



**THE CENTRE FOR CORPORATE LAW  
NATIONAL LAW UNIVERSITY ODISHA**



# #IN SIGHTS

**JANUARY, 2026**

- **INSOLVENCY & BANKRUPTCY LAW**
- **SECURITIES LAW**
- **ARBITRATION LAW**
- **MISCELLANEOUS**

**DEFAULT**



**INSOLVENCY & BANKRUPTCY LAW**



**The National Company Law Appellate Tribunal (“NCLAT”) clarifies that the past Non-Banking Financial Company (“NBFC”) status does not bar Insolvency Proceedings under the Insolvency and Bankruptcy Code, 2016 (“IBC”) [Ankush Saluja v. Urmila Goyal & Anr.]. [Link]**

The NCLAT in its judgement dated 21st January, 2026, has clarified that the exclusion available to Financial Service Providers (“FSPs”) under Section 3(7) of IBC is not permanent. The exclusion depends upon the regulatory status of the corporate debtor on the date of filing of the insolvency application. The tribunal held that if a company’s NBFC registration is cancelled before the initiation of insolvency proceedings, then such a company cannot claim immunity from insolvency proceedings.

Currently, Section 3(7) of the IBC provides for the definition of ‘corporate person’, which specifically excludes FSPs. Further, section 3(17) provides for the definition of FSPs, which specifically states that an FSP is an entity that carries on its financial services under a valid authorisation or registration from a sector regulator.

However, not all FSPs enjoy such exclusion. Section 227 of the IBC empowers the Central Government to notify special insolvency and liquidation proceedings for specific classes of FSPs. All other FSPs are excluded from the Corporate Insolvency Resolution Process (“CIRP”). This exclusion has frequently been invoked as a jurisdictional shield by corporate debtors to delay admission of insolvency proceedings. Such exclusion also raises the question of whether such immunity extends to corporate debtors who formerly held the NBFC registration and lost the same before the initiation of insolvency proceedings.

The NCLAT, resolving the question, held that a company whose NBFC registration has been cancelled prior to the initiation of insolvency proceedings cannot claim such immunity on the basis of its past status. NCLAT affirmed that the applicability of the exclusion must be assessed with reference to a company’s regulatory status at the time of insolvency application and not its historical character. Further, the NCLAT had clarified that whether the corporate debtor was an NBFC at the time of loan was granted is not relevant. What is relevant is whether the corporate debtor continued to hold NBFC status when insolvency proceedings were initiated.

This decision provides clarity on the application of exclusion for FSPs at the stage of admission of insolvency proceedings. Corporate Debtors can no longer rely on cancelled or expired registrations to avoid or delay any proceedings under the IBC. Once the regulatory approval is withdrawn, such entities become subject to the CIRP framework in the same manner as any corporate debtor. Additionally, creditors will now only be required to verify whether the corporate debtor held a valid NBFC registration on the date of filing of the insolvency application.

## **Supreme Court (“SC”) issues guidelines for the Committee of Creditors (“CoC”) to protect the interests of homebuyers [*Elegna Co-Op. Housing and Commercial Society Ltd. Versus Edelweiss Asset Reconstruction*].** **[Link]**

The SC in the present case, maintaining the primacy of the CoC’s commercial wisdom, issued directions to enhance transparency and accountability, including mandatory disclosure of allottee details in the Information Memorandum. It also held that if the CoC refuses handover of possession under Regulation 4E of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or recommends liquidation, it must give clear and written reasons for its decision.

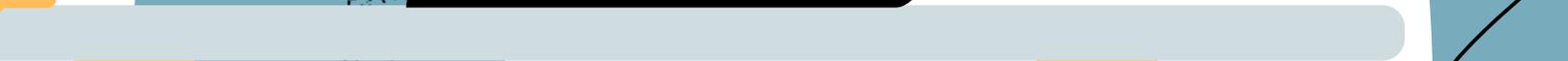
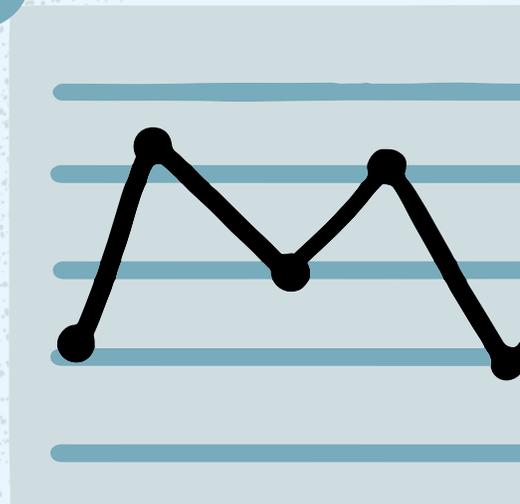
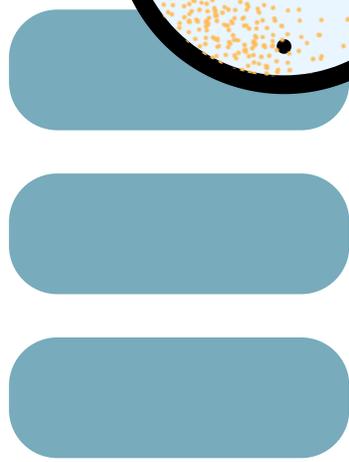
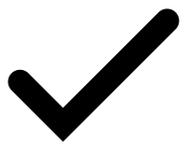
In the past, the IBC framework and judicial interpretation were firmly creditor-centric, with limited scope for third-party participation at the Section 7 stage and near-mandatory admission of CIRP upon proof of debt and default. Although individual homebuyers were statutorily recognised as financial creditors, their collective concerns were largely mediated post-admission through authorised representatives in the CoC. Courts consistently insulated the CoC’s commercial wisdom from judicial scrutiny and treated the IBC as a collective resolution mechanism unaffected by parallel recovery actions under SARFAESI or before the DRT, reinforcing procedural efficiency over stakeholder-sensitive outcomes in real estate insolvency.

In the present, the Court has retained the structural design of the IBC while introducing process-based checks on CoC decision-making in builder insolvencies. By requiring full disclosure of homebuyer details and clear written reasons for refusing possession or choosing liquidation, the court has made the CoC more transparent and accountable. This creates a fairer process in insolvency cases that impact everyday homebuyers.

Going forward, it may guide real estate resolutions toward completing projects over liquidation when feasible. Recording reasons will build a standard for stakeholder-focused decisions, while honouring the CoC's business wisdom. Overall, the ruling fosters a balanced IBC framework that is fast and efficient, yet mindful of insolvency's real impact on homebuyers and consumers.



# SECURITIES LAW



## Securities and Exchange Board of India (“SEBI”) tightens Governance Norms through SEBI (Listing Obligations and Disclosure Requirements) (“LODR”) (Amendments) Regulations, 2026. [\[Link\]](#)

SEBI, on January 20, 2026, has recently introduced a new set of compliance requirements and disclosure changes for listed entities by notifying the SEBI (LODR) (Amendments) Regulations, 2026. These have mainly brought about changes in investor servicing, corporate governance, the investor protection fund, and the High Value Debt Listed Entities (“**HVDLEs**”) framework. The move aims to make listed entities more accountable to investors and to address regulatory gaps that have developed over time.

Under the earlier framework dating back to 2015, companies with Rs.1000 crore or more in outstanding listed non-convertible debt securities were declared as HVDLEs and hence, required to comply with governance regulations, as those for equity-listed entities. Over time, these were flagged by stakeholders as an unnecessary compliance burden on companies only using debt securities to access capital markets. Additionally, a lot of logistical issues came up with processing physical security requests, delays in investor services and uncertainty regarding related party transactions, hence indicating a need for a more streamlined framework and approach.

With these amendments, significant changes have been brought about to rectify the earlier shortcomings. Increasing the HVDLE threshold from Rs.1000 crore to Rs. 5000 crore of outstanding listed non-convertible debt securities has led to regulatory relaxation for companies that do not meet the revised threshold. At the same time, investor servicing rules have been strengthened with issuance, subdivision, consolidation, and duplicate securities to be credited in dematerialised form within 30 days, and transfer, transmission, or transportation to be done only in demat form.

Further, to improve the investor protection schemes, any unclaimed escrow amounts must be transferred to the Investor Education and Protection Fund under the Companies Act, or to SEBI's Investor Protection Fund for non-company entities. SEBI has also mandated the filing of vacancies of directors or key managerial positions within three months, reinforcing a stricter timeline and an age limit of 75 years for non-executive directors, where necessary approvals are required. Moreover, related party transactions include certain exemptions for statutory dues and transactions involving government or public sector entities, especially for HVDLEs.

In conclusion, the amendments reflect a balance, reducing unnecessary compliance burden wherever required but also simultaneously increasing accountability where investor interests are directly involved. Large debt-listed entities are now required to comply with greater governance expectations, while comparatively smaller companies will experience reduced burden owing to a higher HVDLE threshold. Looking from an investor perspective, debenture holders will gain from the dematerialisation of securities and faster service timelines, enhancing confidence in the capital markets.

# ARBITRATION LAW



## **SC clarifies the scope of substitution of arbitrator under section 29A of the Arbitration and Conciliation Act, 1996 (“A&C Act) [*Viva Highways Ltd Petitioner(S) Versus Madhya Pradesh Road Development Corporation Ltd & Anr.*]. [Link]**

On January 07, 2026, the SC in the present case clarified that the courts are not compelled to substitute arbitrators the moment the mandate expires, thereby upholding the judicial discretion enshrined upon the judiciary by virtue of the statute.

Traditionally, Section 29A of the A&C Act has been interpreted as a mechanism that provides a remedy to prevent arbitral delay. Termination of mandate and substitution of arbitrators were not automatic consequences. However, the cloud of confusion arose in the case of *Mohan Lal Fatehpuria v. Bharat Textiles* wherein the SC stated that when the mandate of arbitrator has expired, the continuation is impermissible. When read in isolation, this view suggests that the substitution is mandatory after the expiry of time.

In the present case, the Supreme Court clarified that the intention was not to rewrite Section 29A or mandate the substitution of the arbitrator in every case of extension of mandate. The reference made earlier with respect to “impermissibility” refers to the unilateral proceeding by an arbitrator once the mandate has expired and the duration has not been extended by the courts. It was further clarified that the courts are not curtailed of the power to extend the mandate under Section 29A.

The present case reinforces the legislative intent of Section 29A by distinguishing extension from substitution. It specifies that an Arbitrator should only be substituted if continuing the tribunal is impermissible under any conditions. Relevant factors for substitution include prolonged inaction, or a deadlocked situation. Whereas, mechanical substitution of an Arbitrator is inconsistent with the supervisory and remedial nature of Section 29A.

This decision, in essence, reiterates the purpose and scope of Section 29A as an oversight mechanism which promotes efficiency. The clarification further reinforces the judicial efforts to uphold the legislative intent and protect the arbitrators from arbitrary substitution. Moreover, continuation of the arbitrator signifies the confidence of dispute resolution through arbitration.

# MISCELLANEOUS



## SC denies capital gains exemption for the sale of shares of Flipkart claimed by Tiger Global under the India-Mauritius Double Tax Avoidance Agreement (“DTAA”) [*Authority of Advanced Ruling v. Tiger Global*]. [\[Link\]](#)

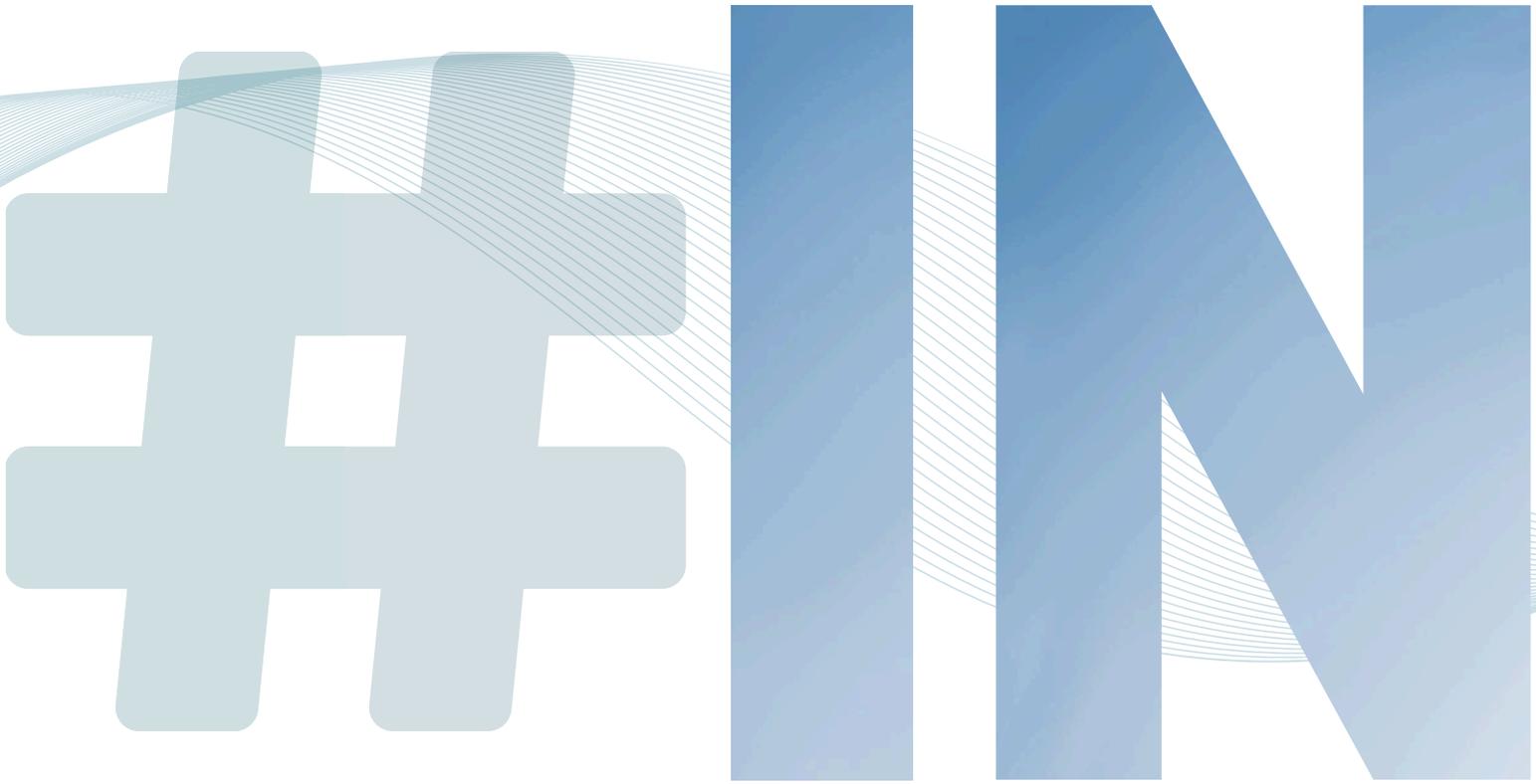
The SC upheld the refusal of Indian tax authorities to entertain advance ruling applications filed by Mauritius-based Tiger Global entities in relation to capital gains arising from the 2018 sale of Flipkart shares to Walmart. The SC held that a Tax Residency Certificate (“**TRC**”) issued by Mauritian authorities is not conclusive proof against tax avoidance, especially after the introduction of the General Anti-Avoidance Rules, 2012 (“**GAAR**”).

The case originated after three Mauritius-incorporated Tiger Global holding companies sold their stakes in Flipkart Singapore during Walmart’s \$16 billion acquisition. Tiger Global claimed exemption by contending that since shares acquired before April 1, 2017, they were eligible for capital gains exemption under the grandfathering clause of the DTAA. The Authority for Advanced Rulings (“**AAR**”) rejected this stance and labelled the Mauritius entities as “conduit entities” and “puppets” and stated that the real control lay with Tiger Global Management (“**TGM**”) LLC in the United States. The AAR concluded that the structure was prima facie a tax-avoidance structure. This decision of the AAR was quashed by the Delhi High Court, which led to the present appeal before the SC.

While granting leave to the appeal by the revenue authorities, the SC held that once a transaction is found to be prima facie designed for tax avoidance, the statutory bar under the proviso to Section 245R(2) of the Income Tax Act, 1961 (“**IT Act**”) is triggered. Justice Pardiwala observed tax sovereignty as an “inherent sovereign function” that cannot be diluted through artificial arrangements. The SC stated that even though a TRC is applicable, it is not conclusive where the revenue authorities can prove prima facie that the structure is a tax avoidance structure.

The judgment represents a significant change in the interpretation of treaties, especially towards a substance rather than form approach. It is an indication that statutory anti-abuse protection will not be toxified by treaty protection, including grandfathering. The message to the cross-border investors is clear: the application of intermediate holding structures must be substantiated commercially. The decision is a move forward to India in safeguarding its tax sovereignty as well as protecting its economic interests.





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