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ARBITRATION

Date: 09 May 2025

Case Name: *Union of India v. Ahluwalia Contracts (India) Ltd.*
FAO(OS)(COMM) 108 of 2023 and CM Nos. 26534 of 2023 and 26535 of 2023

Forum: Delhi High Court

The present dispute arose out of a contract executed between the appellant *i.e.*, Union of India, and the respondent *i.e.*, Ahluwalia Contracts (India) Ltd., for execution of electrical works (Package-III) at AIIMS, Patna. The scope of work included supply, erection, installation, commissioning, and maintenance of electrical equipment. The contractual period stipulated for completion of works was sixteen months, commencing from 19.08.2011 and ending on 18.12.2012, with time being the essence of the contract. The respondent claimed that the appellant failed to provide necessary infrastructure such as sub-station buildings and work fronts in a timely manner, which resulted in prolongation of work and compelled the respondent to incur substantial additional expenditure towards mobilization, site office, head office administration and security.

Upon failure to resolve the dispute amicably, the respondent invoked arbitration. A Sole Arbitrator was appointed on 27.06.2014. The respondent raised seventeen claims before the Arbitral Tribunal (“AT”). While some of these claims were allowed, Claim Nos. 3, 4, 5, 7, 12, 14, and 17 were rejected. The AT based its rejection of Claims 3, 4, 5, and 7 (concerning site and head office expenditure, conveyance, and labour welfare) and Claim 12 (loss of profits during the extended period) on Clauses 12.2 of the General Clauses of Contract (“GCC”) and Clause 2(x) of Schedule ‘F’, holding that overheads and profits were included in the item rates. Claim 14 (bonus for early completion) was rejected as premature.

Aggrieved, the respondent filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“Act”) before the Single Judge, challenging the rejection of Claim Nos. 3, 4, 5, 7, and 12. The Single Judge held that the AT’s reasoning, particularly its interpretation of Clause 2(x), was perverse and set aside the award to that extent.

The present intra-court appeal under Section 37(1)(c) of the Act was filed by the appellant, challenging the setting aside of the award.

Issues:

The principal issue for consideration before the Division Bench was:

Whether the AT’s rejection of Claim Nos. 3, 4, 5, 7, and 12 was vitiated by patent illegality, justifying the Single Judge’s intervention under Section 34 of the Act?

Arguments of the Parties:

The appellant argued that the AT rightly rejected Claims 3, 4, 5, and 7, relying upon Clause 2(xi) of Schedule ‘F’, which allowed a 15% margin over DSR rates to cover

profits and overheads. According to the appellant, the claims for prolongation costs stood subsumed within this margin.

In contrast, the respondent submitted that Clause 2(x) was inapplicable to claims arising from prolongation due to the appellant's delays, as it only governed deviations like extra items and substituted quantities. The respondent argued that the AT had misapplied the clause to deny legitimate claims for damages due to delay. With respect to Claim 12, the respondent contended that the computation of loss of profits was based on a reasonable estimate derived from anticipated monthly earnings over the extended duration.

Observations of the Court:

The Court noted that the arbitral award rejected Claims 3, 4, 5, and 7 solely on the ground that item rates included a margin for overheads and profits as per Clause 2(x) of Schedule 'F'. However, these claims did not pertain to extra items or deviations under Clause 12 of the GCC, but rather to additional costs incurred due to delays directly attributable to the appellant.

The Court further observed that Claim 12 related to loss of profits during the extended period and had been rejected by the AT on the basis that it was speculative and unsupported by evidence.

Reasoning of the Court:

The Court held that the application of Clause 2(x) by the AT to reject Claims 3, 4, 5, and 7 was misplaced and constituted a patent illegality on the face of the record. The 15% markup stipulated under Clause 2(x) was clearly intended for pricing deviations such as extra or substituted items and not for assessing claims arising from contractual prolongation. The Tribunal's mechanical reliance on this clause to dismiss otherwise substantiated claims was irrational and legally untenable.

The Court also found support from a prior judgment rendered by a coordinate bench in a similar matter involving the same parties and contractual terms, which had taken a consistent view.

However, the Court disagreed with the Single Judge's interference with respect to Claim 12. The Tribunal had rightly held that the respondent's calculation of profits was hypothetical and lacked evidentiary support. Citing Supreme Court decisions in *Bharat Coking Coal Ltd. v. L.K. Ahuja* and *Unibros v. All India Radio*, the Court reiterated that a party claiming loss of profits must demonstrate that it lost other work opportunities and suffered actual financial detriment.

Since the respondent failed to adduce such evidence, the AT's rejection of Claim 12 was found to be a plausible view not liable to be disturbed under Section 34.

Held:

The Division Bench allowed the appeal in part. It set aside the Single Judge's order insofar as it interfered with the rejection of Claim 12 by the AT. The arbitral award in respect of Claim 12 was thus restored. However, the Court affirmed the Single Judge's

decision setting aside the rejection of Claim Nos. 3, 4, 5, and 7, upholding the finding that these rejections were perverse and based on a patent misinterpretation of the contract.

The judgment of the Division Bench of the Delhi High Court reinforces the limited scope of judicial interference with arbitral awards under Section 34 and 37 of the Act. While upholding the autonomy of the arbitral process, the Court emphasised that arbitral findings which are plainly irrational or based on a fundamental misapplication of contractual provisions are liable to be set aside. The Court balanced deference to arbitral reasoning with its duty to correct patent illegality, setting aside the AT's findings on prolongation cost claims while preserving its decision on speculative claims for loss of profits.

CIVIL LAW

Date: 27 May 2025

Case Name: *IEEE Mumbai Section Welfare Association v. Global IEEE Institute for Engineers* Civil Appeal No. 7235 of 2025 (SLP (Civil) No. 14208 of 2025)

Forum: Supreme Court of India

The dispute originated from Commercial Original Suit No. 906 of 2024, instituted before the LXXXIV Additional City Civil and Sessions Judge, Commercial Court, Bengaluru. In the said suit, the defendant, the appellant before the Supreme Court, filed an interlocutory application (IA No. 4 of 2024) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) praying for rejection of the plaint. The Commercial Court, by its order dated 12.03.2025, allowed the said application and rejected the plaint.

Aggrieved by the rejection of plaint, the plaintiff (respondent before the Supreme Court) preferred an appeal numbered COMAP No. 181 of 2025 before the High Court of Karnataka.

Alongside the appeal, the respondent also filed an interim application bearing IA No. 1 of 2025, seeking a temporary injunction against the appellant. By its impugned order dated 15.04.2025, the High Court granted the interim injunction. The appeal on merits, however, was left pending before the High Court.

The appellant challenged the order of the High Court granting temporary injunction before the Supreme Court.

Issue:

The primary issue before the Supreme Court was whether the High Court was justified in granting a temporary injunction in an appeal challenging the rejection of the plaint under Order VII Rule 11 of the CPC?

Arguments of the Parties:

The appellant contended that once the Commercial Court had rejected the plaint under Order VII Rule 11 CPC, the High Court could not grant a temporary injunction in the appeal arising therefrom. The argument was premised on the legal position that rejection of the plaint brings the suit itself to an end, thereby extinguishing any basis for interim protection.

Per contra, the respondent justified seeking temporary injunction as a protective measure during the pendency of the appeal, relying on the fact that such interim protection had been previously granted during the original proceedings. The respondent defended the injunction as necessary for preservation of the status quo during the hearing of the appeal on the premise that an appeal is extension of the suit.

Observations of the Court:

The Supreme Court observed that the impugned temporary injunction was granted in an appeal challenging the order rejecting the plaint under Order VII Rule 11 CPC. It emphasised that such an appeal challenges the very existence of the plaint, and thus,

unless the rejection is reversed, there remains no subsisting plaint before the court. Consequently, the grant of a temporary injunction, predicated upon a live and pending suit was not sustainable.

Reasoning of the Court:

The Court reasoned that upon rejection of a plaint under Order VII Rule 11, the suit itself ceases to exist. Therefore, an appeal under Order XLIII Rule 1(a) CPC against such rejection is not a continuation of the suit in the strict sense that would permit the grant of interim relief against the defendant. The Court clarified that the right to seek a temporary injunction is dependent on the existence of a pending plaint and cause of action. Once a plaint is rejected, no injunction can be granted unless the rejection is first set aside and the plaint is restored. The Supreme Court also noted that even if interim relief had been granted during the pendency of the original suit, such protection would not survive post rejection of the plaint.

The judgment rendered by the Supreme Court reiterates the settled principle that a temporary injunction is predicated upon the existence of a valid and subsisting suit. Once a plaint is rejected under Order VII Rule 11 CPC, there exists no proceeding in which such interim relief can be granted. The Supreme Court underscored that appellate proceedings challenging rejection of plaint do not revive the suit for the purposes of granting interlocutory relief, unless the rejection itself is reversed. Thus, the Court firmly ruled against the permissibility of interim injunctions in such appellate proceedings, reinforcing the doctrinal distinction between continuation of a suit and appeal against rejection of plaint.

Date: 30 May 2025

Case Name: *Kamla Nehru Memorial Trust & Anr. v. UP State Industrial Development Corporation Ltd. & Ors.* Civil Appeal arising out of SLP(C) Nos. 31887-88 of 2017

Forum: Supreme Court of India

The appellant *i.e.*, Kamla Nehru Memorial Trust, a charitable trust, applied in July 2003 for the allotment of 125 acres of land in Uteelwa Industrial Area, District Sultanpur, Uttar Pradesh, for floriculture purposes. The respondent *i.e.*, Uttar Pradesh State Industrial Development Corporation issued an allotment letter on 18.09.2003, laying down conditions including payment of 10% provisional premium as reservation money, with the balance 90% payable in eight equal half-yearly instalments commencing from 01.01.2006, subject to interest at 15% per annum. The allotment was on an '*as is where is*' basis, and possession was to be taken within 30 days of invitation or three months from the date of the letter.

The appellant defaulted on initial payment timelines but was granted extensions. Although it accepted the interest liability and terms, it continued to delay payment and requested further concessions. The respondent approved a revised payment schedule in 2005, yet the appellant failed to adhere to it. Despite multiple notices and communications, appellant neither executed the lease deed nor paid the outstanding dues, resulting in the respondent cancelling the allotment on 15.01.2007.

The appellant challenged the cancellation and the re-allotment to M/s Jagdishpur Paper Mills Ltd. by way of writ petitions. The High Court upheld the cancellation. Aggrieved, the appellant filed the present appeals before the Supreme Court.

Issues:

The principal issues before the Supreme Court were:

- i) Whether the appellant was responsible for frustrating the performance of the allotment contract?
- ii) Whether the cancellation of allotment was procedurally defective and legally unsustainable under Clause 3.04(vii) of the respondent's manual?

Arguments of the Parties:

Appellant contended that its failure to make payments stemmed from respondent's inability to deliver physical possession and demarcate the land, which remained encroached upon. It argued that the contract was frustrated due to respondent's non-performance. It also asserted that only one notice, dated 13.11.2006, qualified as a legal notice, and the requirement of three consecutive notices under Clause 3.04(vii) of the manual had not been fulfilled. The appellant pointed to its post-litigation deposit of dues as proof of good faith and willingness to perform.

The respondent contended that the allotment was made on an '*as is where is*' basis and included a site plan. The land was demarcated on 03.03.2005, which appellant had acknowledged. It submitted that the execution of the lease deed was a prerequisite for handing over possession as per Clause 2.15 of the manual. Respondent also cited notices dated 14.12.2004, 14.12.2005, and 13.11.2006 as satisfying the requirement for legal notices. It highlighted appellant's chronic default despite multiple opportunities and maintained that cancellation was legally justified.

Observations of the Court:

The Supreme Court noted that the central controversy revolved around the validity of cancellation of the allotment. It examined the conditions of allotment, including the site plan, the acknowledgment of demarcation by the Appellant, and the allotment's '*as is where is*' basis. The Court held that the claim of encroachment was unsupported by evidence and that the obligation to deliver possession arose only upon execution of the lease deed, which the appellant failed to execute. On the question of procedural compliance, the Court scrutinised Clause 3.04(vii) and found that three valid notices had been issued that sufficiently satisfied the legal requirements.

The Court also invoked the Public Trust Doctrine, observing that large tracts of public land were allotted without transparency. It took note of the proposed re-allotment to M/s Jagdishpur Paper Mills Ltd., which occurred during the pendency of the dispute and which was done without following a transparent process.

Reasoning of the Court:

On the first issue, the Court rejected appellant's argument that respondent frustrated the contract. It found that the land was duly demarcated and that appellant's failure to execute the lease deed and adhere to the payment schedule was the real cause of the dispute. Respondent's demand for execution of the lease deed prior to possession was

consistent with the manual. Therefore, no frustration of contract occurred; rather, appellant failed to perform its obligations.

On the second issue, the Court held that the cancellation was procedurally sound. It interpreted the term '*legal notice*' under Clause 3.04(vii) to mean any clear and unequivocal communication conveying default and warning of consequences. It found that the notices dated 14.12.2004, 14.12.2005, and 13.11.2006 met this threshold and therefore satisfied the procedural mandate. The Court found that respondent had acted in accordance with its statutory manual and rejected the claim that the cancellation was arbitrary.

Held:

The Supreme Court dismissed the appeals, upholding the cancellation of allotment made by respondent. However, it annulled the subsequent re-allotment or any offer made by respondent in favour of M/s Jagdishpur Paper Mills Ltd. for the same land, holding it illegal and against public policy. The Court directed respondent to refund any amount paid by the said company with interest as applicable to Nationalized Bank deposits.

Further, the Court directed the respondent to ensure that all future allotments of industrial land be made in a transparent, non-arbitrary, and non-discriminatory manner, consistent with broader public interest objectives like industrial growth, environmental standards, and regional development. The Subject Land shall be re-allotted in strict adherence to these principles.

The Supreme Court upheld the cancellation of the land allotment to Kamla Nehru Memorial Trust on the grounds of persistent default and non-compliance with allotment terms. It affirmed that UPSIDC followed due procedure and acted within its legal framework. The Court reinforced the importance of procedural integrity and accountability in the allocation of public resources, invoking the Public Trust Doctrine to annul the subsequent irregular re-allotment. The judgment underscores the need for transparency, fairness, and adherence to statutory protocols in dealings involving public land.

INSOLVENCY AND BANKRUPTCY LAW

Date: 02 May 2025

Case Name: *Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors.* Civil Appeal No. 1808 of 2020

Forum: Supreme Court of India

The case arose from the Corporate Insolvency Resolution Process (“**CIRP**”) initiated against the respondent *i.e.*, M/s Bhushan Power and Steel Ltd. (“**BPSL**”) following the Reserve Bank of India’s directions concerning large non-performing assets. The CIRP commenced on 26.07.2017, upon admission of an application filed by Punjab National Bank before the National Company Law Tribunal (“**NCLT**”). Resolution plans were received from JSW Steel, Tata Steel, and Liberty House. After multiple revisions and negotiations, JSW Steel’s Consolidated Resolution Plan was approved by the Committee of Creditors (“**CoC**”) followed by the NCLT on 05.09.2019, with certain conditions.

Subsequently, the Directorate of Enforcement (“**ED**”) provisionally attached BPSL’s assets under the Prevention of Money Laundering Act, 2002 (“**PMLA**”). JSW challenged the attachment before NCLAT, which stayed the provisional attachment order. Simultaneously, other stakeholders including operational creditors, ex-promoters, and the State of Odisha, challenged the NCLT approval before the NCLAT.

On 17.02.2020, the NCLAT upheld the approval of the Resolution Plan with modifications, allowing JSW’s appeal and dismissing the other appeals. The present batch of appeals was filed before the Supreme Court challenging the NCLAT judgment.

Meanwhile, JSW and the CoC implemented the plan during the pendency of the appeals, subject to the final outcome of the Civil Appeal. JSW made partial payments to financial creditors in 2021 and operational creditors in 2022. The ED’s separate appeal concerning the attached properties was disposed of by the Supreme Court without deciding the issues in the present batch.

Issues:

The Supreme Court was called upon to determine the following:

- i. Whether the appeals filed by operational creditors, ex-promoters, and statutory authorities were maintainable under Section 62 of the Insolvency and Bankruptcy Code (“**IBC**”)?
- ii. Whether JSW Steel, the successful resolution applicant (“**SRA**”), could file an appeal against the NCLT’s approval of its own resolution plan under Section 61 of the IBC?
- iii. Whether the NCLAT had jurisdiction to make observations on the provisional attachment under the PMLA?

- iv. Whether there were violations of mandatory IBC provisions including Section 12 (CIRP timeline) and Section 29A (eligibility)?
- v. Whether the implementation of the plan pending the appeals amounted to '*fait accompli*' precluding judicial review?

Arguments of the Parties:

The appellants *i.e.*, operational creditors, ex-promoters, and government entities argued that the CIRP was vitiated by gross irregularities including delays beyond the statutory 270 days period prescribed under Section 12 of the IBC, and ineligibility of JSW under Section 29A. They contended that JSW's conduct was fraudulent and the implementation of the plan post-approval was inconsistent with the Code. Operational creditors claimed impermissible reclassification of claims, violating Regulation 38(1), and the ex-promoters objected to the non-distribution of profits generated during CIRP. The State of Odisha argued that its statutory claims were not properly verified or admitted.

Respondents *i.e.*, JSW and the CoC questioned the maintainability of the appeals, asserting that the appellants were not "*persons aggrieved*" under Section 62 of the IBC. They argued that the resolution plan was implemented and payments made, rendering the appeals infructuous. JSW contended that its appeal against the NCLT order was necessitated by certain adverse observations and conditions. The CoC defended its conduct as being within the realm of commercial wisdom, and asserted that the timeline under Section 12 was directory and not mandatory. It was also contended that operational creditors' claims were dealt with in accordance with law and that statutory dues not part of the resolution plan stood extinguished.

Observations of the Court:

The Court held that the appellants were indeed "*persons aggrieved*" and their appeals were maintainable. The appellants directly challenged the NCLT's resolution plan approval, and their dismissal by the NCLAT, entitled them to invoke the appellate jurisdiction of the Supreme Court. Conversely, the Court found that respondents, JSW, as the Successful Resolution Applicant ("SRA") whose plan had been approved, could not be said to be aggrieved so as to justify an appeal under Section 61. The Court criticised the NCLAT's acceptance of JSW's appeal, terming it legally unsustainable.

The Court took serious note of the procedural violations in the CIRP. It found that the application for approval of the resolution plan was filed significantly beyond the maximum period of 270 days prescribed under Section 12 of the IBC, rendering the entire resolution process invalid. The RP's failure to file the mandatory compliance certificate *i.e.*, Form H and the non-verification of the resolution applicant's eligibility under Section 29A were other deficiencies.

It was also observed that the NCLAT had exceeded its jurisdiction by commenting on the legality of ED's provisional attachment under the PMLA, a subject outside the purview of IBC forums.

Reasoning of the Court

The Court reasoned that timelines under Section 12 are mandatory and not directory. Since the CIRP application for approval of the plan was filed after the expiry of the statutory period, it vitiated the approval process entirely. The Supreme Court held that

the NCLAT committed grave error in entertaining an appeal by JSW under Section 61 despite it not being a person aggrieved and failing to raise any of the grounds contemplated under Section 61(3).

The failure of the RP to ensure compliance with Section 30(2) and Regulation 39(4) including verifying the eligibility of the resolution applicant and the treatment of operational creditors further invalidated the plan. The belated implementation of the plan by JSW, after partial payments and while appeals were pending, did not amount to *fait accompli*, as illegal actions cannot be ratified by subsequent conduct. The shifting stand of the CoC, from alleging default to supporting the plan's delayed implementation, was viewed with suspicion.

Decision of the Court

The Supreme Court allowed the appeals filed by Kalyani Transco, Sanjay Singal and others, Jaldhi Overseas Pte. Ltd., M/s Medi Carrier Pvt. Ltd., and CJ Darcl Logistics Ltd.

The NCLT order dated 05.09.2019 and the NCLAT judgment dated 17.02.2020 were quashed and set aside. The Resolution Plan submitted by JSW was rejected on the ground that it did not comply with the mandatory provisions of Section 30(2) read with Section 31(2) of the IBC. In exercise of powers under Article 142 of the Constitution, the Court directed the NCLT to initiate liquidation proceedings against BPSL under Chapter III of the IBC.

The Court clarified that any payments made by JSW to creditors during the purported plan implementation being subject to the outcome of the appeals, were to be dealt with appropriately by the concerned parties. The issue of EBITDA distribution was expressly left open. The appeals by the Government and State of Odisha were disposed of without adjudication on merits, due to the rejection of the resolution plan.

The Supreme Court's ruling serves as a significant reaffirmation of procedural discipline under the IBC. It reasserts the mandatory nature of the CIRP timeline under Section 12 and holds resolution professionals accountable for strict compliance with statutory requirements. The judgment makes it clear that no successful resolution applicant may challenge the approval of its own plan without statutory grounds and underscores that post-approval implementation, if flawed or delayed, cannot create immunity for an otherwise invalid plan. It also underscores the limited jurisdiction of NCLT/NCLAT vis-à-vis statutory attachments under other special enactments like the PMLA. The ruling has far-reaching implications for the integrity, finality, and fairness of the insolvency resolution process.

Date: 15 May 2025

Case Name: *Asha Basantilal Surana v. State Bank of India* Company Appeal (AT) (Insolvency) No. 84 of 2025 and I.A. No. 334 of 2025

Forum: National Company Law Appellate Tribunal, New Delhi

The present appeal arose from the rejection of an application filed by the appellant *i.e.*, Asha Basantilal Surana under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") seeking initiation of personal insolvency proceedings against herself in the capacity of a personal guarantor. The appellant had executed a personal guarantee deed dated 12.11.2021 in favour of the creditors of the principal borrower, M/s. Surana

Metacast (India) Private Limited, which had obtained credit facilities from the respondents being State Bank of India and other financial creditors.

The account of the principal borrower was declared a Non-Performing Asset (“**NPA**”) on 01.05.2023. Subsequently, on 09.10.2023, a notice under Section 13(2) of the SARFAESI Act, 2002, was issued by the State Bank of India to both the principal borrower and the appellant, demanding repayment of INR 28.56 crores, thereby invoking her guarantee. On 22.08.2024, the appellant filed the Section 94(1) application, which was rejected by the Adjudicating Authority i.e. NCLT, Ahmedabad on 04.12.2024, on the ground that the application was premature without any cause of action. The appellant challenged this order before the NCLAT.

Issue:

The primary issue before the NCLAT was whether the Section 13(2) SARFAESI notice dated 09.10.2023 issued to the appellant constituted sufficient invocation of the personal guarantee, thereby giving rise to a valid cause of action to file an application under Section 94(1) of the IBC?

Arguments of the parties:

The appellant argued that the Section 13(2) notice specifically demanded payment from her as a personal guarantor and thus, by its express language, constituted a formal invocation of the personal guarantee. It was contended that once such a demand was made, she was entitled to seek initiation of insolvency proceedings under Section 94(1) of the IBC. Furthermore, it was submitted that the Adjudicating Authority *erred* in rejecting the application without appointing a Resolution Professional and obtaining a report under Section 99, as required under the statutory framework.

The respondents contended that the appellant filed the application under Section 94(1) only to obstruct respondents’ lawful recovery efforts under SARFAESI. It was submitted that the issuance of a Section 13(2) notice did not, by itself, constitute a cause of action under the IBC for personal insolvency. The respondents argued that the application was rightly dismissed as premature since no further steps had been taken to invoke the guarantee in the manner contemplated under law.

Observations of the Court:

The Tribunal noted that the Adjudicating Authority’s reasoning hinged entirely on the view that a Section 13(2) notice alone was insufficient to constitute cause of action for filing a Section 94(1) application. The NCLAT examined Clause 7 of the Personal Guarantee Agreement, which required the guarantor to pay “*forthwith on demand made by the Bank*”. It was observed that the Section 13(2) notice addressed to the appellant explicitly demanded payment of a specified sum, and this demand fell squarely within the meaning of invocation under Clause 7.

The Tribunal distinguished its prior decision in *Amanjyot Singh v. Navneet Kumar Jain*, where no follow-up action had been taken for years after the notice, and the Bank had not treated the guarantee as invoked. In contrast, in the present case, the demand was contemporaneous, explicit, and actively pursued.

The Tribunal also reviewed its earlier decision in *Mavjibhai Nagarbhai Patel v. State Bank of India*, which had categorically held that a Section 13(2) SARFAESI notice demanding payment from a personal guarantor may constitute invocation of a personal guarantee, depending on its language and context. The Tribunal found this authority binding and directly applicable.

Reasoning of the Court:

The NCLAT reasoned that the determination of whether a guarantee is invoked depends on the terms of the Guarantee Agreement and the substance of the notice. In this case, the Guarantee Agreement did not prescribe a particular format for invocation and required only a demand. Since the Section 13(2) notice issued to the appellant made an express monetary demand and notified her of impending enforcement action, it amounted to invocation of the personal guarantee.

Accordingly, the Tribunal held that the Section 94(1) application filed by the appellant was neither premature nor without cause of action. The Adjudicating Authority *erred* in rejecting it at the threshold without appointing a Resolution Professional or proceeding under Section 99 of the IBC.

Held:

The NCLAT allowed the appeal and set aside the order dated 04.12.2024 passed by the Adjudicating Authority, which had rejected the application under Section 94(1) of the IBC. The Tribunal restored the application bearing no. C.P. (IB) 317(AHM) 2024 to the file of the Adjudicating Authority with a direction to proceed in accordance with law.

This judgment clarifies that a demand made through a Section 13(2) notice under the SARFAESI Act can, depending on its language and contractual terms, amount to invocation of a personal guarantee. The Tribunal emphasized that the Adjudicating Authority must assess the content of the notice against the Guarantee Agreement before rejecting a Section 94 application. This ruling reinforces the procedural discipline under the IBC, especially in personal guarantor insolvency proceedings, and affirms that applications cannot be dismissed at the threshold without statutory compliance under Sections 95–99.

WHITE COLLAR CRIMES

Date: 19 May 2025

Case Name: *State of Lokayuktha Police, Devanagere v. CB Nagaraj*
Criminal Appeal No. 1157 of 2015

Forum: Supreme Court of India

The respondent, C. B. Nagaraj, served as an Extension Officer in the Taluka Panchayath, Devanagere. The complainant, E. R. Krishnamurthy, a primary school teacher, required a certified copy of a Validity Certificate under Category-II A for his appointment. The relevant file was marked to the respondent for enquiry and report. It was alleged that on 07.02.2007 at around 12:30 PM, the respondent demanded a bribe of INR 1,500 from the complainant for forwarding the inspection report.

Based on this complaint, an FIR was registered by the Devanagere Lokayuktha Police under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

Later that evening, during a trap operation, phenolphthalein smeared notes were recovered from the respondent, and a chemical test confirmed the presence of the chemical on his fingers. The Trial Court convicted the respondent under the said provisions. However, on appeal, the Karnataka High Court set aside the conviction, finding that the prosecution had failed to establish the demand for illegal gratification beyond reasonable doubt. The State, through the Lokayuktha Police, appealed against the High Court's decision before the Supreme Court.

Issue:

The central issue before the Supreme Court was whether the High Court was justified in setting aside the conviction on the ground that the prosecution had failed to prove the essential element of demand for illegal gratification, thereby reversing the conviction of the respondent under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988?

Arguments of the parties:

The appellant contended that once the prosecution had proved the demand and acceptance of the bribe, a presumption under Section 20 of the Prevention of Corruption Act was attracted, which the respondent had failed to rebut. The recovery of the tainted money and positive phenolphthalein test constituted strong evidence. Reliance was placed on *State of Karnataka v. Chandrasha*, which equated the presumption under Section 20 with that under Section 118 of the Negotiable Instruments Act in terms of evidentiary burden. The appellant also argued that the respondent's defence that the money was a loan repayment was unsubstantiated and implausible.

The respondent argued that the complainant's testimony was not credible, pointing to inconsistencies such as initially denying the existence of the spot inspection report and later admitting to it. The respondent also contended that the report had already been

submitted before the alleged demand and payment, leaving no pending official act that could motivate a bribe. Furthermore, the respondent consistently claimed the money was repayment of a prior loan extended to the complainant. Personal factors such as his age, service, and disability were also highlighted to support the High Court's finding of acquittal.

Observations of the Court:

The Court analysed the sequence of events on the day in question and highlighted inconsistencies in the prosecution's case. It found the testimony of the complainant *i.e.*, PW1 to be unreliable due to contradictions regarding the status of the inspection report. The complainant initially denied knowledge of the report but then admitted to his and his father's signatures on the document when confronted. The testimony of PW2, the shadow witness, was also found to be incoherent, initially claiming he did not hear the conversation, later stating he heard the demand outside the chamber.

The Court noted that the respondent had already forwarded the file before the alleged bribe was handed over, thereby weakening the prosecution's narrative about a *quid pro quo* arrangement. The absence of any other credible witness corroborating the demand further cast doubt on the reliability of the prosecution's version.

Reasoning of the Court:

The Court reiterated that in order to convict a public servant under the Prevention of Corruption Act, the prosecution must establish a consistent chain of demand, acceptance, and recovery. While recovery and chemical evidence were present, the foundational element of *demand* had not been proved beyond reasonable doubt. The Court emphasized that penal provisions must be construed strictly, and the presumption under Section 20 can arise only upon proof of demand and acceptance. Distinguishing the precedent relied on by the appellant, the Court referred to *Paritala Sudhakar v. State of Telangana*, where it was held that in absence of proof of demand, Section 20 cannot be invoked.

In the present case, since demand was not credibly established, the presumption did not arise. Although the High Court's reasoning was terse, the Supreme Court independently reviewed the evidence and concurred with its conclusion.

Held:

The Supreme Court dismissed the appeal filed by the appellant. The judgment of the Karnataka High Court dated 09.07.2013, which had set aside the Trial Court's conviction of the respondent, was affirmed. The acquittal of the respondent under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, was upheld. No order was made as to costs.

The judgement reaffirms the fundamental legal principle that in corruption cases, the prosecution must prove the initial demand for illegal gratification with cogent and reliable evidence. Recovery of tainted money and test results, in the absence of a clearly established demand, are insufficient for conviction. The Court underscored that the presumption under Section 20 of the Prevention of Corruption Act is conditional upon proof of demand, and cannot substitute for it. The decision also emphasizes the

necessity of consistent and credible witness testimony in upholding convictions under anti-corruption laws.
