THE CENTRE FOR CORPORATE LAW
NATIONAL LAW UNIVERSITY ODISHA

#IN SIGHTS

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

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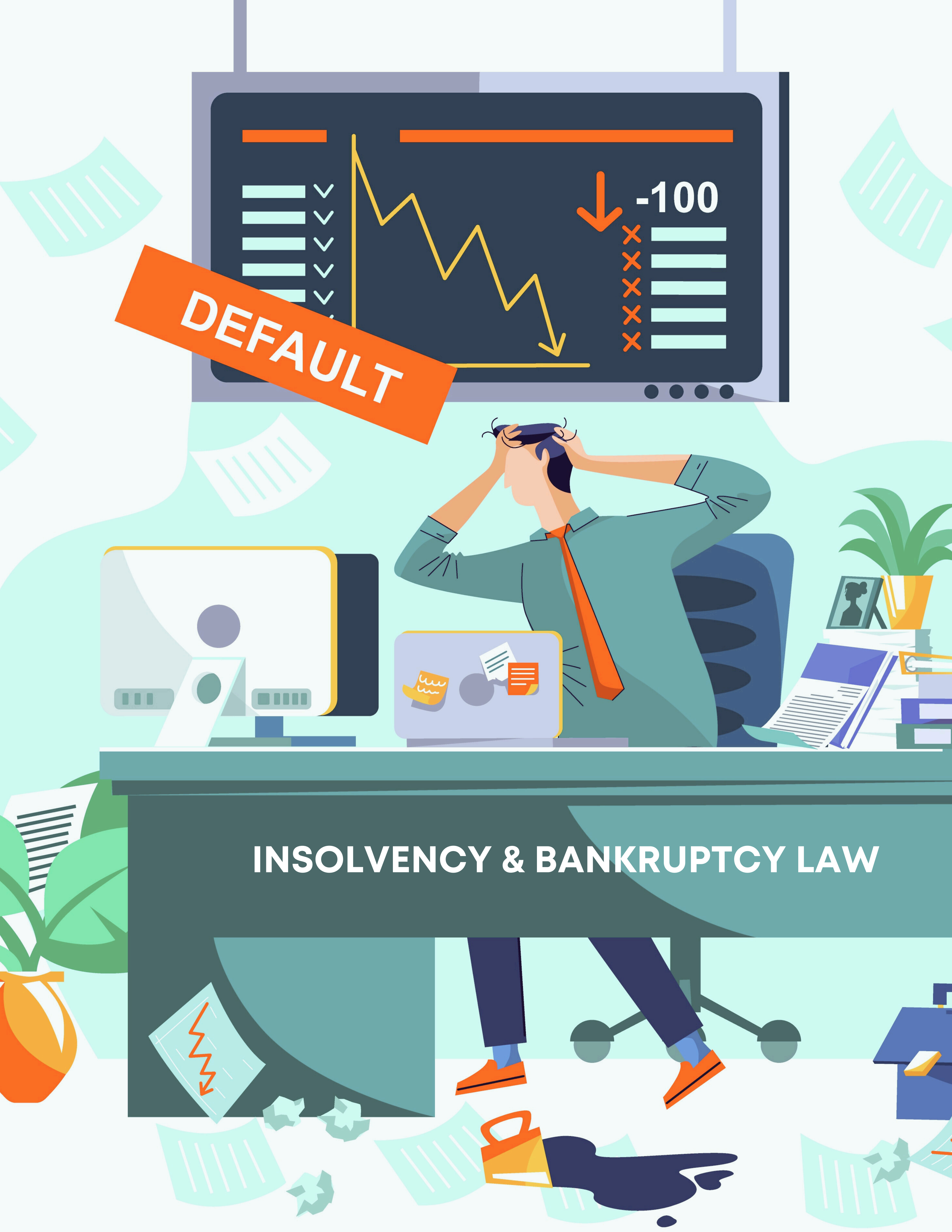
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DEFAULT
INSOLVENCY & BANKRUPTCY LAW

Service of demand notice on Key Managerial Personnel ("KMP") at registered office amounts to deemed service on Corporate Debtor ("CD"): Supreme Court ("SC") [*Visa Coke Limited v. M/S Mesco Kalinga Steel Limited*]. [Link]

The SC held that delivery of the demand notice to the CD's KMP constitutes deemed service of the notice and complies with the requirement under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). While overturning the judgments of the National Company Law Tribunal ("**NCLT**") and National Company Law Appellate Tribunal ("**NCLAT**") that had dismissed the Section 9 insolvency petition on the technical ground that the demand notice was not addressed to the CD, the SC ruled that the purpose of sending a demand notice is to provide the CD with an opportunity to either repay the debt or raise a legitimate dispute.

Additionally, the Court clarified that serving the notice on a director is deemed sufficient and constitutes notice to the company itself. Accordingly, the Creditor's appeal was allowed.

Defaults arising from settlement agreements do not constitute operational debt, and the existence of pre-existing disputes between parties is a valid ground for dismissing an application under Section 9 of the IBC: NCLT, New Delhi [*Harji Engineering Works Pvt. Ltd. v. M/s Enerture Technologies Pvt. Ltd.*]. [Link]

The NCLT, New Delhi held that defaults occurring out of settlement agreements are not "operational debts" under Section 5(21) of IBC. For an operational creditor to file an insolvency petition under Section 9, there has to be the presence of an operational debt. It further observed that existence of a pre-exciting dispute amongst the parties is a valid ground to dismiss the insolvency petition under Section 9 of IBC.

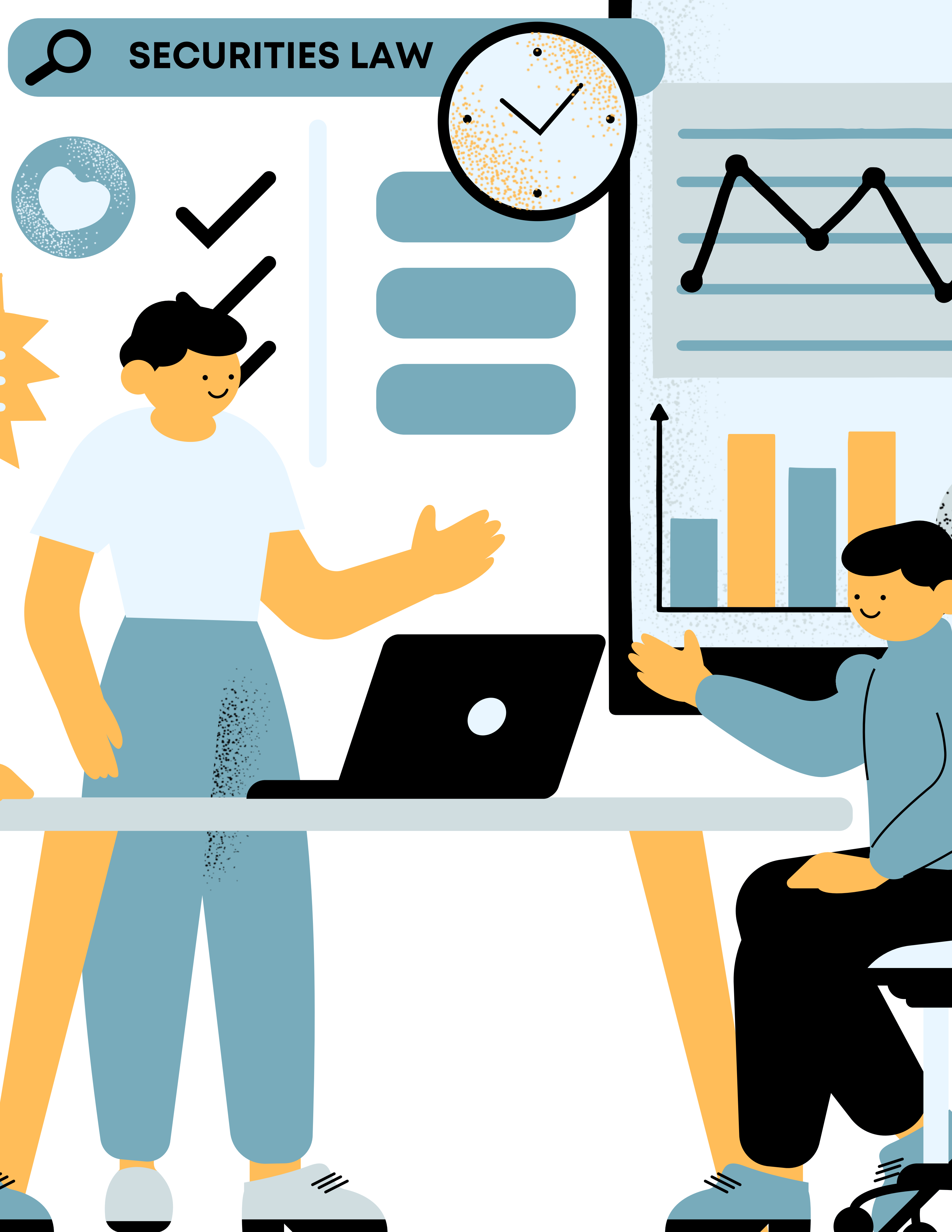
Repetitive filing of applications under Section 42 of IBC violates the doctrine of res judicata and leads to abuse of law: NCLAT, Chennai [*Employees' Provident Fund Organization v. Dr. Madurai Sundaram Sankar*]. [Link]

The NCLAT, Chennai dismissed an appeal under Section 42 of IBC stating that the repetitive filing of settled matters violates the doctrine of res judicata. The Tribunal further emphasized that statutory bodies are expected to act fairly and responsibly, and should not abuse the process of law.

Liquidated Damages deducted during Corporate Insolvency Resolution Process ("CIRP") as per contractual terms cannot be refunded after Resolution Plan ("RP") approval: NCLAT, New Delhi [*Fabtech Projects and Engineers Pvt. Ltd. (Formerly Fabtech Projects and Engineers Ltd.) v. Hindustan Petroleum Corporation Ltd.*]. [Link]

The NCLAT, New Delhi Bench, held that once a RP chooses to continue a contract during the CIRP, all terms of that contract including provisions for liquidated damages, remain enforceable. The Tribunal ruled that deductions made under such contractual terms would be legally binding and not subject to refund after the RP approval.

Additionally, it stated that while claims not submitted or filed before the RP cease to exist, the liquidated damages already deducted under the terms of a contract during CIRP would remain valid. Consequently, no refund of such deductions would be applicable to the successful resolution applicant.


SECURITIES LAW

The Securities and Exchange Board of India ("SEBI") proposes mandatory dematerialisation for all key stakeholders before Initial Public Offerings ("IPO"). [Link]

SEBI has proposed stricter norms for companies planning an IPO, mandating that all specified securities held by promoters, promoter group, directors, KMP, employees, and shareholders with special rights must be in dematerialised form before filing the offer document. Currently, only promoters are required to hold dematerialised securities before an IPO.

SEBI noted that despite existing rules and efforts by the Ministry of Corporate Affairs ("**MCA**"), many critical pre-IPO shareholders such as KMPs, senior management, selling shareholders, and even qualified institutional buyers continue to hold physical shares. To plug this regulatory gap and enhance market transparency, SEBI also proposed extending this requirement to registered stock brokers, non-systemically important Non-Banking Financial Companies ("**NBFC**"), and other regulated entities holding such securities.

SEBI raises threshold for Foreign Portfolio Investor ("FPI") beneficial ownership disclosures.[Link]

SEBI has relaxed disclosure norms for FPIs by increasing the threshold for detailed beneficial ownership disclosures from Rs. 25,000 crores to Rs. 50,000 crores. Now, only those FPIs, individually or as a group, holding over Rs. 50,000 crores in Indian equity assets are required to disclose full details of all entities with any ownership, economic interest, or control on a "look-through" basis.

The earlier Rs. 25,000 crore threshold was introduced in August 2023 to monitor FPIs with concentrated holdings that could potentially bypass Press Note 3 norms and pose systemic risks. Certain FPIs with broad-based structures or those linked to government entities remain exempt, subject to specified conditions.

SEBI proposes enhanced investment limits for Mutual Funds ("MFs") in Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs"). [Link]

To enable greater diversification and more investment avenues, SEBI is considering raising investment limits for MFs in REITs and InvITs. Currently, an MF scheme can invest up to 10% of its Net Asset Value ("**NAV**") in REITs and InvITs, with a cap of 5% per issuer, and no MF can hold more than 10% of units issued by a single issuer across all its schemes. These limits do not apply to index funds or sector-specific schemes focused on REITs/InvITs.

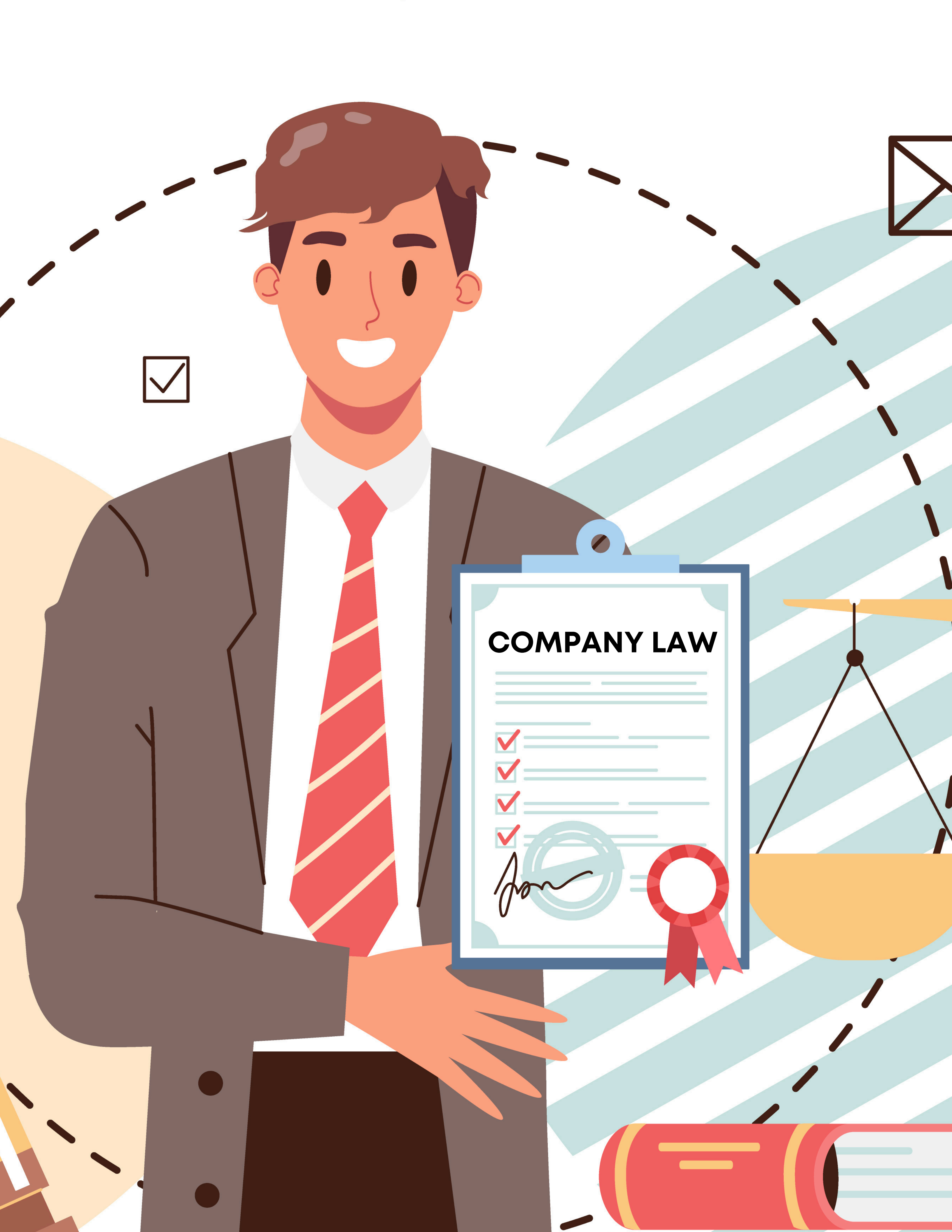
SEBI has proposed allowing an MF scheme to invest up to 10% of its NAV in a single REIT or InvIT, and permitting equity and hybrid schemes to have up to 20% total exposure across all their schemes. Given that REITs and InvITs exhibit both equity and debt features, SEBI is also exploring whether they should be classified as 'equity' and included in equity indices for MF investment purposes.

SEBI expands trading window closure norms to immediate relatives of Designated Persons ("DP").[Link]

SEBI has broadened its automated trading window closure mechanism, designed to curb insider trading, to now cover immediate relatives of DPs in listed companies. Previously, only DPs were restricted from trading ahead of sensitive financial disclosures like quarterly results.

A trading window closure is a period during which certain individuals, typically those with access to unpublished price-sensitive information, are prohibited from trading in the company's securities. This measure ensures that people with access to confidential financial data do not trade on it before it is made public, thus maintaining fairness in the markets.

Under the revised norms, immediate relatives, such as spouses, financially dependent parents, siblings, or children, or those who consult the DP for trading decisions, are also barred from trading during the closure window.


COMPANY LAW

The MCA proposes draft amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“CAA Rules”). [Link]

The MCA has proposed amending the CAA Rules to expand the scope of fast-track mergers under Section 233 of the Companies Act, 2013 (“**CA, 2013**”).

The proposal seeks to include the mergers between unlisted companies, excluding Section 8 companies, having borrowings below Rs. 50 crore and no defaults in payments as certified by the auditor. It also covers mergers between a holding company (whether listed or unlisted) with its unlisted subsidiaries. Additionally, mergers between unlisted subsidiaries of the same holding company are proposed to be included, provided the transferor company is not listed.

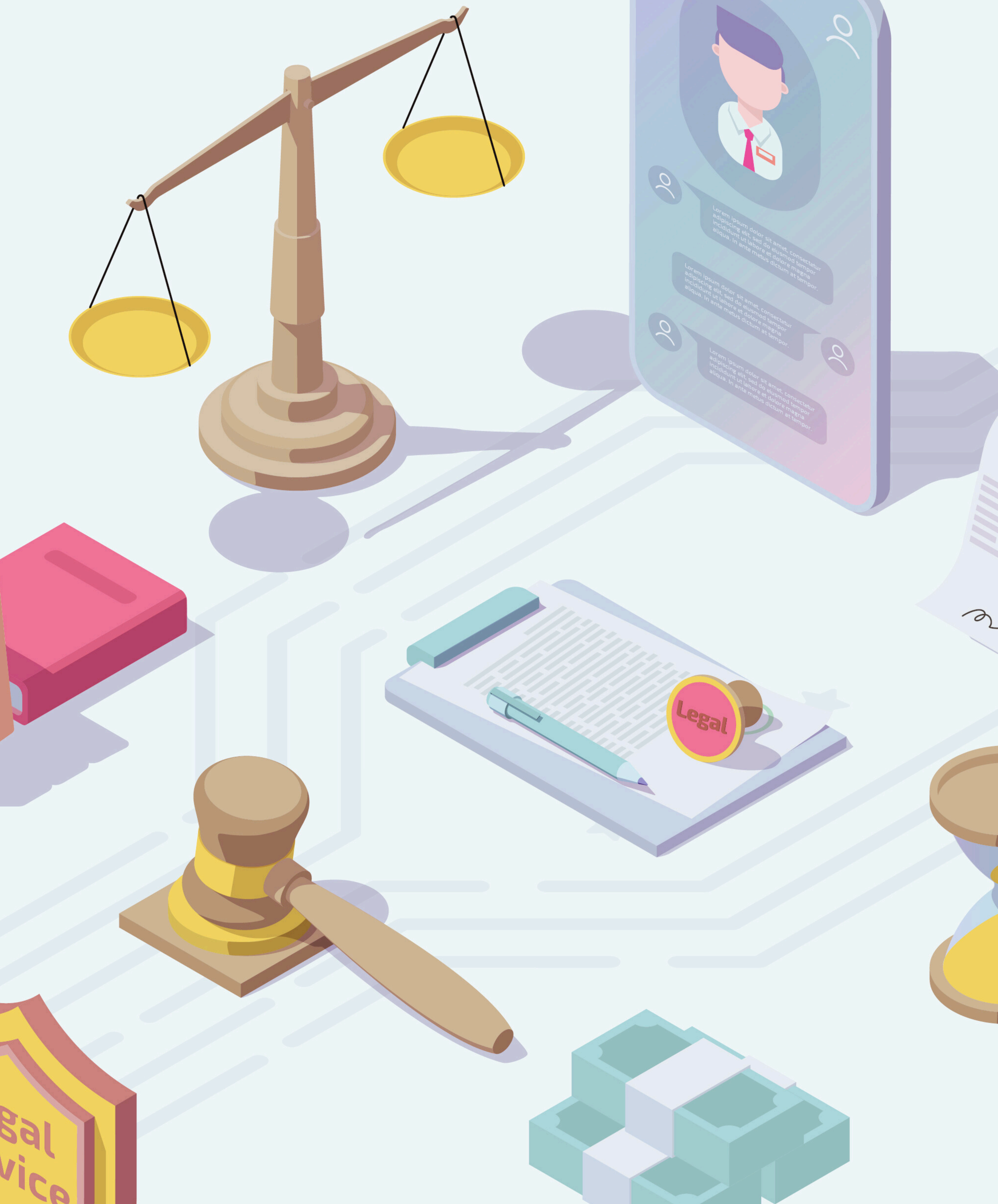
The MCA has also proposed to include the merger covered under Rule 25A (5) of the CAA Rules within Rule 25 itself. This relates to a merger where a foreign holding company merges with its wholly owned subsidiary incorporated in India. The objective is to streamline the provisions and make Rule 25 self-sufficient.

Bail cannot be granted for an offence under Section 447 of the CA, 2013 unless the twin conditions are met under Section 212(6): SC [*Serious Fraud Investigation Office v. Aditya Sarda*]. [Link]

The SC has held that bail, including anticipatory bail, cannot be granted for offences under Section 447 of the CA, 2013 (related to fraud), unless the twin conditions under Section 212(6) are met. These conditions require: (1) the Public Prosecutor must be allowed to oppose the bail application; and (2) if opposed, the court must be satisfied that there are reasonable grounds to believe the accused is not guilty and is unlikely to reoffend while on bail.

The court observed that bail should be granted based on the specific facts and circumstances of each case. It emphasised that when bail is granted through cryptic orders without thorough consideration, especially when the accused has refused to cooperate with authorities, such orders ought to be rescinded.

ARBITRATION LAW



The SC held that courts have limited power to modify arbitral awards under Section 34 and Section 37 of the Arbitration and Conciliation Act, 1996 ("A&C Act") [*Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited*]. [Link]

A five-judge constitution bench of the SC has recently held that modification of arbitral awards is only permissible in exceptional cases. When the award is severable, the invalid part may be removed while retaining the valid portion through modification. The court also allowed for correction of any errors, primarily clerical, typographical or computational, that are apparent on the face of the record.

Additionally, the SC may invoke Article 142 of the Constitution to modify awards, acting within constitutional limits. In certain circumstances, the courts have the power to modify post-award interest under the A&C Act.

The court also clarified that remand powers under Section 34(4) do not substitute for modification. Rather, they are discretionary, only suitable when curable defects exist.

The dissenting opinion held the view that modification of awards is not permitted as it would be equivalent to reviewing merits. Additionally, the usage of Article 142 of the constitution or implied powers to justify the modification was deemed to be inappropriate.

The Delhi High Court ("HC") has held that a fresh notice under Section 21 of the A&C Act is not mandatory for initiating proceedings related to counterclaims [*RailTel Corporation of India Limited v. Primatel Fibcom Limited*]. [Link]

A single judge bench of the HC has observed that issuance of a separate notice is not mandatory only for the purpose of counterclaim when the subject matter of the dispute between the parties has previously been in an arbitral reference.

The key issue in the petition pertained to whether a petition under Section 11 of the A&C Act can proceed without a separate notice as per Section 21. The court clarified that denying the petitioner on purely technical grounds would unfairly prevent the claims from being adjudicated, taking into account that they were never assessed on merit.

The object of Section 21 is to ensure that the party is aware of the claims and in the present case the respondent was not only aware but also had already participated. Hence, the petition was held maintainable.

The Bombay HC has held that an arbitrator cannot be substituted under Section 29-A(6) of the A&C Act unless grounds under Section 14 or Section 15 are satisfied [*Indiabulls Infraestate Ltd. v. Imagine Realty Pvt. Ltd*]. [Link]

The court clarified that although Section 29-A(6) of the A&C Act engages the term substitution, this does not lead to the creation of an independent ground for the same. The power to replace an arbitrator must be exercised solely as per the conditions laid out in Section 14 and Section 15 of the A&C Act.

It was held that mere dissatisfaction with the pace of arbitration or adverse procedural rulings manifesting in allegations of bias does not meet the threshold for removal. Furthermore, the court emphasises that the parties cannot later challenge an extension of the arbitrator's mandate that was consensually agreed upon, claiming that they were "constrained" to agree.

SC held that non service of a notice and absence of application are not valid grounds to exclude a person from arbitral proceedings [*Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd. & Ors.*]. [Link]

The apex court ruled that an arbitral tribunal's jurisdiction hinges on whether a person is a party to the arbitration agreement. It held that issuance of the notice under Section 21 of the A&C Act is mandatory to initiate arbitration, but failure to do so does not bar the tribunal from impleading a party otherwise bound by the arbitration agreement. Similarly, the fact that a party was excluded from the application for appointment of an arbitrator under Section 11 of the A&C Act does not limit the tribunal's authority.

The respondents had acted under and in furtherance of the agreement, and as a result, their conduct had established an implied consent to be bound by the arbitration clause. The decision of the HC was accordingly set aside.

SC clarifies the three-month limitation period under Section 34(3) to be interpreted as three calendar months [*M/s R.K. Transport Company v. M/s Bharat Aluminum Company Ltd. (BALCO)*]. [Link]

In a recent ruling, the SC has held that the three-month limitation period under Section 34(3) of the A&C Act must be interpreted as three calendar months and not a fixed 90-day period. This aligns with the intent of the legislature, wherein the statutory language uses the term "three months" as opposed to "ninety days".

The court clarified that if the statutory three-month period for filing an application under Section 34 of the A&C Act expires on a court holiday, the application may validly be filed on the next working day. Accordingly, the appeal was dismissed by the court.

A writ petition cannot be considered as an earlier application under Section 42 of the A&C Act [*Hariram & Ors. v. National Highway Authority of India*]. [Link]

The Delhi HC held that a writ petition filed previously cannot be taken into account for the purpose of determining jurisdiction over arbitration-related proceedings. It was clarified that Section 42 applies solely to applications filed under Part I of the A&C Act, which are intended to initiate or regulate arbitrations concerning the arbitration agreement. Contrary to this, writ petitions are constitutional remedies to challenge an administrative act or a legal decision. The court, therefore, dismissed the petition for lack of territorial jurisdiction.

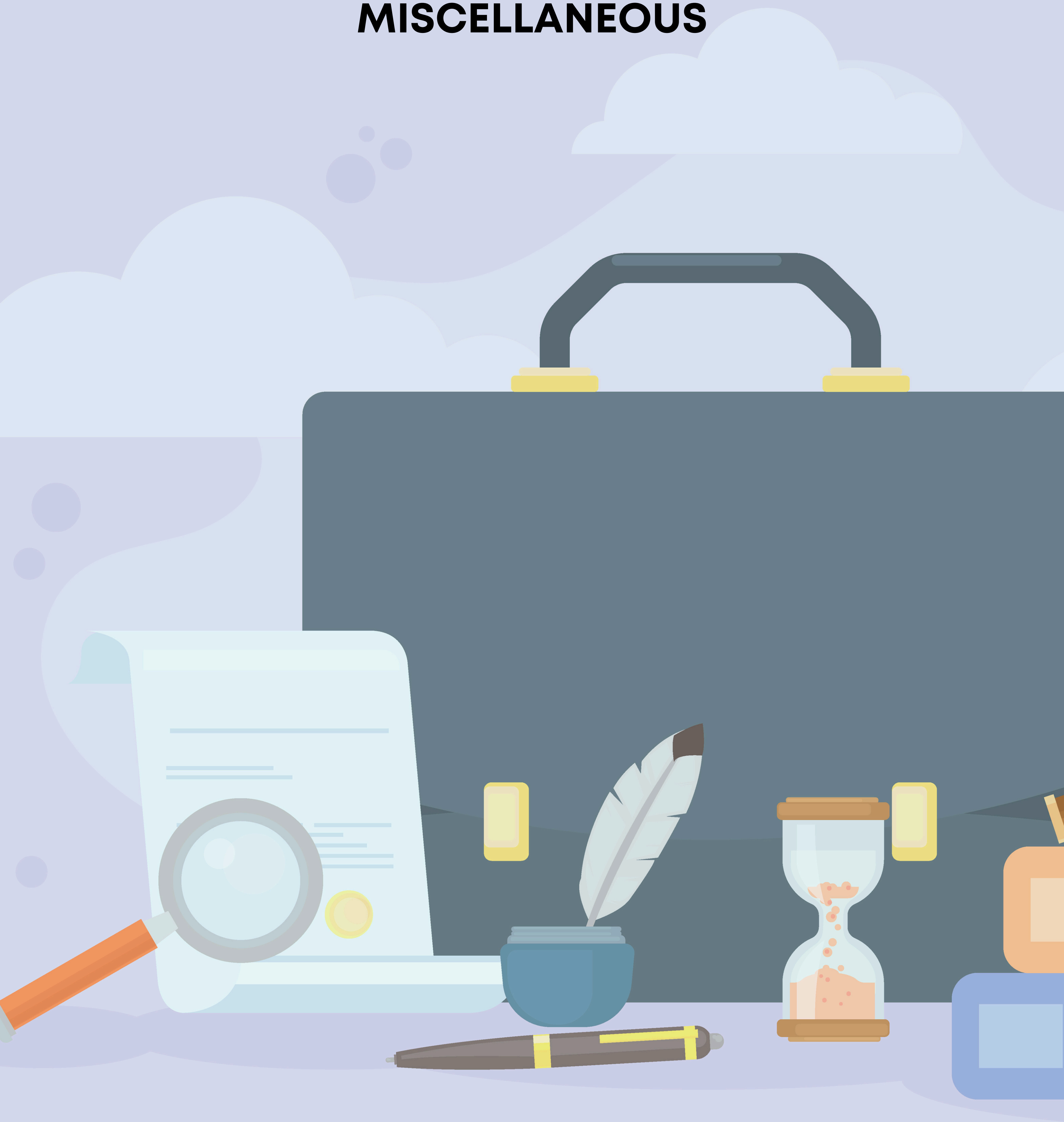
The Delhi HC has held that post-award interest under Section 31(7)(b) of the A&C Act is mandatory [*Union of India & Anr. v. Sudhir Tyagi*]. [Link]

The court ruled that when it comes to awarding post-award interest, the only discretion available with the tribunal pertains to the determination of the rate of such interest. The statutory rate of 18% per annum applies automatically from the date of the award until the date of payment unless the arbitrator specifies otherwise.

The court clarified that the phrase “unless the award otherwise directs” refers only to the rate of post-award interest. As a result, the arbitral tribunal has the discretion to award post-award interest at a different rate or on a portion of the awarded sum.

It concluded that the court executing the award has well within its jurisdiction to grant a post-award interest at 18% even when the arbitral award did not expressly do so. This would not amount to modifying the award.

MISCELLANEOUS



The Department for Promotion of Industry and Internal Trade (“DPIIT”) has clarified the bonus share issuance allowed to existing non-resident shareholders in Foreign Direct Investment (“FDI”)-prohibited sectors. [Link]

The DPIIT has clarified that Indian companies operating in FDI-prohibited sectors may issue bonus shares to their pre-existing non-resident shareholders, however, the shareholding pattern should not be affected post-issuance. This notification clears the ambiguity under Para 1 of Annexure 3 of the Consolidated FDI Policy, 2020 and aligns it with the existing provisions under the Foreign Exchange Management Act, 1999 (“**FEMA**”), which permit bonus issuances to non-residents subject to sectoral caps and other applicable laws.

Further, the clarification ensures that such issuance does not amount to fresh foreign investment in prohibited sectors and will come into force once the corresponding FEMA notifications are issued.

The Allahabad HC rules that tax proceedings can’t be initiated against a deceased assessee without legal provision [*Amit Kumar Sethia (Deceased) v. State of U.P. and another*]. [Link]

The Allahabad HC observed that Section 93 of the Goods and Services Tax, 2017, does not empower tax authorities to initiate or complete proceedings against a deceased person. The provision merely outlines the liability of legal representatives to pay outstanding tax, penalties, or interest only when the business is continued or discontinued.

However, it does not empower the department to issue notices or pass tax determination orders in the name of the deceased assessee. The court underlined that the statutory framework necessitates initiating proceedings against the legal representatives, not the deceased, making such proceedings against the deceased void ab initio.

SC affirms that state rules can't contradict central rules under the Central Sales Tax Act, 1956 ("CST Act") [*State of Rajasthan & Ors. v. Combined Traders*]. [Link]

SC held that Rule 17(20) of the Rajasthan CST Rules, 1957, which permitted cancellation of Form C in cases of fraud or misrepresentation, was ultra vires the CST Act. The court emphasized that under Section 13 of the CST Act, only the Central Government is empowered to prescribe the format and conditions related to Form C through the Central Rules. Since the Central Registration and Turnover Rules, 1957, do not provide for cancellation of Form C, any state rule allowing such cancellation would be inconsistent and beyond the scope of delegated legislative authority.

Thus, the court reiterated the principle that states can't override central rules in a manner that contradicts the central legislative framework, even in situations involving fraudulent conduct.

An amalgamated entity can avail depreciation of the written-down value of assets from merged companies without requiring central government consent: Bombay HC [*Technova Imaging Systems Limited v. Deputy Commissioner of Income Tax*]. [Link]

The Bombay HC stated that an amalgamated company is entitled to adjust the written down value of the assets acquired form amalgamating entities and claim depreciation accordingly, even without approval from the Central Government under Section 72A of the Income Tax Act, 1961 ("**IT Act**").

The court held that since the assessee only claimed depreciation based on the written-down value of the transferred asset, this is not a carry-forward of losses under Section 72. Thus, government approval was not required, making the tribunal's decision legally incorrect.

The Reserve Bank of India ("RBI") issued Draft Directions on Securitisation of Stressed Assets ("Draft Directions"). [Link]

RBI issued Draft Directions on 9th April,2025, which sets out a framework for the securitisation of stressed assets to be undertaken by specified regulated entities of the RBI. The new framework enables entities like NBFC, to securitize stressed loans through a structured and transparent mechanism. The framework is designed to strengthen the secondary market for distressed assets by allowing their conversions into tradable securities, similar to the existing structure for standard assets.

Its key elements include minimum retention requirements, the role of resolution managers, limits on credit enhancement, and clear eligibility criteria for asset pools.

The Telecom Regulatory Authority of India ("TRAI") issued a pre-discussion paper on review of tariff for Domestic Leased Circuits ("DLC"). [Link]

TRAI has released a pre-consultation paper seeking stakeholder input on the potential review of ceiling tariffs for DLCs. DLCs are dedicated point-to-point communication links provided by the telecom operators for secure and high-speed data transmission between two locations. This initiative aims to assess whether the current tariff framework remains effective in light of the market developments, evolving technologies, and the need for fair pricing and competition.

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