



Dispute Resolution & ADR

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Integrated corporate structures may justify lifting the corporate veil in CIRP

Alpha Corp Development Pvt Ltd v. GNIDA

Supreme Court of India | Civil Appeal No. 1526 of 2023

The Supreme Court held that while subsidiary companies are ordinarily distinct legal entities, the corporate veil may be lifted in appropriate cases during insolvency proceedings where group entities are functionally and economically integrated. The judgment strikes a careful balance between commercial reality and legal structure by recognising the practical realities of integrated real estate projects while simultaneously reaffirming that Corporate Insolvency Resolution Process (CIRP) cannot ordinarily be used to bypass ownership boundaries or third-party rights.

The ruling is likely to have significant implications for real estate insolvencies and group company structures, and underscores the need for careful structuring of resolution plans with due regard to title, leasehold arrangements, and contractual restrictions.

SUMMARY OF FACTS

The dispute concerned real estate projects developed on lands leased by the Greater Noida Industrial Development Authority (GNIDA) to subsidiaries/Special Purpose Vehicle (SPV) entities of Earth Infrastructures Ltd (EIL). While legal title vested with the subsidiaries, the projects were effectively controlled and executed by EIL.

Meanwhile, insolvency was initiated against EIL, and the resolution plan sought to deal with the assets allotted to the subsidiaries/SPV entities of EIL.

GNIDA challenged the approval of the plan before the National Company Law Appellate Tribunal (NCLAT) on the grounds that the lands did not belong to EIL and that its consent as lessor had not been obtained.

The NCLAT accepted GNIDA's objections, holding that subsidiary assets could not be treated as assets of the corporate debtor, relying on *BRS Ventures*.¹

This order was challenged before the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that, although subsidiary companies are ordinarily distinct legal entities separate from their holding company, the present case warranted lifting of the corporate veil owing to the functional and economic integration between EIL and its subsidiary/SPV entities.

Relying upon *ArcelorMittal*,² the Court reiterated that the corporate veil may be lifted where associated companies are so inextricably connected as to form part of a single economic concern, particularly where public interest and equitable considerations are involved.

Noting that EIL was either the holding company or the lead member with 98% control, it was the real developer undertaking construction, marketing the projects, collecting monies from homebuyers, and substantially bearing the financial burden of payments due to GNIDA. The subsidiary/SPV entities had little independent commercial existence apart from holding leasehold rights over the project lands.

Importantly, GNIDA itself was fully aware that EIL was executing and controlling the projects and had itself acknowledged EIL's developmental role in prior correspondence. Therefore, it could not subsequently rely upon rigid corporate separateness to isolate the SPVs and their development rights from EIL's insolvency.

Ultimately, as the subsidiary/SPV entities were merely a 'front' for the projects, behind which EIL was the 'main driving force', this was an 'eminently fit case' for lifting the corporate veil. A purely technical interpretation that would defeat project resolution and prejudice homebuyers was rejected.

¹ BRS Ventures Investments Ltd v. SREI Infrastructure Finance Ltd, (2025) 1 SCC 456

² ArcelorMittal India Pvt Ltd v. Satish Kumar Gupta, (2019) 2 SCC 1

Unsuccessful parties can seek post-award interim relief

Home Care Retail Marts Pvt Ltd v. Haresh N Sanghavi

Supreme Court of India | 2026 SCC OnLine SC 670



In a landmark decision, the Supreme Court has clarified that an unsuccessful party can seek interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) at the post-award stage. Importantly, the decision balances this expansive interpretation with a cautionary principle that, while access to Section 9 cannot be denied to an unsuccessful party, the threshold for the grant of relief in such cases must remain significantly higher, and must be granted only in rare and compelling cases, subject to a substantially higher threshold. This safeguard is likely to prevent routine or tactical interim relief applications intended to delay enforcement of arbitral awards.

The ruling is expected to have a considerable practical impact in high-value commercial arbitrations, particularly where immediate enforcement of an award may cause irreversible prejudice before adjudication of the award's challenge.

SUMMARY OF FACTS

Disputes arose between the parties under a contractual arrangement, culminating in arbitral proceedings at the conclusion of which an award was rendered.

Aggrieved, the unsuccessful party challenged the award under Section 34 of the Act, and simultaneously, sought to invoke Section 9 of the Act seeking interim relief pending adjudication of the challenge.

This raised a broader legal issue as to the maintainability of a petition for interim relief under Section 9 of the Act at the behest of an unsuccessful party in arbitration.

Due to a divergence in judicial opinion on this issue, with several High Courts restricting post-award interim relief to successful parties alone, while others permitted even unsuccessful parties to seek such protection, the matter was referred to the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that any party can seek post-award interim protection under Section 9, irrespective of whether it succeeded or failed in the arbitral proceedings.

The expression 'a party' under Section 9 must be given its plain and literal meaning, thereby including any party to the arbitration agreement. Interpreting this expression to only mean the successful party introduces a limitation not found in the text, effectively rewriting the statute. Where statutory language is clear and unambiguous, Courts cannot impose artificial distinctions based on perceived legislative intent.

Where the unsuccessful party has challenged the award under Section 34, limiting the application of Section 9 to successful parties alone leaves such an unsuccessful party without any meaningful remedy, especially where the award may ultimately be set aside or modified.

At the same time, the Court introduced an important safeguard by observing that the threshold for granting interim relief to an unsuccessful party must be significantly higher, and may be granted only in rare and compelling circumstances. Ultimately, the invocation of Section 9 by an unsuccessful party must be subject to careful judicial scrutiny.

GST cannot be levied on damages paid under an arbitral award

Tata Sons Pvt Ltd v. Union of India

Bombay High Court | Writ Petition No. 4914 of 2022

The Bombay High Court recently held that damages paid for breach of contract cannot be treated as a 'supply' under the Goods and Services Tax Act, 2017 (GST Act), and compensatory damages arising from contractual breaches do not constitute taxable consideration under the GST framework.

The Court clearly distinguished between a consensual agreement to tolerate an act for consideration and a judicial or arbitral award granting damages for breach. Given that commercial settlements, arbitral awards, and enforcement compromises are common in cross-border transactions, the ruling provides important clarity that satisfaction of arbitral or decretal liabilities cannot ordinarily be re-characterised as a taxable supply merely because the successful party agrees to withdraw enforcement proceedings as a consequence of payment.

SUMMARY OF FACTS

Disputes arose out of a Shareholders' Agreement between Tata Sons Pvt Ltd (Tata) and NTT Docomo Inc (Docomo) relating to Tata Teleservices Ltd (TTSL), as Tata failed to provide the agreed exit mechanism to Docomo.

Arbitration proceedings were initiated before the London Court of International Arbitration (LCIA), culminating in an award of damages, interest, and costs aggregating to INR 8,468 crore in favour of Docomo.

Docomo initiated enforcement proceedings in India, the UK and the USA. Before the Delhi High Court, the parties entered into consent terms pursuant to which Tata agreed to satisfy the arbitral award, and Docomo agreed to suspend and subsequently withdraw foreign enforcement proceedings upon receipt of payment. The Delhi High Court declared the award enforceable as a deemed decree, and Tata deposited the award amount with the Court Registry.

Thereafter, a show-cause notice was issued against Docomo demanding Integrated Goods and Services Tax (IGST) of approximately INR 1,524 crore, alleging that Docomo had provided a taxable 'supply of service' by agreeing to tolerate Tata's breach and refraining from initiating further proceedings, thereby attracting Entry 5(e) of Schedule II to the GST Act (*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*).

The show-cause notice was challenged before the Bombay High Court on the issue of whether the settlement of an arbitral award and suspension/withdrawal of enforcement proceedings could amount to a taxable 'supply' under Section 7 of the GST Act.

DECISION OF THE COURT

The Bombay High Court held that the arbitral award represented damages arising from breach of contract and not consideration for any independent supply of goods or services. Consequently, the payment made by Tata to Docomo could not be treated as consideration for 'tolerating an act' under Entry 5(e) of Schedule II.

Reliance was placed on *CBIC's Circulars dated August 3, 2022*³ and *February 28, 2023*,⁴ both of which clarify that damages for breach of contract are compensatory in nature for loss or injury caused by breach of contract. Such payments are generally not taxable unless there exists a separate agreement to tolerate an act for consideration.

Docomo's suspension and withdrawal of enforcement proceedings were merely consequential to satisfaction of the arbitral award and did not constitute a separate contractual bargain involving any independent supply of service.

The GST authorities lacked jurisdiction to levy IGST on the arbitral award settlement and quashed the impugned proceedings.

³ Circular No. 178/10/2022-GST

⁴ Circular No. 214/1/2023-Service Tax

Market definition under competition law must reflect functional dependence and economic reality

TNPPA v. CICTPL

National Company Law Appellate Tribunal | Competition Appeal (AT) No. 05 of 2021



The National Company Law Appellate Tribunal (NCLAT) held that the determination of relevant market under competition law must be based on practical and economic realities, and not merely on abstract assumptions of substitutability. The decision is a significant reaffirmation that market definition must be grounded in commercial realities and functional dependence, particularly in infrastructure-intensive sectors such as ports, logistics, energy and utilities, where geographical proximity, transportation costs, supply-chain dependence and infrastructure limitations materially constrain consumer choice and shape competitive dynamics.

The ruling is likely to have broader implications for abuse of dominance assessments in sectors characterised by high entry barriers and operational dependence, where consumers may be practically 'locked in' despite the theoretical availability of alternatives. Going forward, enterprises operating critical infrastructure may face closer scrutiny where logistical constraints and switching costs create captive consumer bases and confer significant market power.

SUMMARY OF FACTS

Chettinad International Coal Terminal Pvt Ltd (CICTPL) operated the only common-user coal terminal at Kamarajar Port, Tamil Nadu.

Tamil Nadu Power Producer Association (TNPPA), an association of thermal power producers dependent upon imported coal, alleged abuse of dominant position by CICTPL through imposition of unfair and discriminatory tariffs and conditions.

The Competition Commission of India (CCI) dismissed the complaint on the ground that CICTPL was not dominant in the relevant market, adopting a broad geographic market by treating multiple ports as viable substitutes for coal imports.

Aggrieved, TNPPA preferred an appeal before the NCLAT.

DECISION OF THE COURT

The NCLAT set aside the findings of the CCI and held that the relevant market determination must be based on practical and economic realities, and not merely theoretical substitutability.

Conditions of competition cannot be regarded as homogeneous merely because alternative ports theoretically exist. Factors such as proximity, transportation costs, infrastructure limitations, and operational dependence materially restrict substitutability, which is the primary test for defining the relevant market.

Thermal power producers dependent on imported coal are effectively tied to specific supply chains and port infrastructure. As such, high switching costs and logistical constraints may create a captive consumer base.

CIRP costs must be directly linked to the resolution process and approved by the CoC

Kohinoor City Office Towers Industrial Estate & Premises Co-operative Society Ltd v. Santanu T Ray

National Company Law Tribunal, Mumbai | CP (IB) No. 2096 of 2019

The National Company Law Tribunal (NCLT) recently clarified that dues arising during the Corporate Insolvency Resolution Process (CIRP) do not automatically qualify as CIRP costs unless they are directly linked to the resolution process and approved by the Committee of Creditors (CoC), whereas expenses necessary for preservation of assets during liquidation may qualify as liquidation costs.

The ruling is likely to be particularly relevant for companies, landlords, maintenance agencies and statutory authorities dealing with entities undergoing CIRP or liquidation. It emphasises the need for stakeholders providing essential services to distressed entities to adopt a more proactive approach in documenting ongoing obligations, engaging early with resolution professionals, and ensuring that critical operational expenses are formally recognised during the insolvency process. Further, businesses dealing with assets subject to regulatory attachment should note that such attachment may not prevent accrual of maintenance and statutory liabilities. Companies may therefore consider strengthening contractual protections, monitoring mechanisms, and recovery strategies when dealing with financially stressed parties, including early engagement with the insolvency professionals.

SUMMARY OF FACTS

Kohinoor City Office Towers Industrial Estate & Premises Co-operative Society Ltd (Kohinoor), a co-operative society managing premises in which the corporate debtor owned certain commercial units, sought payment of outstanding maintenance dues and property tax in priority during liquidation proceedings.

Prior to the commencement of insolvency proceedings, the Enforcement Directorate (ED) had attached the corporate debtor's properties under the Prevention of Money Laundering Act, 2002 (PMLA). The attached properties were subsequently released to the liquidator.

Kohinoor had initially filed claims for maintenance dues, part of which was admitted by the liquidator as operational debt. Subsequently, it contended that:

- Maintenance dues arising during the CIRP period ought to be treated as CIRP costs
- Maintenance dues and property taxes accruing during the ED attachment period should be treated as liquidation costs payable in priority.

DECISION OF THE COURT

The NCLT partly allowed the application and drew a distinction between CIRP costs and liquidation costs under the Insolvency and Bankruptcy Code, 2016 (Code).

The Tribunal held that merely because dues arise during the CIRP period does not automatically make them CIRP costs. Such costs must be directly related to the insolvency resolution process and approved by the CoC. Since the dues had not been approved by the CoC and were not raised during CIRP, they could not be retrospectively reclassified as CIRP costs.

However, the Tribunal held that maintenance charges and property taxes accruing during liquidation qualify as liquidation costs since they are necessary for preserving and protecting the liquidation estate and maintaining the value and marketability of the assets.

Importantly, the Tribunal clarified that attachment under the Prevention of Money Laundering Act, 2002 does not divest ownership of property but merely restricts its transfer – the properties continued to vest in the corporate debtor and formed part of the liquidation estate. Consequently, the liquidator remained responsible for preservation of the assets, including payment of maintenance charges and property taxes during liquidation.



Extension of arbitrator's mandate is permissible even after lapse of time limit

C Velusamy v. K Indhera

Supreme Court of India | 2026 SCC OnLine SC 142

The Supreme Court has clarified that Courts can extend an arbitrator's mandate under Section 29A of the Act even after the award has been rendered after the expiry of the prescribed timeline. The judgment recognises that commercial arbitrations often involve complex factual matrices, voluminous records and procedural delays, and that rendering awards automatically *void* due to procedural lapses would undermine arbitration as an effective dispute resolution mechanism. As such, the ruling ensures that arbitral proceedings are not rendered futile merely because parties themselves contributed to delays through settlement negotiations or consensual adjournments.

While timelines under Section 29A remain mandatory, the ruling clarifies that Courts retain supervisory control to preserve the efficacy of arbitral proceedings, with extension of mandate remaining discretionary and subject to judicial safeguards such as imposition of costs, reduction of arbitrator fees, or substitution of arbitrators in appropriate cases.

SUMMARY OF FACTS

A dispute arose out of 3 agreements to sell, leading to arbitration. With the completion of pleadings, the 12-month timeline under Section 29A(1) of the Act for making the arbitral award was triggered.

Before the expiry of this period, both parties consented to a 6-month extension under Section 29A(3) of the Act.

Meanwhile, arguments were concluded, and the matter was reserved for award. However, owing to ongoing settlement discussions, the proceedings were repeatedly adjourned. Eventually, the arbitrator rendered the award, well after expiry of its mandate.

Aggrieved by the award, it was challenged on the ground that the mandate of the arbitrator had expired prior to passing of the award, rendering it invalid.

Subsequently, the award-holder filed an application under Section 29A of the Act before the Madras High Court seeking extension of the arbitrator's mandate, which was dismissed on the ground that once an award had already been passed after expiry of the arbitrator's mandate, the Court lacked jurisdiction to extend time retrospectively.

The matter thereafter reached the Supreme Court.

DECISION OF THE COURT

The Supreme Court reversed the High Court's decision, and held that an application under Section 29A(5) of the Act is maintainable even after expiry of the mandate and even after an award has been rendered beyond the prescribed timeline.

Section 29A of the Act, introduced *vide* the 2015 Amendment to the Act to ensure the timely completion of arbitral proceedings, does not expressly prohibit the extension of an arbitrator's mandate after an award has been passed. The expression 'if the award is not made' merely specifies the circumstances in which the Court may intervene and extend time. It does not create a threshold bar against post-award extension applications.

The Court heavily relied on its earlier decision in *Rohan Builders*,⁵ wherein it had observed that the termination contemplated under Section 29A(4) of the Act is not absolute but conditional and capable of revival through the Court's intervention.

However, an award rendered after the expiry of the arbitrator's mandate remains ineffective and unenforceable under Section 36 of the Act until the Court subsequently extends the mandate. Such extension must not be automatic – Courts must scrutinise the facts carefully and may impose costs, reduce arbitrator fees, or even substitute the arbitrator where circumstances warrant.

⁵ Rohan Builders (India) Pvt Ltd v. Berger Paints India Ltd, 2024 SCC OnLine SC 2494

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