbitration proceedings are still underway under the Act, but no statement of defence has been filed, it would be open for the parties to seek a transfer of the arbitration proceedings to the MP State Arbitration Tribunal in view of the applicability of the MP Act.
- Where the arbitration proceedings are still underway, but a statement of defence has already been filed, it would not be open for the parties to then raise an objection to a lack of jurisdiction. The better course of action would be to let the arbitration proceedings conclude.
- Where the arbitration proceedings have concluded and an award has been passed, and no jurisdictional objections were raised at the relevant stage, then such an award cannot be annulled only on the ground of lack of jurisdiction.
- Any award passed by an arbitral tribunal under the Act, where otherwise the MP Act was applicable, may be challenged on other grounds available under Section 34 and Section 37 of the Act. However, it must be executed in terms of the MP Act and the relevant provisions thereunder.

Insolvency of a member is not a ground to halt consortium-led projects

Three C Green Developers Pvt Ltd v. State of UP

Allahabad High Court | 2025 SCC OnLine All 914

In a significant decision for the infrastructure sector, the Allahabad High Court has laid down guidelines on the continuation of consortium-led projects when one member undergoes insolvency. Addressing a legislative gap, the judgment prescribes a timeline for the Insolvency Resolution Professional (**IRP**) and the solvent consortium members to declare their willingness and ability to proceed with the project. Crucially, it ensures that *bona fide* solvent entities are not automatically dragged into insolvency proceedings initiated against another member. If the remaining members are unable to execute the project independently, the project authority is required to make alternate arrangements for completion of the project. At the same time, the Court has flagged the risk of abuse by group-company consortiums, where common promoters use a web of subsidiaries to fragment liabilities, monetise gains, and then shift defaulting entities into insolvency.

By providing a framework to address the insolvency of a member in a consortium, the guidelines prevent the remaining members to simply walk away from their obligations. Developers operating through group entities should prioritise transparent structuring and collective accountability, ensuring that obligations tied to public-interest projects are met holistically, rather than fragmented across affiliates.

SUMMARY OF FACTS

Under the New Okhla Industrial Development Authority's (NOIDA) Sports City Scheme, a project was awarded to a consortium of 9 companies, involving the development of 70% of the land into sports infrastructure along with a corresponding right to develop and monetise the remaining 30% for residential and commercial use.

On the consortium's request, the project land was divided and further subdivided and leased to the consortium members' wholly-owned subsidiaries, each of whom was individually liable to pay land premium and lease rent to NOIDA.

While the residential and commercial spaces were constructed and monetised, there was no corresponding development of the sports infrastructure.

After a change in the State Government, when NOIDA sought recovery of pending land premium and rent dues, a challenge was raised before the Allahabad High Court, citing encroachments and incomplete handover of possession.

Meanwhile, for defaulting on debts raised to fund the project, 4 consortium members were admitted into insolvency, which was used by other solvent members as a defence against payment and performance obligations under the Scheme.

DECISION OF THE COURT

The Allahabad High Court noted the existence of various illegalities, including the subdivision of project land, allotments to ineligible subsidiaries, irregular payment relaxations, and failure to take substantive action against non-payment of dues. Consequently, the Court directed an investigation by the Central Bureau of Investigation, apprehending a grave scam.

Developers, operating through a web of controlled entities with fragmented obligations and lease deeds, had monetised residential portions and then slipped into insolvency without fulfilling public obligations, shielding themselves from liability. While the Code was never intended to enable the siphoning of funds and extinguishment of obligations, the insolvency of even 1 consortium member was found to undermine the viability of the entire project.

In the absence of a statutory mechanism, the Court formulated the following guidelines to address the impact of a consortium member undergoing insolvency:

- Within 4 weeks of the commencement of insolvency, the IRP must communicate to the project authority and other consortium members whether the company intends to and can usefully continue participating in the consortium project.
- The remaining consortium members shall then have 4 weeks to opt to complete the project on their own.
- If the remaining members express inability to complete the project on their own, the project authority shall make alternative arrangements to ensure the timely completion of the project.

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