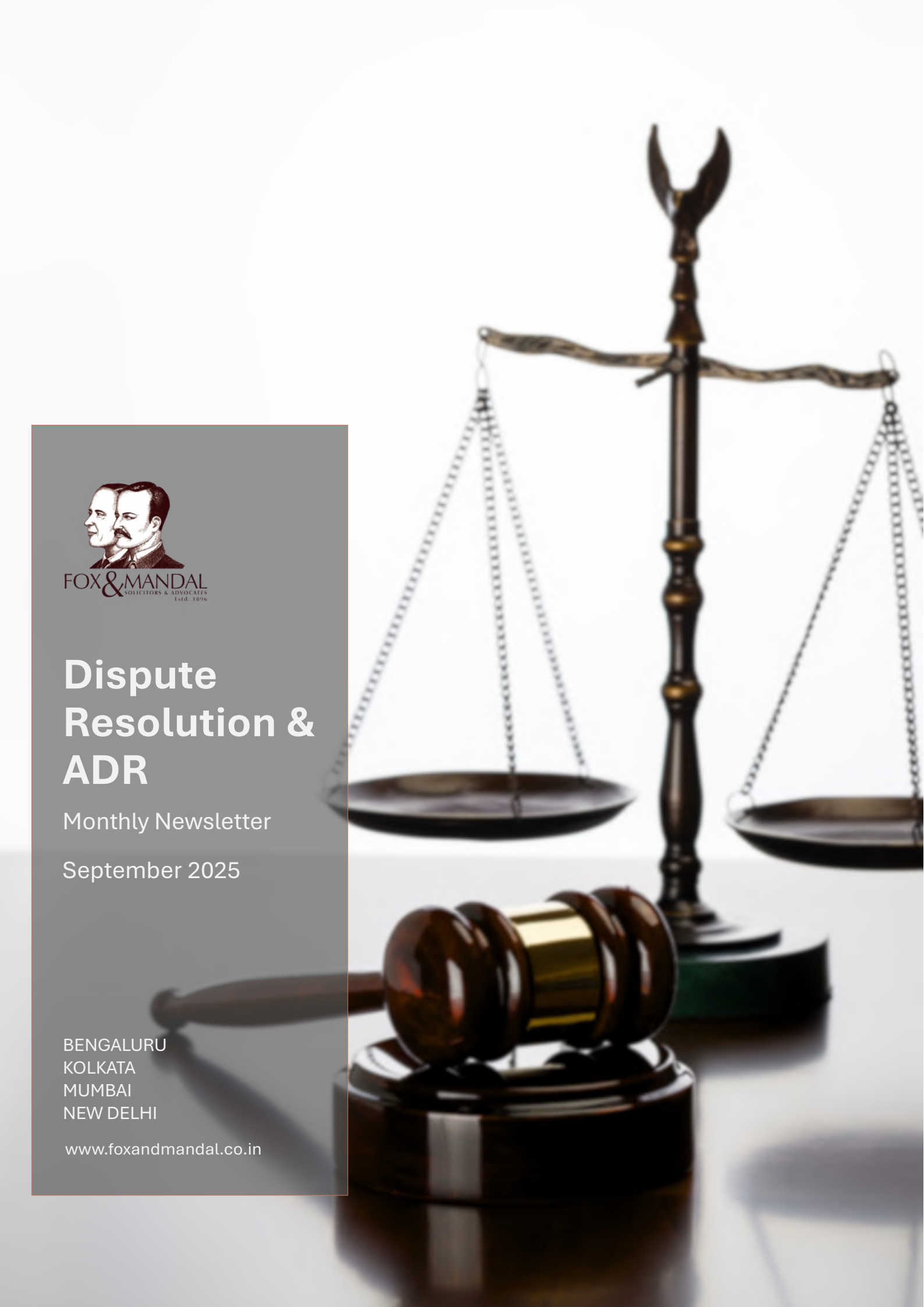

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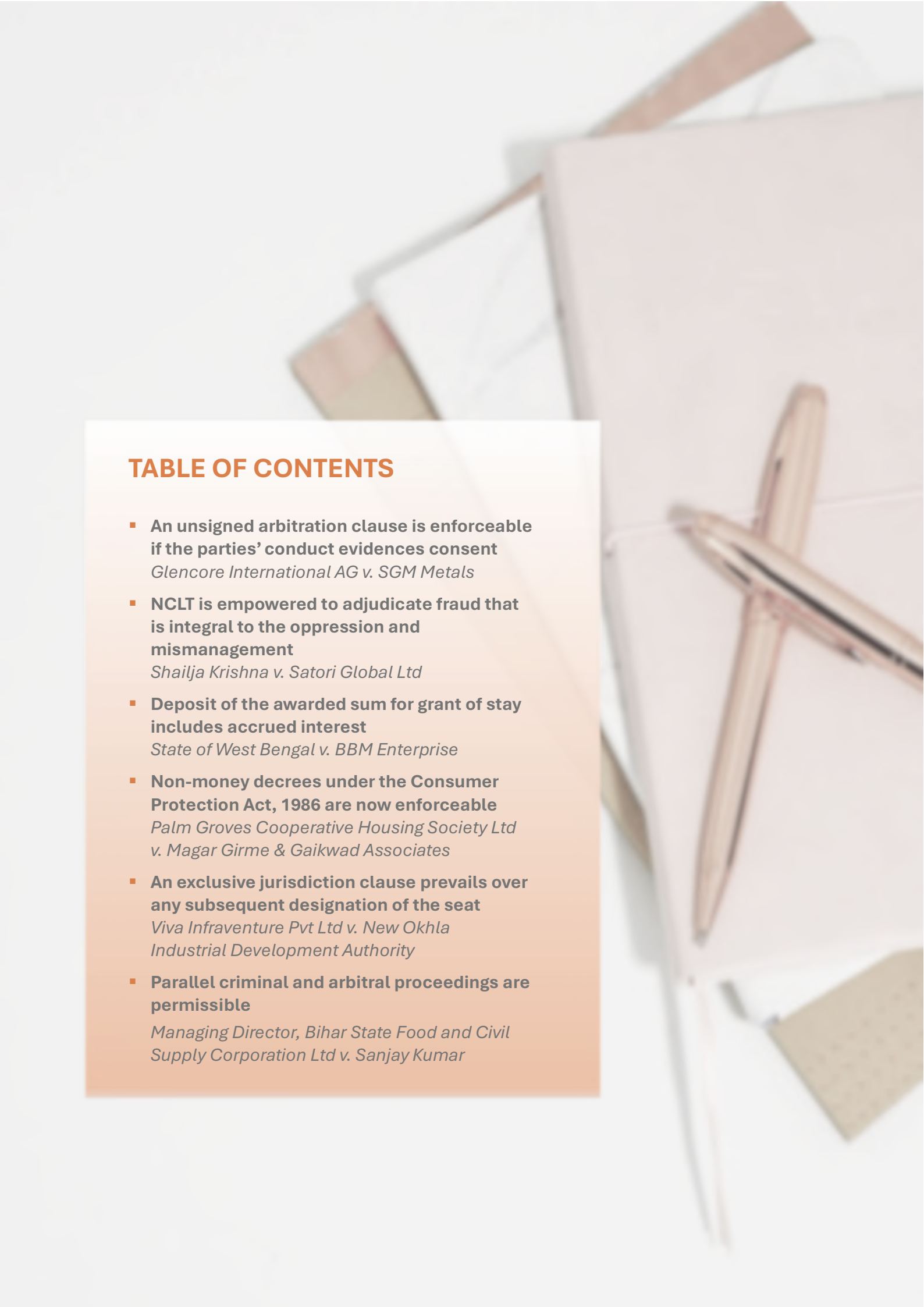

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An unsigned arbitration clause is enforceable if the parties' conduct evidences consent

Glencore International AG v. SGM Metals

Supreme Court of India | 2025 SCC OnLine SC 1815

The Supreme Court recently held that an arbitration clause in an unsigned contract may be valid if the parties' conduct evidences consent. This ruling provides a significant clarification that even an unsigned arbitration agreement can bind parties where consent is evident through conduct and correspondence. It reduces the risk of opportunistic avoidance of arbitration by withholding signatures and reinforces confidence in India's pro-arbitration stance. Businesses should ensure meticulous documentation – through invoices, bank instruments, and communications – to evidence consent. The decision strengthens contractual certainty and signals that substance, not mere formality, governs arbitration enforceability.

SUMMARY OF FACTS

Building on their prior transactions, Glencore International AG (Glencore), a Swiss commodity trading company and Shree Ganesh Metals (SGM) entered into an agreement for the supply of 6,000 metric tons of zinc metal.

While Glencore signed and sent the finalised contract to SGM, the latter never physically signed the document (Contract). However, both parties continued dealings under the terms reflected in the unsigned Contract.

Glencore supplied 2,000 metric tons of zinc, along with invoices referencing the Contract, while SGM procured Standby Letters of Credit also referring to it; party correspondences consistently referred to the Contract and its performance.

Disputes arose, and SGM filed a civil suit. Glencore sought reference to arbitration under the Contract under Section 45 of the Arbitration and Conciliation Act, 1996 (Act). The Delhi High Court held that in the absence of signatures, no contract had been concluded and consequently, no arbitration agreement came into existence.

Aggrieved, Glencore approached the Supreme Court.

DECISION OF THE COURT

The Supreme Court reversed the Delhi High Court's decision, emphasising that an arbitration agreement in writing does not require the signatures of all parties if their conduct evidences consent. Signature is not indispensable, and an arbitration agreement's enforceability depends chiefly on written evidence of *consensus ad idem*.[1]

Clear evidence of agreement and performance cannot defeat the agreed route of arbitration, and the totality of communications and commercial conduct must be considered to discern whether parties intended to arbitrate their disputes.

Substantial performance through delivery of goods, coupled with consistent references to the Contract in invoices, Letters of Credit, and party correspondence, constituted overwhelming evidence of assent to the arbitration agreement.

Further, under Section 45 of the Act, the Court's obligation is limited – once a *prima facie* case for the existence of a binding arbitration agreement is made, reference to arbitration must follow without unnecessarily conducting a 'mini-trial', leaving deeper disputes about validity primarily for the arbitral tribunal.

A purely formalistic interpretation of arbitration clauses must not be adopted, particularly in high-value commercial contracts involving electronic communications, unsigned proformas, and other modern modes of recording consensus. Citing *Scrutton on Charter Parties*, the Court endorsed a commercially sensible approach, favouring the enforcement of arbitration agreements.[2]

[1] Govind Rubber Ltd v. Louis Dreyfus Commodities Asia Pvt Ltd, (2015) 13 SCC 477; and Caravel Shipping Services Pvt Ltd v. Premier Sea Foods Exim Pvt Ltd, (2019) 11 SCC 461
[2] 17th Edition, Sweet & Maxwell, London, 1964

NCLT is empowered to adjudicate on issues of fraud integral to oppression and mismanagement

Shailja Krishna v. Satori Global Ltd

Supreme Court of India | 2025 SCC OnLine SC 1889

The Supreme Court recently held that the National Company Law Tribunal (**NCLT**) is empowered to adjudicate allegations of fraud when such fraud is central to the claims of oppression and mismanagement, affirming its role as a quasi-judicial body rather than a mere summary forum. This pro-shareholder ruling expands the Tribunal's jurisdiction in fraud-related company disputes.

This approach appears to contrast with ***IFB Agro Industries***,[3] where the Supreme Court observed that serious fraud allegations such as coercion and forgery, involving extensive evidence, fall outside NCLT's procedural scope and must be pursued in Civil Courts. The divergence is reconciled by distinguishing incidental fraud, which may be dealt with by Civil Courts, from foundational fraud, which triggers NCLT intervention. This pragmatic distinction allows stakeholders to resolve critical corporate disputes under company law without resorting to protracted civil litigation, ensuring timely protection of shareholder rights and effective corporate governance, without undermining the procedural safeguards of a full trial.

SUMMARY OF FACTS

Shailja Krishna, a majority shareholder and director of Satori Global Ltd, alleged fraudulent transfer of her shares and ouster from management.

She claimed her husband and family members coerced her into signing blank documents, fabricated her resignation, and transferred her entire shareholding to her mother-in-law under a purported gift deed.

She challenged the validity of the gift deed, alleged manipulation of share transfer forms, and contested board meetings convened without notice or quorum.

In 2018, the NCLT, Allahabad, passed an order in her favour, invalidating the transfer of her shares and reinstating her as shareholder and director.

Reversing the decision, the National Company Law Appellate Tribunal, New Delhi (NCLAT), held that the NCLT lacked jurisdiction to decide issues pertaining to fraud, and directed Shailja to approach the Civil Courts under the Specific Relief Act, 1963.

Aggrieved, Shailja approached the Supreme Court.

DECISION OF THE COURT

The Supreme Court set aside the NCLAT's order and held that the NCLT has wide powers to decide issues integral to oppression and mismanagement, including examining allegations of fraud, under Sections 397 and 398 of the Companies Act, 1956 and Section 242 of the Companies Act, 2013.

The test is whether the fraud is foundational to shareholder rights and company affairs, and not whether it involves disputed facts.

Mere allegation of fraud does not automatically trigger the Civil Court's jurisdiction. The role of the NCLT is to provide effective and immediate remedies, and it cannot abdicate this duty by pushing disputes to Civil Courts when fraud is central to the complaint.

On facts, the following acts collectively amounted to oppression and mismanagement, and therefore, Shailja was reinstated as shareholder and director:

- Invalid gift deed: The gift deed was held invalid as it contravened the Articles of Association and was executed under suspicious and fraudulent circumstances.
- Defective share transfers: The share transfer forms were found to be tampered with and backdated beyond the statutory timelines, thereby rendering them *void*.
- Invalid board meetings: The board meetings accepting her resignation and appointing new directors were declared invalid for want of proper notice and quorum.

[3] IFB Agro Industries Ltd v. SICGIL India Ltd, (2023) 4 SCC 209

Deposit of the awarded sum for grant of stay includes accrued interest

State of West Bengal v. BBM Enterprise

Calcutta High Court | AP No. 808 of 2022

The Calcutta High Court has reaffirmed its jurisdiction to modify conditions for grant of stay on an arbitral award. Significantly, it clarified that the deposit required for securing a stay must cover both principal and accrued interest, as a stay does not halt the accrual of interest. By retaining the power to revisit stay conditions, the Court ensures that award-holders are not disadvantaged by delays in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. Crucially, it recognises the necessity of depositing the entire awarded amount, noting that business common sense does not permit postponement of the fruits of an award to an uncertain future date. This pragmatic approach bolsters confidence in arbitration and safeguards the financial interests of award-holders.

SUMMARY OF FACTS

Disputes under a works contract between BBM Enterprise and the State of West Bengal were referred to arbitration.

An award of approximately INR 12.5 crore was passed in favour of BBM Enterprise, which was subsequently challenged by the State of West Bengal.

Pending the challenge, the Calcutta High Court temporarily stayed the enforcement of the award on the condition that the State deposit INR 9 crore.

The State deposited the amount, which was permitted to be withdrawn by BBM Enterprise against the furnishment of bank guarantees.

As the challenge remained pending, BBM Enterprise sought deposit of the balance amount of approximately INR 3.5 crore, along with accrued interest.

DECISION OF THE COURT

The High Court modified its stay order, directing the State to deposit the balance undeposited award sum along with accrued interest (INR 5.32 crore), permitting BBM Enterprise to withdraw it upon furnishing an unconditional bank guarantee.

The deposit of the awarded sum/decreed amount encompasses both principal and accrued interest, as the stay did not halt the accrual of interest.

Additionally, emphasising the need to deposit the entire awarded sum, the Court observed that business common sense does not permit postponement of the award's benefits to an uncertain future date. In a commercial context, a part-deposit for stay undermines equal treatment of parties.

The Court retains jurisdiction to revisit and modify stay conditions to balance equities, and does not become *functus officio* upon disposal of the stay application

Non-money decrees passed under the Consumer Protection Act, 1986 are now enforceable

Palm Groves Cooperative Housing Society Ltd v. Magar Girme & Gaikwad Associates

Supreme Court of India | 2025 SCC OnLine SC 1790

The Supreme Court's recent ruling resolves a long-standing legislative gap by affirming that non-money consumer forum orders passed under the Consumer Protection Act, 1986 (**erstwhile Act**) between March 15, 2003 and July 20, 2020 are now enforceable as Civil Court decrees. It aligns the interpretation of Section 25 of the erstwhile Act with the legislative intent later embodied in Section 71 of the Consumer Protection Act, 2019 (**new Act**), which expressly provides for enforcement of all consumer forum orders. For developers, housing societies, and consumer-facing businesses, the decision heightens the execution risk of non-monetary directions (e.g. conveyance obligations, rectification of defects) which can now be enforced through civil process. Stakeholders should recalibrate compliance protocols and litigation strategies accordingly. By realigning enforcement powers with legislative intent, the judgment enhances consumer confidence and restores certainty and finality to consumer dispute resolution.

SUMMARY OF FACTS

Disputes arose between the developer of a residential project and its housing society formed by the flat purchasers concerning defective construction, deficiency of service, and failure to execute the conveyance deed in favour of the society.

In 2007, the District Consumer Disputes Redressal Commission partly allowed the consumer complaint, awarding compensation and directing the developer to execute the conveyance deed in favour of the society.

Upon non-compliance by the developer, execution proceedings were initiated under the erstwhile Act, and the District Commission's directions were reiterated.

In appeal, however, the National Consumer Disputes Redressal Commission dismissed the execution-related proceedings as 'not maintainable'.

Aggrieved by the absence of any remedy for securing the enforcement of the District Commission's orders, the society approached the Supreme Court.

DECISION OF THE COURT

The Court noted that an amendment to Section 25 of the erstwhile Act (providing for enforcement of orders of the consumer fora) in 2002 (effective from 2003) had created a legislative anomaly, leaving no mechanism to execute final orders except those directing payment of money.

The 2002 amendment was a drafting error, as the intent of the legislature was always to allow enforcement of both interim and final orders.

The new Act (effective from 2020), under Section 71, rectified this anomaly by expressly providing that every order of a consumer forum shall be enforced like a decree of a Civil Court.

As relief, the Court reinterpreted Section 25(1) for pending execution proceedings of all orders passed between March 15, 2003 and July 20, 2020, permitting execution of both interim and final orders as Civil Court decrees.

An exclusive jurisdiction clause prevails over any subsequent designation of the seat

Viva Infraventure Pvt Ltd v. New Okhla Industrial Development Authority

Delhi High Court | 2025 SCC OnLine Del 4684

The Delhi High Court recently held that an exclusive jurisdiction clause will prevail over any subsequent designation of the seat by the arbitrator. An arbitrator's discretion to fix the 'place' of arbitration cannot override the contract's exclusive jurisdiction clause. Reaffirming the primacy of an exclusive jurisdiction clause even against a separate contractual designation of seat, the decision also offers much-needed clarity, as contracts often contain conflicting provisions on exclusive jurisdiction and seat. This is particularly significant as the designation of 'place' in contracts or arbitral orders is prone to ambiguity, since the term is used interchangeably to mean both seat and venue depending on the context.

However, the Court's reasoning in distinguishing ***Inox Renewables***[4] suggests that even a mutually agreed change of seat may not override an exclusive jurisdiction clause. This could prove controversial, as it raises questions about the balance between party autonomy and contractual certainty. Parties should therefore draft arbitration clauses with precision, while being mindful that the exclusive jurisdiction clause expressly covers all arbitral matters, not just general disputes. Where both seat and jurisdiction clauses are included, they must be harmonised to avoid conflict and unintended curtailment of party autonomy.

SUMMARY OF FACTS

For the construction of a road, Viva Infraventure Pvt Ltd (VIPL) and the New Okhla Industrial Development Authority (NOIDA) entered into a contract, containing an arbitration clause under which the arbitrator could fix the venue at their sole discretion. Further, any suit or application for the enforcement of this arbitration clause was to be filed exclusively before the Courts at Gautam Budh Nagar, Uttar Pradesh.

Disputes arose and were referred to a sole arbitrator, who passed a procedural order designating Delhi as the seat of the arbitration, although without the express consent of the parties.

Subsequently, VIPL sought an extension of time for the conclusion of arbitral proceedings before the Delhi High Court. NOIDA challenged the said application on the ground that Delhi was not the seat of arbitration.

DECISION OF THE COURT

The Delhi High Court held that the seat of arbitration designated by the arbitrator would not override an exclusive jurisdiction clause already present in the arbitration agreement.

As the designation of a venue would ordinarily be construed as the seat absent any contrary indication,[5] on an isolated reading of the contractual provision empowering the arbitrator to fix the venue, Delhi ought to be treated as the seat of arbitration. However, the exclusive jurisdiction clause could not be ignored.

An exclusive jurisdiction clause covering applications related to arbitral proceedings prevails over any separate clause fixing the seat of arbitration outside that jurisdiction. Any subsequent designation of the place, whether by the arbitrator or by mutual consent of the parties, would not override such exclusive jurisdiction.

In such a case, any reference to the arbitrator's discretion to fix the place of arbitration must be understood as a designation of the venue. The Supreme Court's decision in *Inox Renewables*, where the seat of arbitration was shifted from Jaipur to Ahmedabad and accepted as such, was also distinguished by the Delhi High Court, noting that the case did not involve an exclusive jurisdiction clause.

[4] Inox Renewables Ltd v. Jayesh Electricals Ltd, (2023) 3 SCC 733
[5] BGS SGS Soma JV v. NHPC Ltd, (2020) 4 SCC 234

Parallel criminal and arbitral proceedings are permissible

Managing Director, Bihar State Food and Civil Supply Corporation Ltd v. Sanjay Kumar

Supreme Court of India | 2025 SCC OnLine SC 1604

The Supreme Court's ruling affirms that mere allegations of fraud or the pendency of criminal proceedings do not oust arbitrability. Only fraud which vitiates the arbitration agreement itself or implicates public law concerns would render a dispute non-arbitrable. The ruling has narrowed the non-arbitrability exception by upholding arbitration in a dispute involving allegations of large-scale fraud involving Government officials, thereby reinforcing confidence in commercial arbitration. The ruling provides much-needed certainty to commercial parties by ensuring that the mere initiation of criminal proceedings cannot stall arbitration. Parties should continue to incorporate robust arbitration clauses and pursue arbitral remedies despite parallel criminal investigations, reserving challenges for the enforcement stage if necessary. By reaffirming the limited role of the referring/appointing Court to a *prima facie* verification of the existence of a valid arbitration agreement, the decision promotes party autonomy, procedural efficiency, and curbs the misuse of criminal proceedings to derail arbitral references.

SUMMARY OF FACTS

Under the Public Distribution Scheme, the Bihar State Food and Civil Supplies Corporation (BSFCSC) procured paddy from farmers and engaged rice millers to deliver 67% rice from the paddy supplied, *vide* agreements containing both an arbitration clause and a recovery mechanism under the Bihar & Orissa Public Demands Recovery Act, 1914 (1914 Act).

Alleging failure to deliver rice, BSFCSC initiated recovery under the 1914 Act, against which the millers sought reference to arbitration.

Meanwhile, large-scale fraud of over INR 1,000 crore surfaced, leading to over 1,200+ First Information Reports (FIRs).

Vide its order, the Patna High Court appointed an arbitral tribunal, which was challenged by BSFCSC before the Supreme Court on various grounds.

DECISION OF THE COURT

The Supreme Court upheld the appointment of the arbitral tribunal.

On the arbitrability of the dispute, the Court reaffirmed that allegations of fraud do not per se render disputes non-arbitrable, drawing a distinction between 'fraud simpliciter' (arising out of contractual dealings, and is arbitrable) and 'serious fraud' (affecting the validity of the arbitration agreement itself or implicating public law concerns, and is not arbitrable).

Mere pendency of criminal proceedings involving the same set of facts does not oust arbitral jurisdiction, and the two may proceed in parallel. Subsequent criminal conviction, if any, may be raised at the stage of enforcement or challenge to the award.

On the interplay between the 1914 Act and the Arbitration and Conciliation Act, 1996 (1996 Act), the two statutes were held to operate in distinct legislative spheres. The 1914 Act provides an expeditious mechanism for recovery of public dues, while the 1996 Act governs consensual dispute resolution under contracts.

Invocation of the 1914 Act does not *ipso facto* exclude the arbitral remedy, and in case of overlap, the 1996 Act, being a Central legislation, would prevail.

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