DISPUTE RESOLUTION & ADR

Highlights | 2025

BENGALURU
KOLKATA
MUMBAI
NEW DELHI

www.foxandmandal.co.in

TABLE OF CONTENTS

Inextricably linked disputes can be adjudicated along with the main 'commercial dispute' under the Commercial Courts Act, 2015

Manisha Gupta v. Rajinder Kumar

Delhi High Court | 2025 SCC OnLine Del 43

The Delhi High Court allowed ancillary disputes beyond the definition of 'commercial dispute' under Section 2(1)(c) of the Commercial Courts Act, 2015 (Act) to be included in a commercial suit if intrinsically linked to the principal dispute. Although the Supreme Court, in *Ambalal Sarabhai Enterprises Ltd v. KS Infraspace LLP,*[1] held that the term 'commercial dispute' must be strictly construed to only cover transactions that are explicitly mentioned under its definition – in line with the purpose of the Act to facilitate the expeditious resolution of a class of litigation – the Delhi High Court's ruling carves out an exception. Since the principal dispute in the instant matter (partnership dispute) was explicitly covered under the Act and the interconnected transactions were essential to its resolution, such transactions, though not independently 'commercial disputes', would also be covered under the Act. Without diluting the Act's purpose, this decision prevents fragmentation and avoids conflicting outcomes that could arise if the interlinked disputes were adjudicated separately, ultimately streamlining commercial dispute resolution in line with the objective of the Act.

SUMMARY OF FACTS

Metal Industries, a partnership firm, was dissolved upon the death of one of its partners, Gopal Krishan Gupta.

Without settling accounts with Gopal's legal heir (his daughter, Manisha Gupta), the surviving partner, Rajinder Kumar (Defendant 1) set up a new firm on the same premises, appropriating the inventory and funds from the dissolved firm, Metal Industries.

Manisha alleged unauthorised dealings with Metal Industries' assets and funds by Defendant 1, aided by other Defendants, including relatives, employees/accountants, debtors, and creditors (Defendants 2 to 17) of Metal Industries.

In this regard, Manisha Gupta filed a suit under the Act seeking rendition of accounts, injunction, partition, and recovery concerning her late father's 50% share in the dissolved firm.

The maintainability of the Suit was opposed by Defendants 2 to 17 (non-partners) since their respective transactions with Metal Industries were not covered by the definition of 'commercial dispute' under Section 2(1)(c) of the Act.

DECISION OF THE COURT

The Court noted that though the dispute between Manisha and the surviving partner (Defendant 1) was admittedly covered by Section 2(1)(c) of the Act, the transactions between Metal Industries and the other Defendants were not.

Since the transaction between the creditors and the firm was commercial in nature as per Explanation II to Section 34 of the Code of Civil Procedure, 1908, despite not being covered by the definition of 'commercial dispute' under Section 2(1)(c) of the Act, the Suit was held maintainable against them.

Further, since the other Defendants also had direct privity with the partnership, having dealt with its funds and assets post-dissolution of Metal Industries, the legal heirs of the deceased partner have an undisputed right to seek verification of these transactions as they directly impact their share in the firm's assets.

Separating these claims into multiple proceedings would be inefficient, as the transactions were interconnected and required a comprehensive adjudication for the matter to be effectively resolved.

[1] (2020) 15 SCC 585

Second FIR is maintainable to uncover a broader criminal conspiracy

State of Rajasthan v. Surendra Singh Rathore

Supreme Court of India | 2025 SCC OnLine SC 358

The Supreme Court's ruling provides critical guidance on the maintainability of a subsequent First Information Report (FIR), particularly where fresh facts or a wider conspiracy come to light – principles with direct relevance to the Prevention of Money Laundering Act, 2002 (PMLA). While this empowers investigative agencies to pursue broader trails of economic crime without procedural hurdles, it also underscores the need for corporate stakeholders and PMLA-accused entities to adopt a proactive litigation and compliance strategy. Entities must be vigilant to the possibility of successive Enforcement Case Information Reports (ECIRs) arising from evolving factual matrices and ensure robust documentation, internal audits, and timely legal intervention to prevent repetitive or overbroad prosecutions.

SUMMARY OF FACTS

An FIR was registered against a Rajasthan Government officer for demanding a bribe for the renewal of the Complainant's license for sale of bio-diesel (First FIR).

Subsequently, another FIR was registered against the same officer for indulging in taking bribes over a particular period of time for the grant/renewal of licenses to run bio-fuel pumps (Second FIR).

The officer sought quashing of the Second FIR before the Rajasthan High Court under Section 482 of the Criminal Procedure Code, 1973 (CrPC) on the ground that no fresh incident was disclosed in it, and a second FIR in respect of allegations connected to the First FIR, already registered, ought to be quashed for being irregular.

The High Court allowed the prayer and quashed the Second FIR. Aggrieved, the prosecution approached the Supreme Court.

DECISION OF THE COURT

While deciding whether the registration of a subsequent FIR is legally permissible, the Court analysed various judicial precedents and set out the different circumstances under which a subsequent FIR may be maintainable:

- Counter-complaint or rival version: When the subsequent FIR is a counter-complaint or presents a rival version of a set of facts in reference to an incident for which an earlier FIR is already registered.
- Different ambit: When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.
- Larger conspiracy: When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.
- Previously unknown facts or circumstances: When investigation and/or persons related to the incident bring to light facts or circumstances that were unknown at the time of registration of the initial FIR.
- Separate incident: Where the subsequent FIR pertains to a separate incident, whether or not involving a similar offence.

Applying these principles, the Court held that since the First FIR pertains to a specific incident and the Second FIR pertains to the larger issue of widespread corruption in the concerned department, the Second FIR is much broader in its scope and would therefore be maintainable.

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.

LLP bound by arbitration clause despite not being signatory to the agreement

Kartik Radia v. BDO India LLP

Bombay High Court | 2025 SCC OnLine Bom 445

The Bombay High Court has held that a Limited Liability Partnership (LLP) can be bound by an arbitration agreement despite not being a signatory to the LLP agreement. This decision is important, given the significant role of arbitration as a preferred dispute resolution mechanism for commercial disputes as it ensures speed, confidentiality, and finality – elements essential for maintaining business continuity and trust among stakeholders. LLPs can no longer escape arbitration merely by relying on technical non-signatory arguments, especially where the dispute arises from the affairs of the LLP itself. It reinforces the idea that where the LLP is intrinsically connected to the subject matter of the partnership agreement, it cannot remain a passive bystander. Businesses are advised to carefully draft their partnership agreements, clearly outlining the scope and applicability of arbitration clauses, and to consider including the LLP explicitly as a party to such clauses to avoid future disputes over arbitrability.

SUMMARY OF FACTS

Kartik Radia, a former partner of BDO India LLP (BDO), was expelled from BDO by Milind Kothari, the managing partner.

Kartik sought initiation of arbitration proceedings against BDO and Milind against his expulsion from BDO and the high-handed behaviour and misconduct of Milind.

This request was opposed on the ground that BDO was not party to the arbitration agreement which only covered disputes inter se the partners of BDO.

The issue before the Bombay High Court was whether disputes between an LLP and its partners could be covered by the arbitration agreement contained in the main agreement to which the LLP is not a signatory.

DECISION OF THE COURT

The Bombay High Court rejected the absolute proposition that an LLP can never be a party to arbitration proceedings under an agreement to which it is not a signatory.

Since the arbitration agreement covers the rights and liabilities of the partners of BDO as well as matters concerning the interpretation and application of the LLP agreement, it would include any matter in any way relating to the business and affairs of the LLP. Hence, BDO must be made a party to the arbitration.

The Court held that since item 14 of the First Schedule to the LLP Act, 2008 provides for partnership disputes to be referred to arbitration, an LLP would have to be made a party even if it is not a signatory to the partnership agreement as item 14 would create a deemed statutory arbitration agreement.

Further, as per the LLP Act, every partner acts as an agent of the LLP and the LLP is liable for the acts of its partners. As the challenge to Kartik's expulsion would entail an examination of the injury to the LLP, if any, caused by his conduct, it necessitated the impleadment of the LLP itself.

3-fold test to determine the law governing an international arbitration clause

Disortho SAS v. Meril Life Sciences Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 570

The Supreme Court's ruling marks a significant step in clarifying the law governing arbitration agreements in cross-border contracts by introducing a 3-fold test – considering the express choice of law, any implied choice (typically the law governing the contract), and the system with the closest and most real connection to the dispute. This judgment not only reduces ambiguity in interpreting inconsistent or conflicting dispute resolution clauses but also aligns Indian arbitration jurisprudence with global standards by referencing UK and Singapore precedents. The Court's emphasis on coherence between the governing law of the main contract and the arbitration clause enhances commercial certainty and predictability. For stakeholders, this decision serves as a vital reminder to expressly define the applicable law of the arbitration agreement at the drafting stage to prevent procedural disputes. It also reinforces the supervisory jurisdiction of Indian Courts where Indian law governs the contract, even if the arbitration is seated abroad.

SUMMARY OF FACTS

Disortho SAS (Disortho) (incorporated in Colombia) and Meril Life Science Pvt Ltd (Meril) (incorporated in India) entered into an agreement for the distribution of medical products in Colombia (Agreement).

Clause 16 provided that the Agreement would be governed by Indian laws and all matters pertaining to or arising from the Agreement shall be subject to the Courts in Gujarat, India. On the other hand, Clause 18 provided that any dispute or claim under the Agreement shall be resolved by conciliation and arbitration under the aegis of the Center for Arbitration and Conciliation of the Bogotá Chamber of Commerce, Colombia (CCB) and the award shall be in Colombian law.

Disputes arose between the parties and Disortho approached the Supreme Court of India seeking the appointment of an arbitral tribunal in terms of the Agreement. Meril opposed the request contending that the Agreement does not grant jurisdiction to the Courts in India to appoint the arbitral tribunal.

DECISION OF THE COURT

The Supreme Court noted the divergence of international and domestic opinion on the appropriate test to determine the jurisdiction in cross-border arbitrations due to the interaction of 3 distinct legal systems:

- *Lex contractus:* The law governing the substantive contractual issues.
- *Lex arbitri:* The law governing the arbitration clause/agreement and the performance of the arbitration.
- *Lex fori:* The law governing the procedural aspects of arbitration proceedings.

Lex arbitri serves as a guiding principle in case of inconsistent, unclear, or conflicting dispute resolution clauses in the main agreement. The Court cautioned against distinguishing between the law governing the arbitration clause (concerning the validity, scope, and interpretation of the arbitration clause) and the law governing the performance of the arbitration (concerning the jurisdiction and powers of the supervisory Court) as they are inherently intertwined under *lex arbitri* and involve issues of overlap.

The law of the chosen seat would govern the arbitration in case of a standalone arbitration agreement. However, an arbitration clause contained in the main agreement would generally be governed by *lex contractus* unless there is an indication to the contrary (for example, if *lex contractus* renders the dispute inarbitrable).

For this determination, the Court must follow a 3-fold test – primarily considering any express choice of law, in the absence of which, any implied choice, such as lex contractus, may be considered, and in the absence of both, the Court may determine the closest and most real connection to the dispute as the governing law.

Applying the above principles, the Court held that Clause 18 would not diminish the supervisory powers of Indian Courts as Indian law (lex contractus) would govern the arbitration agreement. However, the arbitration would be conducted in Bogota as per the procedural rules of CCB.

Guidelines for determining compensation for land acquisition based on market value of adjacent land

Manilal Shamalbhai Patel v. Officer on Special Duty (Land Acquisition)

Supreme Court of India | 2025 SCC OnLine SC 634

In its recent decision, the Supreme Court laid down a structured approach to determine compensation for acquisition of land based on the market value of adjacent land. By outlining clear guidelines – such as deductions for undeveloped land and size-based adjustments – the Court ensures that compensation reflects the land's actual market value while accounting for practical limitations. This ruling is significant for both landowners and State authorities, as it introduces consistency and fairness in valuation, reducing reliance on arbitrary comparisons. The emphasis on development-related deductions is particularly relevant for agricultural or large tracts of land being repurposed for industrial or urban use. Authorities should adopt this methodology in future acquisitions to minimise litigation risks, while landowners should be aware that compensation may vary even when the adjacent land is priced higher.

SUMMARY OF FACTS

The Government of Gujarat acquired certain land situated in Vadodara, Gujarat for public purposes.

Following the process under the Land Acquisition Act, 1894 (Act), notifications under Sections 4 and 6 were issued and the final award was passed by the Special Land Officer under Section 11 offering compensation at the rate of INR 11 per square metre.

Dissatisfied by the offer, the landowners approached the Reference Court under Section 18 of the Act, which enhanced the compensation to INR 30 per square metre.

The landowners, still dissatisfied, approached the High Court and thereafter the Supreme Court, relying on the INR 180 per square metre acquisition rate of an adjacent plot that was used for the construction of a petrol pump.

DECISION OF THE COURT

The Supreme Court enhanced the compensation to INR 95 per square metre and developed a methodology for determining the compensation based on market value of the adjacent land:

- 5% increment per year due to the trend of rising prices.
- 30 to 50% deduction for undeveloped land which requires carving out open areas for road, sewage, water, green belt, and electric lines, thereby reducing the transferrable/saleable area to approximately 50% of the land acquired. This factor is particularly important in the acquisition of agricultural land which would require development before it is usable as an industrial site.
- 10% deduction since a large plot of land does not attract the same rate as a smaller plot.
- Since compensation is not based on an algebraic formula and cannot be accurately determined, some amount of guesswork is always permissible.

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*.[2]

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.[3]

[2] 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

[3] 17th Edition, Sweet & Maxwell, London, 1964

Non-compete employment clauses are not enforceable

Varun Tyagi v. Daffodil Software Pvt Ltd

Delhi High Court | 2025 SCC OnLine Del 4589

The Delhi High Court has held that employment clauses restricting an employee's future employment with competing businesses are invalid and unenforceable under Indian law. While narrowly drafted restrictions aimed at safeguarding confidential or proprietary information may be upheld subject to proof of actual misuse, a blanket bar on pursuing future professional opportunities cannot be imposed merely because an employee had access to sensitive information during their tenure. The judgment affirms an employee's right to seek better opportunities while recognising that employers can protect legitimate interests through precise, reasonable covenants. Accordingly, rather than relying on broad restraints, organisations should focus on strengthening mechanisms that protect confidential information during and after employment, such as digital watermarking, encryption, enforcing strict role-based and time-bound access controls, incorporating post-exit monitoring and audits for high-risk roles, and adding clauses providing for damages for post-employment breaches.

SUMMARY OF FACTS

Varun Tyagi was employed by Daffodil Software Pvt Ltd (DSPL) in the research and development team, vide an employment agreement containing a non-compete clause that restricted Tyagi from joining any competitor for 3 years post-cessation of his employment with DSPL.

Tyagi subsequently resigned and joined a competitor.

DSPL filed a suit to enforce the non-compete clause and restrain Tyagi from working with his new employer.

DECISION OF THE COURT

The Court held that employment terms restricting future employment are prohibited under Section 27 of the Indian Contract Act, 1872, which bars agreements in restraint of a lawful trade, profession or business.

A negative post-termination covenant is permissible only for the protection of the employer's confidential or proprietary information, or to restrain the employee from soliciting the employer's clients.

Regarding confidentiality, the Court relied on *American Express Bank Ltd v. Priya Puri*[4] to clarify that merely having access and possession of confidential information cannot be used as a garb by the employer to perpetuate forced employment.

Ultimately, the Court upheld the freedom to change employment for improving service conditions as a vital right of an employee and dismissed

Importantly, the execution and registration of a document have the effect of transferring only those rights, if any, that the seller possesses. If the seller has no right, title, or interest in the property, the registered document cannot effect any transfer.

[4] 2006 SCC OnLine Del 19

Appointment of a sole arbitrator due to the other party's inaction is not invalid

St Frosso Shipping Corporation v. Eastern Multitrans Logistics Pvt Ltd

Telangana High Court | Execution Petition No. 4 of 2022

The Telangana High Court recently upheld the appointment of a sole arbitrator nominated by the party initiating arbitration, due to the counterparty's failure to nominate its arbitrator as per the contractually agreed procedure. The ruling affirms that mechanisms permitting arbitration by a party's nominated sole arbitrator are valid where the other party does not act within a stipulated timeframe, provided both parties were initially afforded an equal opportunity to participate.

While providing much-needed clarity for commercial entities relying on standard arbitration clauses in international contracts, particularly in the shipping and logistics sectors where the Baltic and International Maritime Council (BIMCO) templates are common, the decision also reinforces the Indian judiciary's non-intrusive approach in arbitration. From a drafting perspective, contracting parties should increasingly consider adopting such self-executing default mechanisms in their arbitration clauses, as they help prevent undue delay and procedural deadlock.

SUMMARY OF FACTS

St Frosso Shipping Corporation (Frosso), a Liberian company and owner of a charter vessel, entered into a charter agreement with Eastern Multitrans Logistics Pvt Ltd (EML) for a 70-day voyage via India, Madagascar, and Mozambique.

Under the agreement, disputes would be resolved by arbitration under the BIMCO Dispute Resolution Clause, 2015, which provided for a 3-member tribunal and required the party initiating arbitration (claimant) to appoint its arbitrator and serve a notice on the other party to nominate its respective arbitrator within 14 days. If the other party failed to do so, the claimant's arbitrator would continue as the sole arbitrator.

Disputes arose between the parties, constraining Frosso to invoke arbitration. Frosso issued a notice nominating its arbitrator and requested EML to do the same. However, EML failed to nominate its arbitrator within the stipulated 14-day period. As such, Frosso's arbitrator continued as the sole arbitrator and an award was passed against EML (Award).

On EML's failure to comply with the Award, Frosso approached the Telangana High Court seeking its enforcement under Sections 47 and 48 of the Arbitration and Conciliation Act, 1996. EML objected, citing that the unilateral appointment of the arbitrator was contrary to the settled law, and hence, the Award was against the public policy of India.

DECISION OF THE COURT

The Telangana High Court held that the arbitration agreement provided both parties with an equal right of participation in the appointment procedure.

The appointment of the sole arbitrator to carry the arbitration forward was legitimised only on the second party's failure to appoint its arbitrator within 14 days, presuming its silence/inaction as deemed acceptance.

The failure of the second party to nominate its arbitrator within the stipulated timeframe was not an instance of unequal treatment but rather a reflection of the need to proceed with the arbitration without further delay.

As such, the appointment procedure was not unilateral (wherein one party is deprived of the right to participate or object to the appointment of arbitrators in the tribunal), but rather a mechanism for expediency.

Further, the said clause could be traced to Section 17(2) of the English Arbitration Act, 1996 (the applicable law), which explicitly permits the appointment of a sole arbitrator on the counterparty's failure to nominate its respective arbitrator within the stipulated timeframe.

The Court distinguished the Supreme Court's landmark decisions holding unilateral and one-sided appointment procedures to be invalid, as the appointment procedures in such cases were starkly one-sided without giving any option to the other party to nominate its arbitrator.

WhatsApp and email correspondence may constitute an arbitration agreement

Belvedere Resources DMCC v. OCL Iron and Steel Ltd

Delhi High Court | OMP (I) (Comm) No. 397 of 2024

In a recent decision, the Delhi High Court confirmed that contracts formed through WhatsApp and email exchanges constitute a valid arbitration agreement if the core terms are agreed upon. Even in the absence of signatures, Courts will examine the substance of the parties' conduct and correspondence to determine contractual intent. This is indicative of a welcome and pragmatic shift toward aligning the law with the realities of modern commercial transactions, where business is increasingly conducted over informal and digital channels. The Court's recognition that the absence of a signed document does not negate the existence of an arbitration agreement provides clarity and legal certainty to parties who proceed based on documented negotiations and conduct. The decision will be particularly reassuring for international suppliers, tech-enabled businesses, and startups, which may not always formalise contracts through traditional, signed instruments. Businesses are advised to retain and preserve all commercial communications, whether via email, messaging platforms, or digital document exchanges, as they may constitute enforceable agreements or be used to establish consent to arbitration.

SUMMARY OF FACTS

Belvedere Resources DMCC (Belvedere), a UAE-based coal supplier, entered into a binding contract with SM Niryat Pvt Ltd (SMN) in October 2022 through WhatsApp and email exchanges. SMN subsequently merged into OCL Iron and Steel (OCL).

To formalise the contract between the parties, Belvedere shared a Standard Coal Trading Agreement (ScoTA) via email, incorporating the supply and payment terms, and providing for dispute resolution through arbitration under the Singapore International Arbitration Centre (SIAC) Rules.

After the proposed amendments were accepted, Belvedere shared the 'final contract' to SMN for signing and, upon SMN's request, nominated the shipping vessel.

By November 15, 2022, although SMN had neither signed the contract nor paid the advance, Belvedere completed all shipping formalities, and the vessel arrived at the loading port as scheduled. However, SMN then unilaterally cancelled the contract.

Aggrieved, Belvedere initiated arbitration in Singapore, seeking damages for wrongful termination and approached the Delhi High Court seeking interim protection to secure its claim.

DECISION OF THE COURT

The Delhi High Court reaffirmed that a concluded contract is not necessary, as the existence of a valid arbitration agreement can be inferred from various documents and communications between the parties.

To ascertain the existence of a valid arbitration agreement, the Court examined the parties' WhatsApp and email correspondence and noted that:

- Belvedere had duly shared the final version of the ScoTA, which contained an arbitration clause.
- SMN had assured that it would sign and stamp the ScoTA.
- SMN had knowledge of Belvedere's shipment and repeatedly enquired about Belvedere's Estimated Time of Berthing.

As such, the email and WhatsApp exchanges between the parties constituted a valid and binding arbitration agreement under the Arbitration and Conciliation Act, 1996.

However, the Court declined to grant relief due to the absence of territorial jurisdiction, as no part of the cause of action had arisen in Delhi, and as Belvedere's claim for unliquidated damages was not substantiated with evidence to suggest that SMN/OCL was attempting to dispose of assets to defeat a future award.

Likelihood of confusion is sufficient to protect a family of registered trademarks

Modi-Mundipharma Pvt Ltd v. Speciality Meditech Pvt Ltd

Delhi High Court | 2025 SCC OnLine Del 4627

In a recent decision, the Delhi High Court clarified that the family of marks doctrine is not confined to passing off claims (which require proof of actual confusion or loss of goodwill) and also extends to trademark infringement, where statutory protection for registered marks is available based on the likelihood of confusion arising from deceptive similarity. The judgment rightly eases the burden on trademark owners by recognising that consumers associate the common element of a trademark series with its proprietor, and a deceptively similar competing mark is likely to mislead the public and dilute the distinctiveness of the original family. The ruling has significant implications for businesses that have invested in building trademark series and can now rely on the collective goodwill of the entire family. The takeaway for brand owners is clear: develop your trademark portfolio with foresight, register key variations, maintain use records, and monitor competitors. Timely legal action against similar marks can prevent confusion and dilution of brand.

SUMMARY OF FACTS

Since the late 1980s, Modi Mundipharma Pvt Ltd (MMPL) has built an extensive portfolio of 32 trademarks pertaining to its pharmaceutical products, including 'ANGICONTIN', 'DILCONTIN', and 'THEOCONTIN', all having the common mark 'CONTIN', which acts as the source identifier for MMPL. It also owns a separate registration for 'FECONTIN F', an iron and folic acid tablet being marketed since 1993.

Speciality Meditech Pvt Ltd (SMPL) launched an iron supplement capsule with the mark 'FEMICONTIN'.

On coming across SMPL's product, MMPL issued a cease-and-desist notice followed by a suit alleging infringement of the marks 'CONTIN' and 'FECONTIN F', and the broader 'CONTIN' family of marks.

DECISION OF THE COURT

The Delhi High Court held that the family of marks doctrine applies not only in cases of passing off but also for infringement. The concept, though judicially created and developed, is merely a manifestation of the principles enshrined under the Trade Marks Act, 1999.

When an entity is the proprietor of several registered trademarks containing a common element, consumers associate the common element with the source of the product (the proprietor). A subsequent mark that incorporates the common element of a well-established trademark family is likely to confuse the public, particularly when used in the same class of goods.

As such, while the likelihood of confusion is required to be proved by establishing deceptive similarity between the marks, proof of actual confusion using empirical evidence is not required.

Although MMPL had not used the mark 'CONTIN' as a standalone trademark, it had built a substantial and recognisable family of marks incorporating the 'CONTIN' suffix, including 'FECONTIN-F', used consistently over decades in respect of pharmaceutical products.

'FEMICONTIN' was held to be deceptively similar to 'FECONTIN-F', both visually and phonetically, and it catered to similar therapeutic uses. The High Court also rejected the argument that the marks were generic or descriptive (defences against infringement claims when the mark indicates the kind, quality, or intended purpose of the product).

While the High Court granted a permanent injunction in favour of MMPL, restraining SMPL from using 'FEMICONTIN' or any deceptively similar variant, it declined to grant MMPL a blanket injunction against all use of the word 'CONTIN', holding that such protection must be case-specific.

Civil Courts can grant anti-arbitration injunctions in foreign-seated arbitrations

Engineering Projects (India) Ltd v. MSA Global LLP

Delhi High Court | 2025 SCC OnLine Del 5072

The Delhi High Court recently stayed proceedings in a foreign-seated arbitration on the ground that the co-arbitrator had failed to disclose his prior involvement with the counterparty. While the Court reiterated that such powers must be exercised only in exceptional cases – where the proceedings are found to be vexatious, oppressive, or a misuse of legal process – it emphasised that the neutrality of the arbitral tribunal, which lies at the core of fair adjudication, cannot be sacrificed at the altar of minimal judicial interference. Such relief, consistent with the cautious stance in jurisdictions like England, Singapore, and Hong Kong, is reserved for clear cases of abuse or procedural unfairness. Transparent disclosures and good-faith conduct are essential to avoid such disputes. Parties should first exhaust remedies under the arbitral rules and before the seat Court, ensuring intervention by the domestic Court remains a last resort.

SUMMARY OF FACTS

Engineering Projects (India) Ltd (EPL) entered into a contract with MSA Global LLP (MSA), which included a dispute resolution clause providing for arbitration under the aegis of the International Chamber of Commerce (ICC). Singapore was the chosen seat of arbitration.

A dispute arose concerning delays in performance, prompting the initiation of arbitration proceedings. MSA nominated Andre Yeap as its arbitrator in the 3-member tribunal.

Yeap had previously participated in arbitral proceedings alongside MSA's Managing Director, a fact he failed to disclose at the time of his appointment. EPL only discovered this non-disclosure after the tribunal issued an interim award in favour of MSA.

EPL challenged Yeap's appointment before the ICC Court, which, while acknowledging the non-disclosure as regrettable, dismissed the challenge on merits on the ground that it did not give rise to justifiable doubts regarding his impartiality or independence.

Against the ICC Court's order, EPL approached the High Court of Singapore, and in parallel, the Delhi High Court in the present matter, seeking an anti-arbitration injunction, while MSA sought enforcement of the interim award.

DECISION OF THE COURT

The High Court held that Civil Courts, in exceptional cases, do have the jurisdiction to grant anti-arbitration injunctions, even in foreign-seated arbitrations, where the proceedings are found to be vexatious, oppressive, or a misuse of the legal process.

The Court clarified that the challenge did not rest solely on proving actual bias by the co-arbitrator. Rather, the focus was on Yeap's failure to disclose his prior association with MSA at the time of his appointment. This non-disclosure deprived EPL of the opportunity to raise timely objections, undermined the tribunal's impartiality, and eroded confidence in the arbitral process.

Noting that arbitration cannot be allowed to become a tool for sustained harassment or manipulation disguised as lawful proceedings, the Court found that an interim stay on the arbitration is warranted till the proper adjudication of the validity of Yeap's appointment. It is necessary to prevent irreparable harm and to uphold fairness, especially in cases where rigid application of statutory principles would undermine equity and the constitutional right to access justice.

Registration alone may not confer a valid property title

K Gopi v. Sub-Registrar

Supreme Court of India | 2025 SCC OnLine SC 740

In a significant ruling for property buyers, the Supreme Court clarified that mere registration of a sale deed does not by itself establish ownership, as the registering authority's role is confined to procedural compliance and does not extend to verifying the seller's title. The decision dispels the common misconception that registration alone confers a valid title and aligns with a recent decision holding that *bona fide* property holders are not obliged to seek cancellation of dubious transfer instruments to which they are not parties. Buyers should therefore undertake thorough due diligence beyond registration, including review of key documents such as the previous Sale Deed, Mother Deed, and Encumbrance Certificate to confirm ownership history and liabilities. Additional checks should cover mutation records (Khata/property tax number), inheritance documents, RERA approvals, possession letters, completion certificates, utility bills, NOCs from family members, and proof of possession, to ensure the title is clear and marketable.

SUMMARY OF FACTS

A sale deed was executed in favour of K Gopi. However, the Sub-Registrar refused its registration because the seller had not established his title and ownership over the subject property (Order).

The Order was upheld on the strength of Rule 55A(i) of the Tamil Nadu Registration Rules (Rules), which required the production of the previous transfer deed, by which the seller had acquired the subject property, and an Encumbrance Certificate along with the document that is presented for registration.

Aggrieved, Gopi approached the Supreme Court of India and challenged the constitutional validity of Rule 55A(i) of the Rules.

DECISION OF THE COURT

The Court set aside the Order and declared Rule 55A(i) to be invalid for being beyond the scope of the Registration Act, 1908 (Act).

As Rule 55A(i) mandated the production of documents to establish the seller's ownership over the subject property, it essentially empowered the registering officer to verify the seller's title. Rule 55A(i), therefore, violated the provisions of the Act on the following grounds:

- The rule-making power of the Inspector General under Section 69 of the Act did not provide for framing Rules that conferred power on the registering authority to refuse registration of a transfer document.
- Sections 22A and 22B, introduced vide a 2008 Tamil Nadu State Amendment to the Act, which provided limited grounds for refusal of registration by the Registrar – pertaining to specific properties that were governed by other statutes enlisted therein; land converted as housing sites without permission for development; forged documents and prohibited transactions – also did not include the power to refuse registration on the failure to produce documents verifying the seller's title.

The registering officer is not concerned with the seller's title and ought to register the document on satisfaction of procedural requirements and payment of necessary stamp duty/registration charges.

Importantly, the execution and registration of a document have the effect of transferring only those rights, if any, that the seller possesses. If the seller has no right, title, or interest in the property, the registered document cannot effect any transfer.

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*,[5] 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.

[5] (2023) 4 SCC 209

Speculative investors can participate in but cannot initiate CIRP

Mansi Brar Fernandes v. Shubha Sharma

Supreme Court of India | Civil Appeal No. 3826 of 2020

The Supreme Court's ruling – whereas speculative investors cannot initiate insolvency, they are not barred from filing their claims in case insolvency proceedings are initiated otherwise – draws a decisive line between genuine homebuyers and speculative investors, ensuring that the Insolvency and Bankruptcy Code, 2016 (Code) is not reduced to a mere recovery mechanism for profit-seeking individuals. The Court's reasoning reflects a deeper judicial concern about the increasing trend of invoking insolvency proceedings as a coercive recovery tool, particularly in the real estate sector. It underscores that intent and conduct must govern the determination of whether an allottee qualifies as a financial creditor. The presence of buy-back clauses, assured returns, or multiple allotments are clear indicators of speculative intent, which falls outside the legislative intent of Section 5(8)(f) of the Code (financial creditor). Further, by affirming the State's duty to protect bona fide homebuyers and ensuring institutional efficiency through directions to strengthen the infrastructure of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), the judgment extends beyond mere statutory interpretation – it positions housing not as a speculative commodity, but as a constitutional entitlement.

SUMMARY OF FACTS

For the purchase of 4 flats in the project 'Gayatri Life' at Greater Noida, Mansi Brar Fernandes and Gayatri Infra Planner Pvt Ltd entered into a Memorandum of Understanding (MoU), containing a clause that allowed the developer to buy back the units for INR 1 crore within a year. Mansi paid INR 35 lakh as part consideration under the MoU.

When the developer failed to either repurchase the units or deliver possession, and the post-dated cheques were dishonoured, Mansi filed a petition under Section 7 of the Code, seeking to initiate insolvency as a financial creditor.

While the NCLT admitted the petition, the NCLAT reversed the order in appeal, holding that Mansi was not a genuine homebuyer but a speculative investor, as the arrangement was structured purely for financial gain.

A similar controversy had arisen in *Sunita Agarwal v. Antriksh Infratech Pvt Ltd* where the buyer had invested INR 25 lakhs with a promise of 25% annual returns under a 'buy-back plan'. The NCLAT had held that this was also speculative in nature.

In both matters, the buyers approached the Supreme Court, arguing that the existence of a buy-back clause should not exclude them from the definition of financial creditors under the Code, and that they intended to take possession of the property.

DECISION OF THE COURT

The Supreme Court dismissed the appeals, affirming the NCLAT's view that both buyers were speculative investors, and therefore not entitled to initiate proceedings under Section 7 of the Code.

The intent of the parties is central to determining whether an allottee qualifies as a genuine homebuyer or a speculative investor. Indicators such as the inclusion of buy-back clauses, assured returns, or unusually high interest components reveal investment intent rather than a genuine desire for possession: possession remains the *sine qua non* (essential condition) of a true homebuyer's intent.

In both cases, the agreements offered disproportionate returns – INR 1 crore on INR 35 lakh in one instance, and 25% interest per annum in the other – without any real commitment to occupy the flats. Such arrangements amounted to financial speculation, not genuine homebuying, and allowing such claims would distort the insolvency regime.

Importantly, the Court reaffirmed that the right to housing is an integral part of Article 21, imposing a constitutional obligation on the State to ensure that homebuyers receive timely possession. It urged the Government to strengthen real estate regulatory mechanisms and directed that vacancies in NCLT/NCLAT be filled expeditiously, and that dedicated insolvency benches be constituted in the NCLT to address the growing volume of cases.

Concluding that speculative misuse of the Code undermines its objective of resolution and revival, the Court upheld the NCLAT's orders while granting liberty to the purchasers to pursue alternative remedies under RERA, consumer law, or civil proceedings, or to file their claims with the resolution professional in case CIRP is otherwise initiated.

LATEST UPDATES **AND INSIGHTS**

Monthly newsletter

Recent developments in India's corporate and commercial laws

Scan the QR code to download the latest edition

Monthly newsletter

Dispute Resolution & ADR

Scan the QR code to download the latest edition

LinkedIn

Scan the QR code to view
our latest updates:

mondaq
Connecting knowledge & people

Scan the QR code to view
our Mondaq profile:

CONTRIBUTORS

Ashutosh Gupta | Partner
ashutosh.gupta@foxandmandal.co.in

Kunal Mimani | Partner
kunal.mimani@foxandmandal.co.in

Mandeep Singh | Senior Associate
mandeep.singh @foxandmandal.co.in

Prashant Alai | Senior Associate
prashant.alai@foxandmandal.co.in

Shubhang Tandon | Senior Associate
shubhang.tandon@foxandmandal.co.in

Abhinav Rana | Associate
abhinav.rana@foxandmandal.co.in

Akshay Luthra | Associate
akshay.luthra@foxandmandal.co.in

Tanish Arora | Associate
tanish.arora@foxandmandal.co.in

Kartikey Bhatt | Partner
kartikey.bhatt@foxandmandal.co.in

Kunal Vajani | Jt. Managing Partner
kunal.vajani@foxandmandal.co.in

Mranal Prajapati | Senior Associate
mranal.prajapati@foxandmandal.co.in

Shraddha Chirania | Senior Associate
shraddha.chirania@foxandmandal.co.in

Abhinav Jain | Assistant Manager
abhinav.jain@foxandmandal.co.in

Afshaa Hakim | Associate
afshaa.hakim@foxandmandal.co.in

Deeksha Dabas | Assistant Manager
deeksha.dabas@foxandmandal.co.in

OUR OFFICES

BENGALURU
G 102, Embassy One Pinnacle,
8 Bellary Road, Bengaluru 560 032
Email: bengaluru@foxandmandal.co.in

KOLKATA
7th Floor, 206 AJC Bose Road
Kolkata 700 017
Email: calcutta@foxandmandal.co.in

KOLKATA
12, Old Post Office Street
Kolkata 700 001
Email: calcutta@foxandmandal.co.in

MUMBAI
105, Arcadia Building, 195 NCPA Marg
Nariman Point, Mumbai 400 021
Email: mumbai@foxandmandal.co.in

NEW DELHI
Fox & Mandal House
D 394, Defence Colony, New Delhi 110 024
Email: newdelhi@foxandmandal.co.in