THE CENTRE FOR CORPORATE LAW
NATIONAL LAW UNIVERSITY ODISHA

#INSIGHTS

March, 2025

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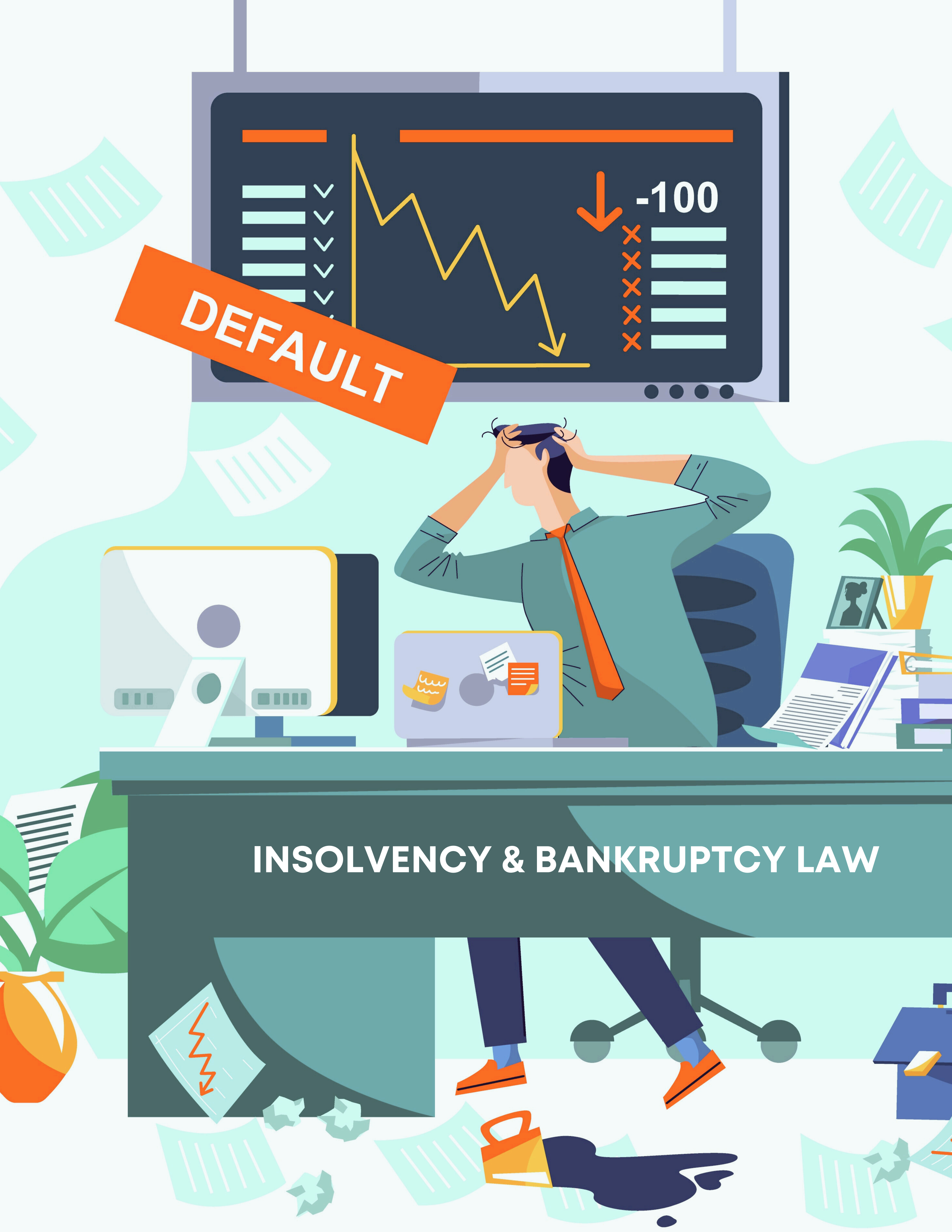


INSOLVENCY & BANKRUPTCY LAW

Corporate Revival under Insolvency and Bankruptcy Code, 2016 ("IBC") should not impede land acquisition for public welfare interests: National Company law Tribunal ("NCLT"), Mumbai [*Aegis Resolution Service Private Limited, Resolution Professional of Radius & Deserve Land Developers Private Limited V. Slum Rehabilitation Authority*]. [Link]

The NCLT, Mumbai in its recent judgement held that that corporate revival under the IBC should not come at the cost of public welfare projects especially those impacting housing and infrastructure. The Tribunal stated that while the moratorium under Section 14 prohibits asset transfers and legal proceedings against the Corporate Debtor ("**CD**"), it does not bar the government from exercising its sovereign rights to acquire land for public purposes through due process of law. The moratorium should not be misused to prevent public initiatives.

Once Resolution Plan is approved, dues not part of it get extinguished: Supreme Court ("SC"). [*Vaibhav Goel & Anr. versus Deputy Commissioner of Income Tax & Anr.*] [Link]

The SC in its recent judgement stated that once a resolution plan is approved under the IBC, any dues which are not a part of the plan it gets extinguished. In the judgment, the Court addressed a claim concerning the inclusion of income tax in a Resolution Plan after it was approved by the Adjudicating Authority. The Court ruled that these tax demands were invalid and could not be enforced due to the reason that a resolution applicant should take over the CD without any pending or late claims.

Application under Section 9 of IBC cannot be admitted when there is no privity of contract between the operational creditor and CD: National Company Law Appellate Tribunal ("NCLAT"), New Delhi [*Rahee Jhajharia E to E JV Versus MB Power (Madhya Pradesh Ltd.)*]. [Link]

The NCLAT, New Delhi bench has held that an application under Section 9 of the IBC cannot be admitted when there is no privity of contract between the Operational Creditor and the CD. The case pertains to a petition filed seeking to recover operational debt.

However, the NCLAT ruled that since invoices were raised against a different entity, there was no creditor-debtor relationship between the parties. The Tribunal proceedings under Section 9 cannot be used as a recovery mechanism where privity of contract is absent.

Fresh limitation period under Section 18 of the Limitation Act 1963 ("LA") commences from the date of balance sheet signing by CD: NCLAT [*IL&FS Financial Services Limited Versus Adhunik Meghalaya Steels Private Limited*]. [Link]

The New Delhi bench of NCLAT has held that a fresh period of limitation under Section 18 of the LA for filing of an application under section 7 of the IBC, 2016 begins from the date the balance sheet is signed by the authorized signatories of the CD, not from the date it is uploaded on the Ministry of Corporate Affairs website. Moreover, the Tribunal also observed that if CD provides a written acknowledgment of debt within the three-year limitation period, the limitation is extended for an additional three years under Section 18 of the LA.

Sole Proprietorship Firms not classified as "Debtors" under Section 94 of IBC: Madhya Pradesh High Court ("HC"). [*Ramesh Kothari Versus the State of Madhya Pradesh and Others*]. [Link]

In its recent judgement the Madhya Pradesh HC held that Section 94 of IBC is not applicable to sole proprietorships. The Court reasoned that since a sole proprietorship is not a separate legal entity from its owner, it does not qualify as a "debtor" under the IBC and, therefore, cannot seek insolvency protection under this provision. The Court analysed that the definition of a 'corporate person' under Section 3(7) of IBC includes companies, limited liability partnerships or any other person incorporated with limited liability. Since Section 94 applies to individual debtors and doesn't cover firms which are legally indistinguishable from their owners, the Court held that a sole proprietorship cannot claim protection under this section.

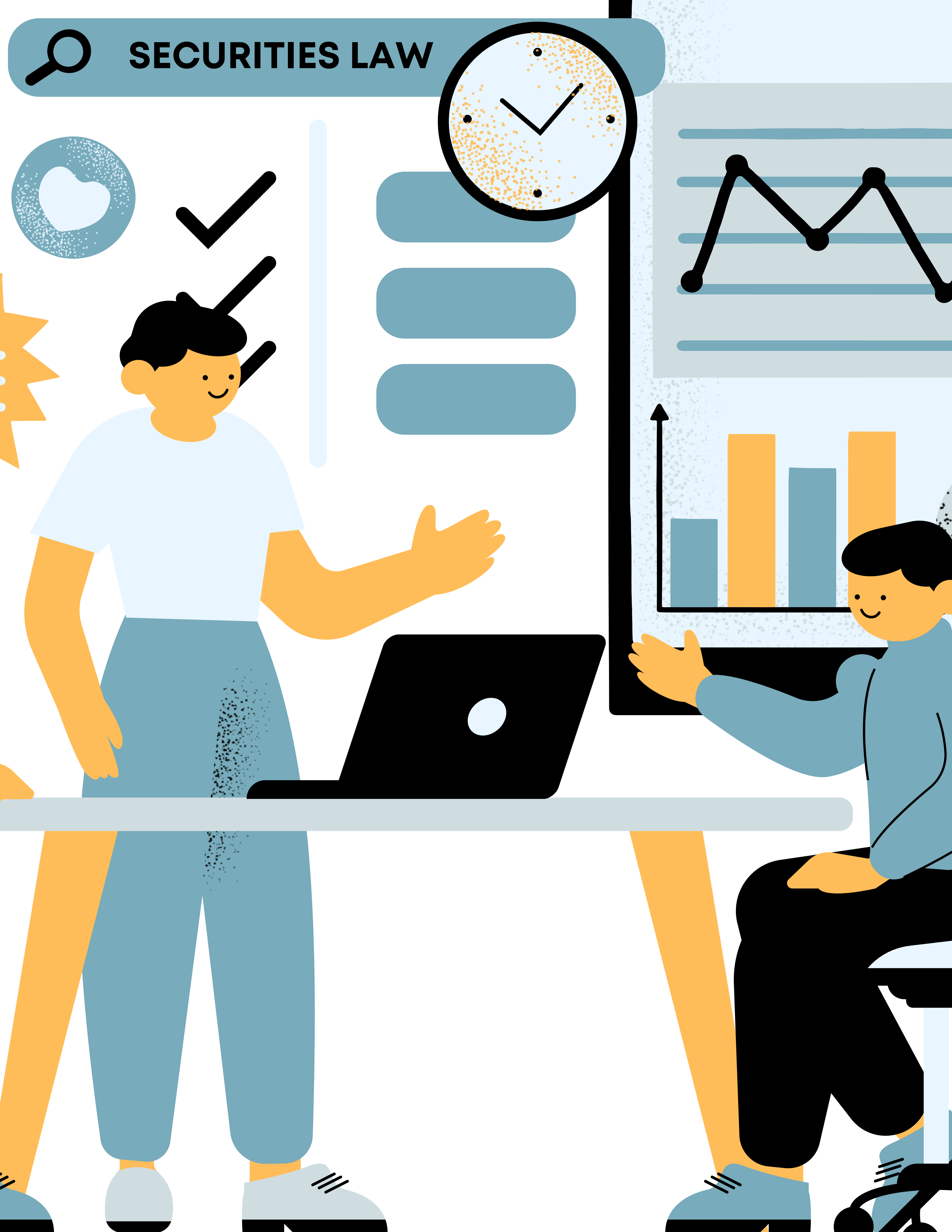
SC held that moratorium under IBC does not exempt individuals from penalties under Consumer Law: [*Saranga Anilkumar Aggarwal Versus Bhavesh Dhirajlal Sheth & Ors.*] [Link]

The SC has ruled that an interim moratorium under Section 96 of the IBC does not protect individuals or companies from penalties imposed under the Consumer law. The Court clarified that there existed a fundamental distinction between civil debt-related proceedings and regulatory proceedings as these are not considered "debts" under the IBC framework. Penalties imposed by the National Consumer Disputes Redressal Commission serve a regulatory purpose and intended to ensure compliance with consumer protection laws rather than function as a debt recovery mechanism. They do not fall within the scope of the IBC's moratorium provisions.

Pursuing Corporate Insolvency Resolution Process ("CIRP") while accepting One-Time Settlement ("OTS") Payments leads to misuse of IBC as a debt recovery tool: NCLT, Mumbai [*IFCI Limited Versus M/s. Patil Construction & Infrastructure Ltd*]. [Link]

The NCLT has held that the Financial Creditors can't accept substantial payments in the form of OTS while also simultaneously pushing the companies into CIRP proceedings. IFCI had rejected an OTS proposal in August 2022 after receiving part payments, but still proceeded with the insolvency application. This represents an attempt to use the IBC as a recovery mechanism. The Tribunal reiterated that the IBC is designed for the resolution of the CD, not as a tool for debt recovery.

This decision aligns with the SC's stance in cases like Swiss Ribbons Pvt. Ltd. v. Union of India (2019) and Innoventive Industries Ltd. v. ICICI Bank (2017), where it was reiterated that the primary objective of the IBC is to resolve financial distress and maximize the value of assets, rather than to serve as a coercive recovery mechanism for creditors.


SECURITIES LAW

Securities and Exchange Board of India ("SEBI") has notified amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations"). [Link]

To streamline Initial Public Offering ("**IPO**") process and align it with the SEBI Listing Regulations. SEBI has introduced amendments to ICDR Regulations. These amendments introduce significant changes related to disclosures, Stock Appreciation Rights ("**SARs**"), and the rights issue framework.

The revised regulations permit SARs to remain outstanding until the filing of the Red Herring Prospectus, whereas previously, all employee incentive schemes except Employee Stock Options ("**ESOPs**") had to be rolled back before filing of Draft Red Herring Prospectus ("**DRHP**").

The promoter lock-in period has also been revised. Previously, if the majority of IPO proceeds were allocated to capital expenditure, the Minimum Promoter Contribution was locked in for three years. This period is now reduced to one year.

The rights issue framework has undergone key changes to expedite the process. The requirement for a public announcement of the draft offer letter and its filing with SEBI has been removed. Additionally, the newly introduced Regulation 77B allows promoters and promoter groups to waive their rights in favour of specific investors and enables issuers to allocate undersubscribed shares to identified investors. SEBI has also specified that rights issues must be completed within 23 working days from the date the Board of Directors approves the issue.

SEBI has proposed to allow stock brokers to operate in the Gujarat International Finance Tech-city – International Financial Services Centre ("GIFT-IFSC") as Separate Business Unit ("SBU"). [Link]

To promote ease of business, SEBI is considering allowing stock brokers to function as SBU in GIFT city without requiring prior approval from SEBI. Currently, SEBI-registered stock brokers must obtain SEBI's approval to establish subsidiaries or enter joint ventures for securities market related activities in GIFT-IFSC.

As per the proposal stock brokers must ensure that securities market-related activities of the SBU in GIFT-IFSC are segregated and ring-fenced from the Indian securities market-related activities of the stock broker.

Additionally, since the activities of the SBU would be under the jurisdiction of another regulatory authority, grievance redressal mechanism and investor protection fund of the stock exchanges will not be available for investors availing the services of the SBU.

SEBI relaxes the 'skin in the game' requirements for Asset Management Companies ("AMC"). [Link]

To facilitate ease of doing business for mutual funds, SEBI has relaxed the 'skin in the game' requirement for AMCs. Earlier the regulator mandated that the all-designated employees are to hold 20% of their remuneration in units of the mutual funds they manage, ensuring alignment between employees' interests and unit holders' interest. SEBI has taken a more a more flexible and proportionate approach in the revised regulation, replacing the blanket 20% contribution requirement with a slab-wise structure for AMC employees.

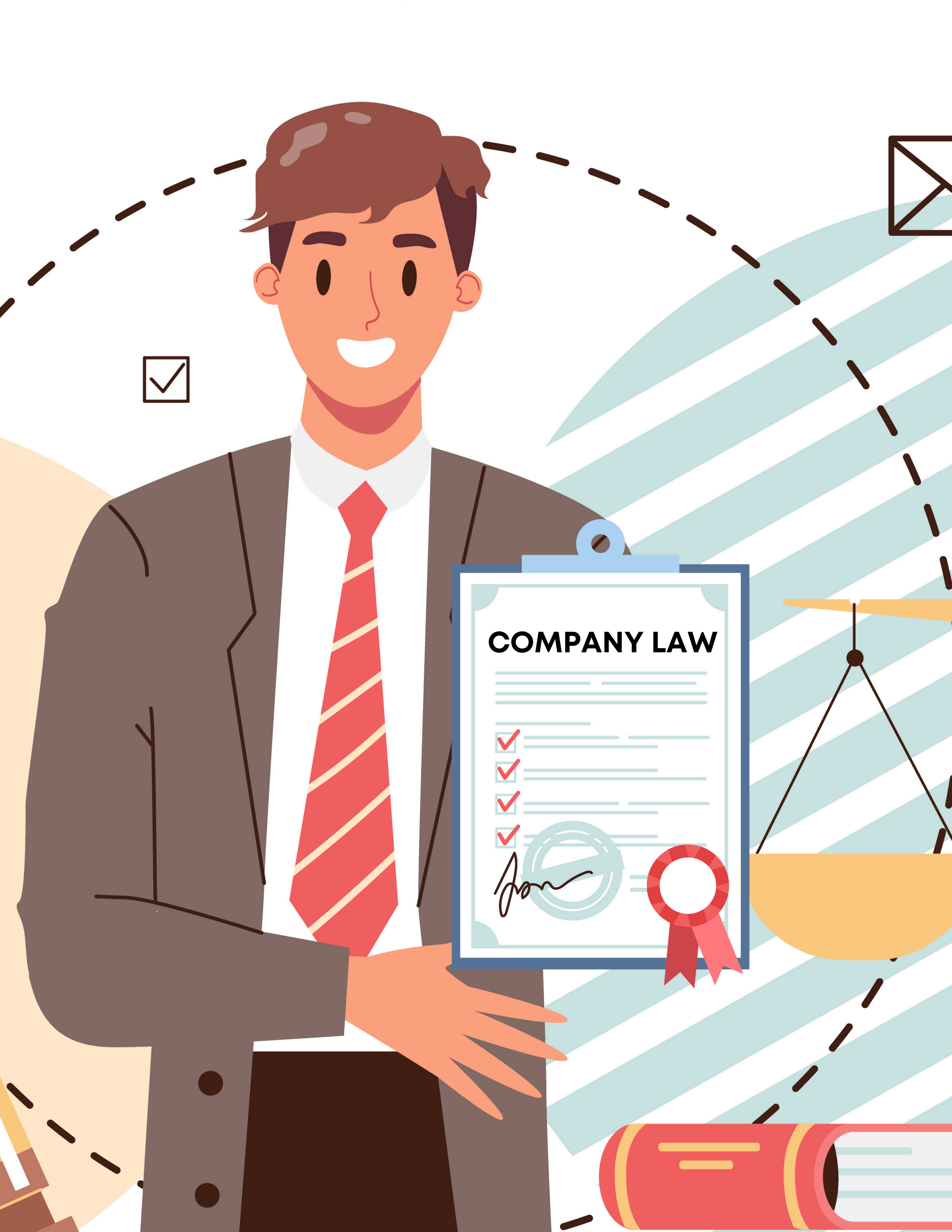
Under new rules, employees earning below Rs 25 lakh annually are exempt from mandatory investment, while higher salary brackets have varying investment requirements, with senior employees contributing a larger percentage. Employees are classified into investment-related roles (Category A) and senior non-investment roles (Category B), to determine their respective contribution requirements. AMCs can either include or exclude ESOPs while calculating the contribution obligations.

SEBI proposes amendments to the SEBI ICDR Regulations and the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021 (“SBEB &SE Regulations”). [Link]

To streamline public issue requirements SEBI is considering two key amendments in ICDR Regulations and SBEB &SE Regulations. These amendments aim to provide clarity on two key aspects.

The first proposed amendment clarifies the rule on selling shares in an IPO. Currently, shares must be held for at least one year before being offered for sale, except when acquired through mergers or restructuring. However, it is unclear whether shares arising from the conversion of compulsorily convertible securities also qualify for this exemption. SEBI proposes to explicitly include such shares, ensuring they can be sold without the one-year holding requirement. This change will align the rules for Offer for Sale and Minimum Public Shareholding.

The second proposed amendment to the SBEB &SE Regulations pertains to ESOPs for startup founders. Under current rules, promoters cannot receive ESOPs, which creates uncertainty for founders who were initially employees and later became promoters before an IPO. SEBI proposes that ESOPs granted at least one year before the company decides to go public will remain valid, even if the recipient is later classified as a promoter. This ensures founders are not unfairly stripped of their ESOPs and prevents last-minute grants before an IPO.

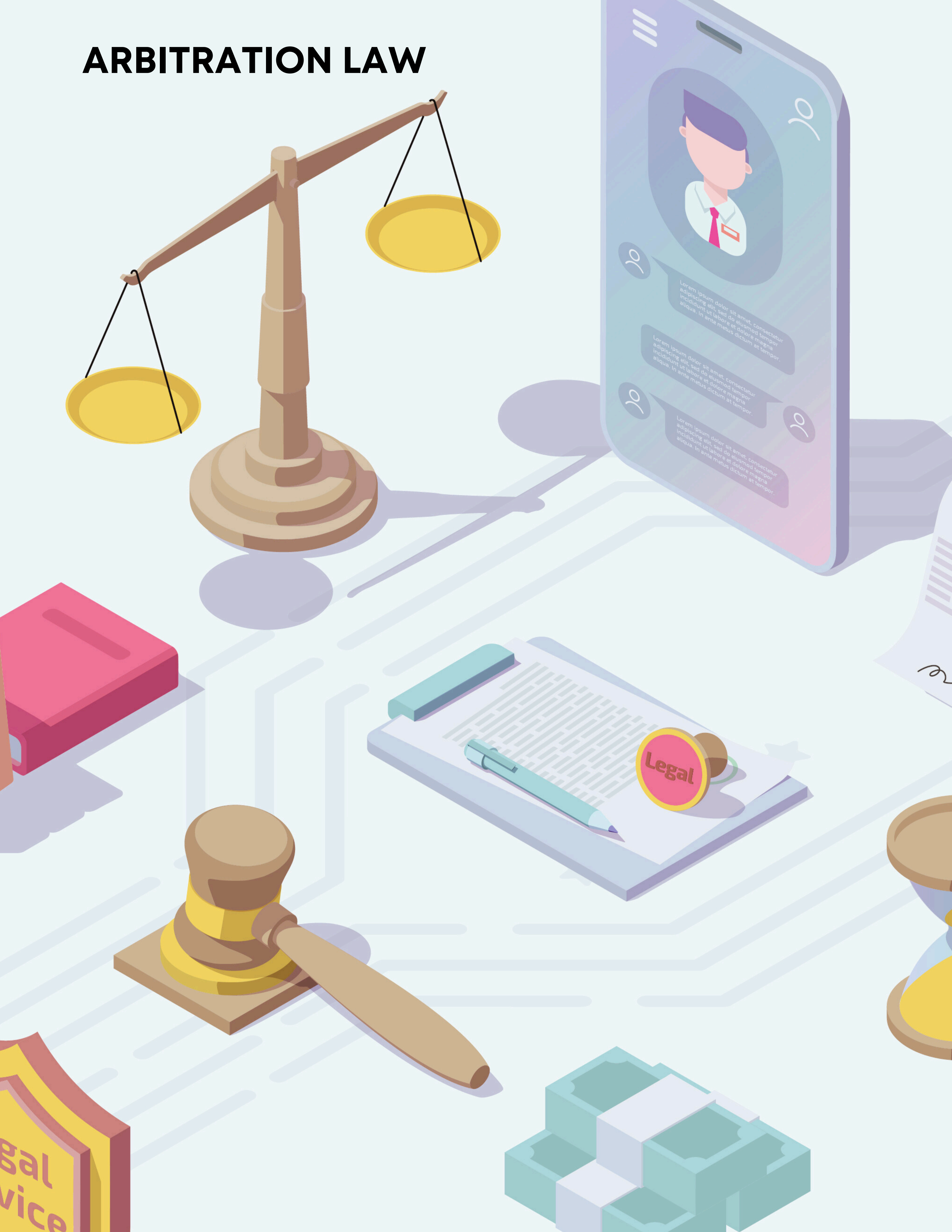

COMPANY LAW

SC clarifies liability of Non-Executive Directors under Sec 138 Negotiable Instrument Act ("NI Act"). [*K.S. Mehta & Ors. vs. M/S Morgan Securities & Credits Pvt. Ltd.*]. [Link]

The SC in K.S. Mehta v. Morgan Securities held that non-executive and independent directors cannot be held liable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, unless there are specific allegations showing active involvement in the company's affairs. The case stemmed from an Inter-Corporate Deposit agreement, where post-dated repayment cheques issued to Morgan Securities were dishonoured. Criminal proceedings under Section 138 for dishonour of cheque of the NI Act were initiated against all directors, including non-executive directors.

The Court ruled in favour of the respondents, holding that non-executive and independent directors cannot be held vicariously liable under these provisions unless there are clear and specific allegations backed by evidence showing their active role in the conduct of the company's business at the relevant time. Mere designation as a director or attending board meetings is not enough to attract criminal liability under the Act.

ARBITRATION LAW



The Delhi HC held that time in the wrong forum should be excluded when analysing the limitation period under Section 34(1) of the Arbitration and Conciliation Act, 1996 ("A&C Act") [*Incite Homecare Products Pvt. Ltd. v. R K Swamy Pvt. Ltd.*]. [Link]

The Court held that the time spent litigating the application in the wrong court is to be excluded when calculating the three-month limitation period for an application under Section 34(1) of the A&C Act. This is subject to the condition that the proceedings were pursued in good faith and with due diligence.

The HC found that the applicability of Section 14 of the LA was overlooked by the district court. Section 14 allows for the exclusion of time spent litigating in the wrong forum. The Court relied on judgement of the SC in Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt., which clarified the distinction between Section 5 and Section 14 of the LA. It also referred to Kirpal Singh v. Government of India, reaffirming that relief under Section 14 can be granted even if an appeal is otherwise barred under Section 34(3) of the A&C Act. Consequently, the HC set aside the District Judge's order.

The Orissa HC has ruled that in the absence of an arbitration agreement, a court cannot appoint an arbitrator to resolve disputes between parties. [*M/s. Andhavarapu Power Projects (P) Ltd. v. Odisha Renewable Development Agency*]. [Link]

The single bench emphasized that arbitration can only be compelled if an arbitration agreement exists. It further noted that when approached for the appointment of an arbitrator, the court must first determine the existence of such an agreement.

The Court held that judicial intervention in appointing arbitrators must be limited to verifying the existence of an arbitration agreement under to Section 11(6-A) of the A&C Act. Therefore, the Court declined the request to appoint an arbitrator, adjudging that arbitration proceedings cannot be initiated without a valid arbitration agreement.

Delhi HC ruled that exclusive jurisdiction clause prevails over arbitral seat if expressly covering arbitration proceedings. [*Precitech Enclosures Systems Pvt. Ltd. v. Rudrapur Precision Industries*]. [Link]

The Court held that when an agreement includes both an exclusive jurisdiction clause and a seat of arbitration clause, judicial proceedings related to arbitration generally fall under the territorial jurisdiction of the court governing the arbitral seat. However, if the exclusive jurisdiction clause explicitly covers arbitration-related proceedings, it will take precedence over the seat of arbitration clause.

Section 42 of the act states that once an application under the Act is made in a court, that court alone has jurisdiction over the arbitral proceedings and all subsequent applications arising from it. Consequently, the jurisdictional objection raised by the Respondent was upheld, and the Court ruled that it lacked territorial jurisdiction.

SC held that the law governing the main contract is presumed to apply in absence of an express choice in arbitration agreement [*Disortho S.A.S. v. Meril Life Sciences Private Limited*]. [Link]

In this landmark ruling on International Commercial Arbitration, the SC held that when an arbitration agreement doesn’t specify an express governing law, the applicable law should be determined based on the parties' intentions, with a strong presumption in favor of the law governing the main contract (lex contractus).

The key issue before the Court was whether Indian courts could appoint an arbitrator despite the arbitration taking place in a foreign jurisdiction. Since the arbitration agreement did not explicitly specify its governing law, the Court applied the three-step test from Sulamérica Cia Nacional De Seguros S.A. v. Enesa Engenharia S.A. to determine the applicable law.

Applying the implied choice test, it concluded that the parties intended Indian law to govern the arbitration agreement, given that Indian law was designated for the main contract. Additionally, the Court held that Indian law had the closest and most real connection with the arbitration agreement, satisfying the third test. The Court also highlighted the need to harmonize contractual clauses, observing that Colombia served as the arbitration venue while Indian courts retained supervisory jurisdiction.

The Patna HC ruled that in the absence of any clause specifying the "seat" of arbitration, there is no basis to infer that the "seat" and "venue" are distinct. [M/s Pramila Motors Pvt. Ltd. v. M/s Okinawa Autotech International Pvt. Ltd.]. [Link]

The agreement in question only mentioned the "venue" as New Delhi without specifying a separate "seat," the Court concluded that there was no indication of the parties intending the seat to be different from the venue.

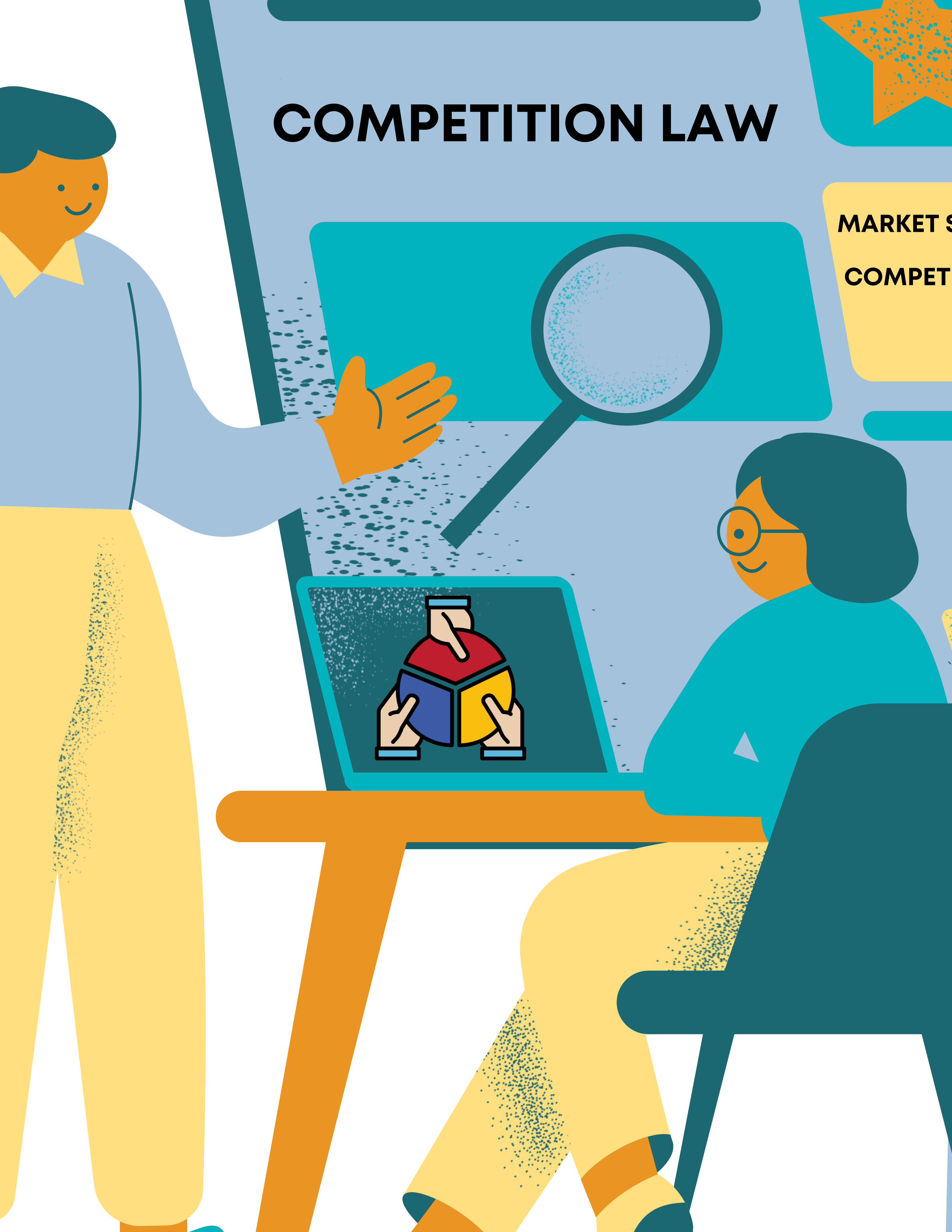
The Court referred to the SC's decision in Brahmani River Pellets Limited v. Kamachi Industries Limited (2020), which held that when a contract specifies the jurisdiction of a particular court, it is presumed that the parties intended to exclude all other courts. If a contract stipulates a specific "venue" for arbitration, that venue is presumed to have exclusive jurisdiction unless stated otherwise.

The Delhi HC ruled that an arbitrator has full discretion over the quantity and quality of evidence considered while rendering an arbitral award. [Direct News Pvt. Ltd. v. DTS Travels Pvt. Ltd]. [Link]

The Court stated that an award cannot be deemed invalid merely because it is based on minimal or imperfect evidence that does not align with a legally trained mind's standard. It found that the Arbitral Tribunal had reached its decision after thoroughly assessing the evidence and materials presented by both parties.

It further clarified that the Indian Evidence Act, 1872, does not apply to arbitral proceedings, as expressly stated in Section 19 of the A&C Act. While fundamental principles of evidence law may serve as guidance, the tribunal remains the ultimate authority in evaluating evidence. Moreover, the Court affirmed that its role under Section 34 of the Act is limited to determining whether the award should be set aside based on the grounds specified in Sections 34(2) and 34(2)(a).

Hence, the Court upheld the arbitral award, reinforcing that an arbitrator is the sole judge of evidentiary matters, and dismissed the appeal.


COMPETITION LAW
MARKET

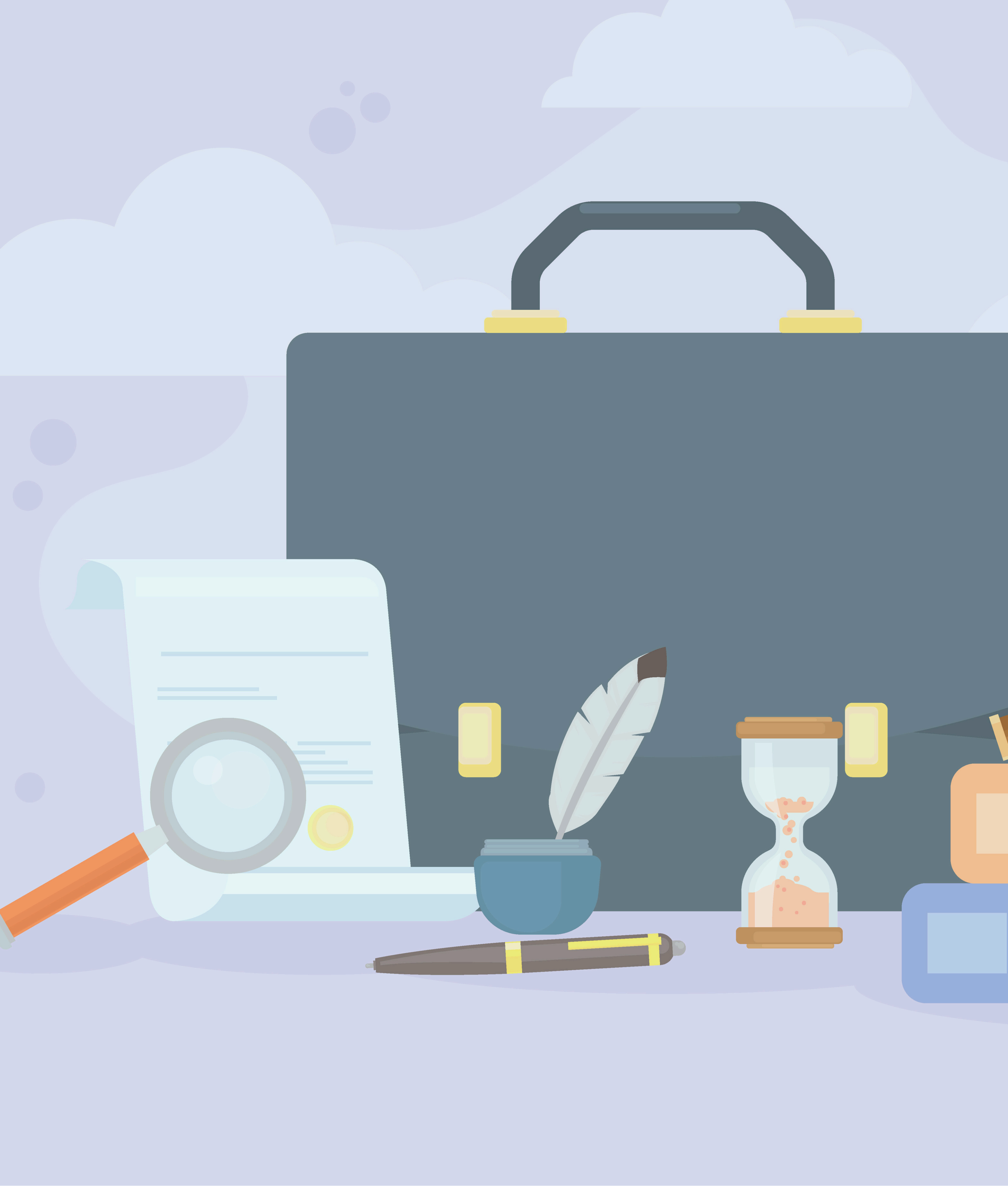
Competition Commission of India (“CCI”) introduces the CCI (Conduct) Rules, 2025. [Link]

To ensure confidentiality of sensitive information and promote ethical practices, the CCI has introduced its Draft Conduct Rules, 2025, which will replace the Central Civil Services (Conduct) Rules, 1964.

The key changes introduced by the draft include investment restrictions and post-employment regulations. To prevent insider trading and conflict of interest employees will be prohibited from directly or indirectly investing in commodity derivatives, equities, or equity-linked instruments. However, they may invest through mutual funds, non-convertible bonds/debentures, IPOs, or rights issues related to existing holdings.

Additionally, employees can take up commercial employment within one year of retirement only with prior approval from the CCI. This measure aims to prevent leakage of any sensitive and confidential information to the public through the ex-employees of CCI.

MISCELLANEOUS



The Delhi HC ruled in favour of Indigo Airlines, striking down the imposition of additional Integrated Goods and Services Tax ("IGST") on repaired and re-imported aircraft parts as unconstitutional. [InterGlobe Aviation Ltd. v. Principal Commissioner of Customs (Import), ACC, New Custom House, New Delhi & Ors.]. [Link]

The Delhi HC declared the imposition of additional IGST on repaired and re-imported aircraft parts unconstitutional. The Court observed that once the transaction of exporting parts for repair is classified as a supply of service, it can't be classified as an import of goods to impose additional IGST under Section 3(7) of the Customs Tariff Act, 1975 ("CTA"). The Central Board of Indirect Taxes and Customs notification released in 2021, which levied an integrated tax and cess beyond customs duty, was set aside by the Court.

Further, the Court emphasized that IGST on services is exclusively governed by Section 5(1) of the IGST Act, and Section 3(7) of the CTA can't be used an independent charging provision to impose additional tax.

The Karnataka HC observed that the Income Tax department can't reject the Fair Market Value ("FMV") of shares if that has been calculated using statutory methods given under the Income Tax Act, 1961 ("IT Act"). [The Principal Commissioner of Income Tax Central & Anr. v. Waterline Hotels Pvt. Ltd.]. [Link]

The Karnataka HC ruled that the Income Tax Department can't reject the FMV of shares calculated by employing the statutory valuation methods under Rule 11UA (2) of the Income Tax Rules. Revenue authorities discarded the Discounted Cash Flow method used by the assessee, stating that it was not backed by scientific basis and was unjustified considering the given company's financial losses.

However, the HC emphasized that a valuation based on a legally recognized method cannot be discredited without justified reasons. The Court affirmed that the valuation complied with legal provisions, and the revenue authorities could not reject it without substantial reasoning.

The Customs, Excise & Service Tax Appellate Tribunal ("CESTAT") ruled that no penalty can be imposed if an assessee fails to pay tax under a Bonafide belief that no tax was due. [Link]

The CESTAT observed that penalties are unjustified when non-payment results from a genuine misunderstanding of tax liability rather than deliberate evasion. The Tribunal notes that even if there was an error, the assessee had not misrepresented, suppressed information, or evaded tax as the payment details were available in the returns. While the Tribunal upheld the tax liability, it stated that since the issue involved revenue neutrality and classification ambiguity, penalties were unwarranted.

The Central Board of Direct Taxes ("CBDT") allows Income Tax data sharing for identifying beneficiaries under social welfare schemes. [Link]

The CBDT issued a notification on 18th March 2025, permitting data sharing under Section 138 of the IT Act. This notification authorizes the Additional Chief Secretary of the NCT Delhi government to access taxpayer information. The information can be shared with the Department of Information & Technology, Government of NCT Delhi to aid in the identification of beneficiaries for the social welfare programs.

Key amendments introduced to Finance Bill, 2025. [Link]

Finance Minister, Ms. Nirmala Sitaraman, proposed amendments to the bill which were passed by the Lok Sabha on 25th March, 2025. The amendments include removal of the equalization levy, often referred to as "Google Tax", which was imposed at 6% on online advertisement services. This levy was applicable to foreign digital companies earning revenue from Indian advertisers and will no longer be applicable from 1st April, 2025. The corresponding tax exemption under Section 10(50) of the IT Act has also been repealed.

Further, the amendment introduces Section 44BBD, under which non-resident companies giving technology or services for setting up electronics manufacturing facilities in India will be taxed on a presumptive basis, this excluding them from the ambit of Sections 44DA and 115A of the IT Act.

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