THE CENTRE FOR CORPORATE LAW
NATIONAL LAW UNIVERSITY ODISHA

#IN SIGHTS

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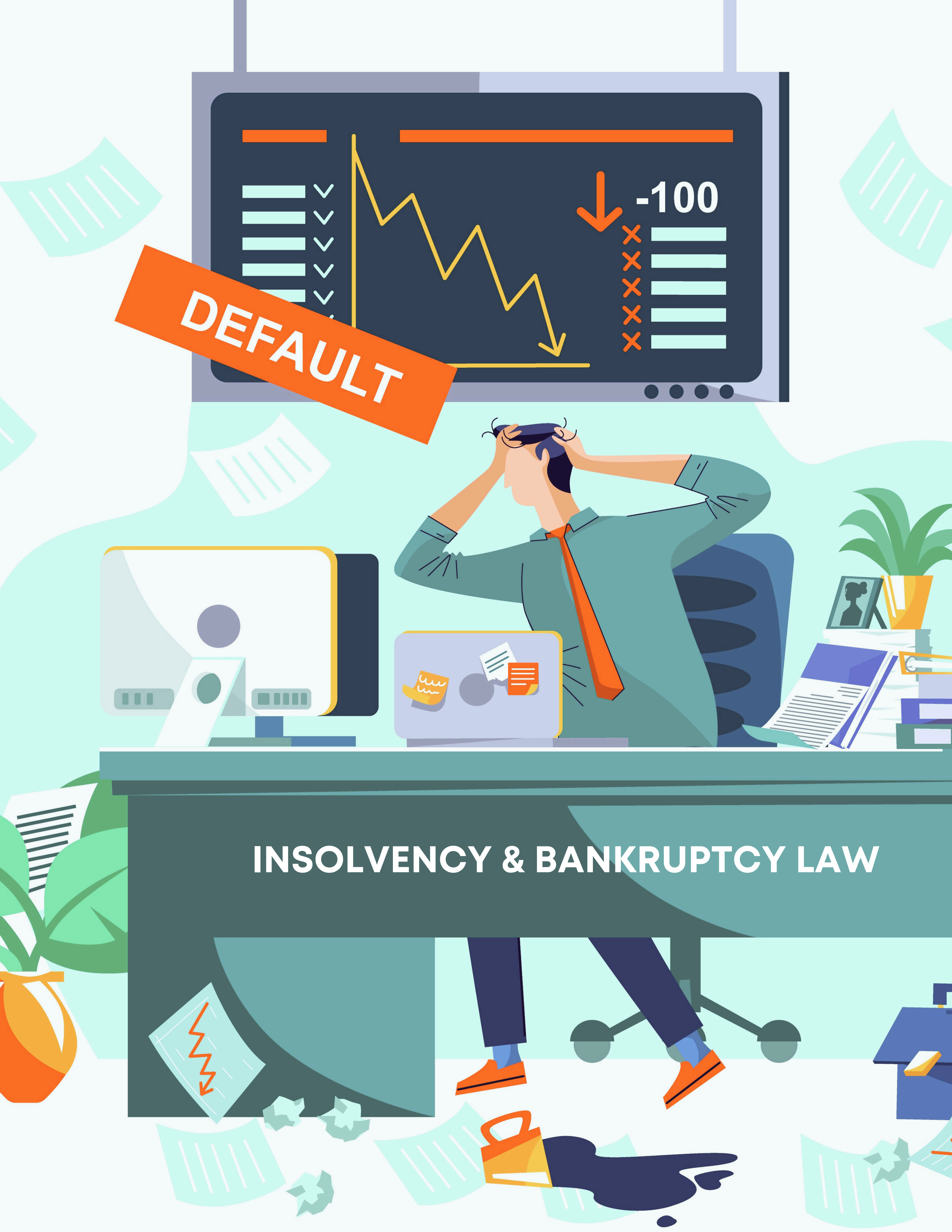

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DEFAULT
INSOLVENCY & BANKRUPTCY LAW

The Supreme Court ("SC") has held that holders of Cumulative Redeemable Preference Shares ("CRPS") are not considered Financial Creditors under the Insolvency and Bankruptcy Code, 2016 ("IBC") [*EPC Constructions Vs Matix Fertilizers*]. [Link]

The SC has recently held that holders of CRPS do not qualify as financial creditors under the IBC. This bars them from initiating any insolvency proceedings under Section 7 of IBC. The decision was in congruence with the findings of the National Company Law Tribunal ("**NCLT**") and National Company Law Appellate Tribunal ("**NCLAT**") which stated that preference shares were not a part of financial debt.

Earlier, the NCLT and NCLAT held that preference share capital is a part of company's share capital and not its debt. Further, non-redemption of preference shares cannot be treated as a default, since Section 55 of the Companies Act, 2013 permits redemption only out of profits or fresh share proceeds. In the present case, since the respondent has not raised any fresh funds or earned profits, no liability to pay the financial debt arose.

The SC upheld these findings and reiterated that preference shareholders remain members of the company's capital structure and cannot claim the rights of a creditor. Section 5(8)(c) of IBC which define financial debt, does not include preference shares as an instrument thereunder. This omission is significant and purposeful. Citing precedent judgements, the SC also emphasized that neither can preference shareholders sue for money on the shares which are to be redeemed, nor can they claim a return of their share money except in the case when a company winds-up.

Further, payment on preference shares cannot be termed as a loan or borrowing as it represents a part of the company's share capital itself. Accounting treatment by designating such instruments as financial liabilities cannot alter their true legal nature. Redemption rights arise only in compliance with statutory conditions and not automatically upon expiry of the redemption period.

By stating that holders of CRPS are not financial creditors, the Court made shares are it clear that they cannot use IBC to recover unpaid amounts. This distinction strengthens the idea that preference shares are part of a company's capital, not debt. It also prevents misuse of the IBC by shareholders trying to claim creditor rights. By drawing a firm line between equity and debt, the decision provides companies, especially those undergoing temporary financial stress, with some relief from unnecessary insolvency threats.

The Insolvency and Bankruptcy Board of India ("IBBI") scraps 'Going Concern' sale provisions under the IBBI (Insolvency Resolution Process for Corporate Persons) (Sixth Amendment) Regulations, 2025 ("principal regulations"). [Link]

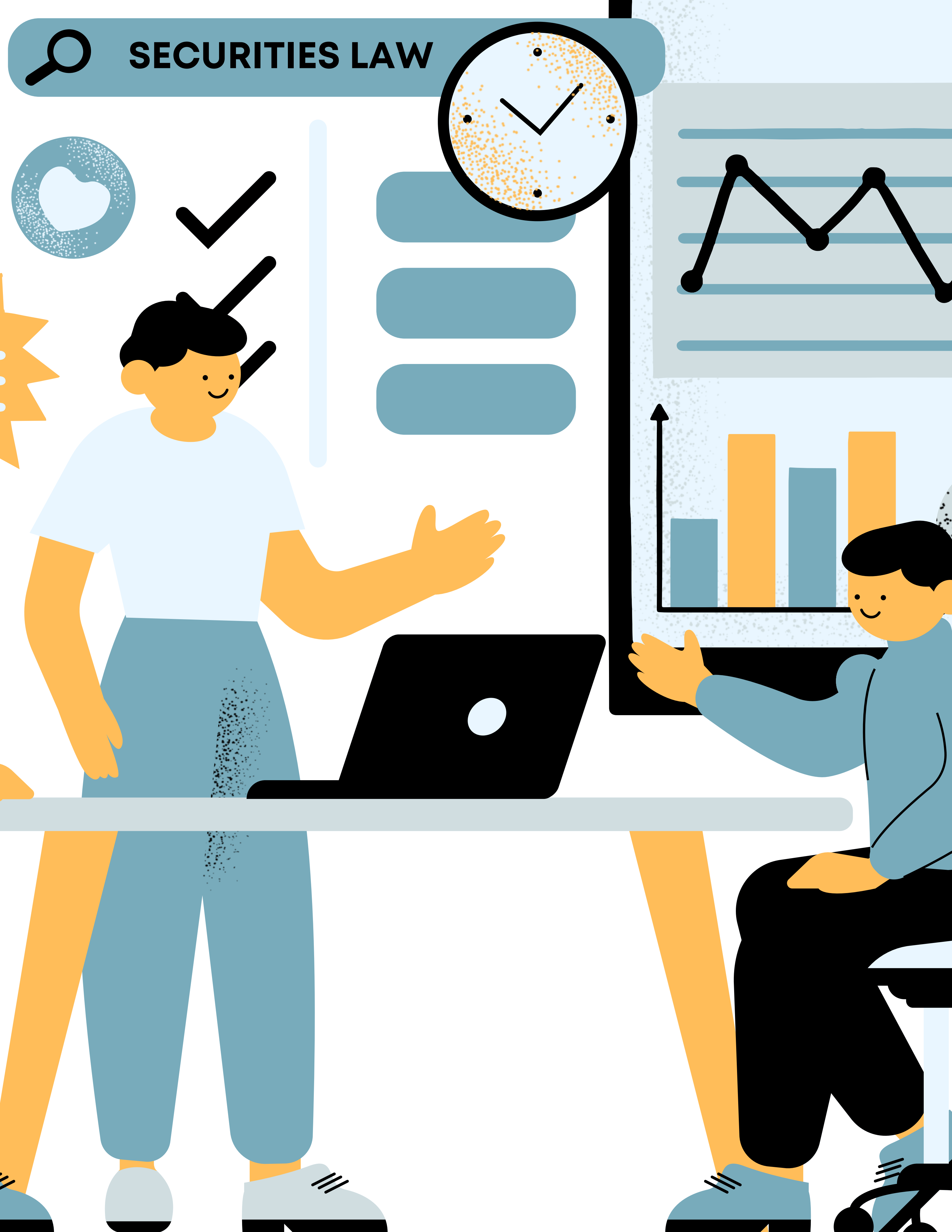
The IBBI has introduced a significant reset to the treatment of "sale as a going concern" through the principal regulations and the corresponding amendment to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**liquidation regulations**"). Regulation 39C of the principal regulations and Regulation 32A of the liquidation regulations, which had formed the core procedural framework for going-concern sales since 2018 and 2019, now stand omitted. Clause (b) of Regulation 39D has also been removed, thereby eliminating Corporate Insolvency Resolution Process ("**CIRP**"), stage fixation of liquidator fees tied to going-concern sale attempts under Regulation 32 of the liquidation regulations.

Earlier, Regulation 39C of the principal regulation allowed the Committee of Creditors ("**CoC**") to recommend a going-concern sale and identify the asset-liability groupings necessary for such a transfer, while Regulation 32A required the liquidator to prioritise that mode of sale to maximise value. Together with Form H of the principal regulations disclosures, these provisions created a structured and preferential pathway for transferring the corporate debtor or its business as a running unit.

This structure has now been dismantled. With Regulation 39C and point 15(b) of Form H deleted, the CoC no longer records or communicates any recommendation for a going-concern sale. The omission of Regulation 32A removes the liquidator's statutory obligation to attempt such a sale first, and the amendment to Regulation 39D detaches CIRP from liquidation-linked fee arrangements. In the new framework, going-concern sales may still be undertaken under Regulation 32(e) and (f), but they no longer receive special statutory priority or procedural scaffolding. They operate simply as one of multiple permissible modes of sale.

The removal of mandated recommendations, priority obligations, and fee provisions represents just how far the restructured legal framework has come in the opposite direction of complexity and prescription to ensuring less overlap, less conflict of procedure, and, as much as possible, freedom in exercising discretion as commercial rather than regulatory. The amendment's purpose is to eradicate mechanistic and often futile attempts at going-concern sales, as they were stalling the liquidation process and value erosion.

Due to the inconsistency in the previous frameworks, liquidators had no option but to attempt, or at least, justify going concern sales in cases where there was a void in the market. In these cases, the liquidator is expected to exercise discretion as pertains the asset, conforming to Regulation 32, and is devoid of any legislative control. Although going concern sales are possible, there has been a shift in the frameworks where they are not prioritized or given structured regulatory backing.


SECURITIES LAW

Securities Exchange Board of India ("SEBI") notifies Issue of Capital and Disclosure Requirements ("ICDR") (Third Amendment) Regulations, 2025. [Link]

Through a notification dated 31st October, 2025, SEBI notified the ICDR (Third Amendment) Regulations, 2025, bringing major changes to the procedural and eligibility framework for Anchor Investments in Public Issues.

The changes provide that in case of a public issue on the main board through the book building process, a maximum two investors would be allowed for allocation up to Rs. 10 crores. Only two to fifteen investors shall be permitted for allocation of above Rs. 10 crores and up to 250 crores, and the minimum allotment in such cases shall be Rs. 5 crores per investor.

Additionally, for allocation above Rs. 250 crores, there must be five to fifteen investors for the first 250 crores of the allocation, and an additional ten anchor investors can be added for each subsequent 250 crores. In this case, each investor shall be allocated a minimum of Rs. 5 crores.

Earlier, one-third of the investment portion had to be reserved for domestic mutual funds. But after the amendment, 40% of the investment shall be reserved in which 33.33% shall be for domestic mutual funds, and the rest shall be for life insurance companies and pension funds.

The amendment aims to ensure a broader institutional participation and prevents over-concentration of investments in the hands of a few anchors. The requirement of additional investors in higher tranches, a wider distribution in the anchor allocation. Mandatory reservation for domestic mutual funds, life insurers, and pension funds ensures domestic participation. Additionally, recognition of domestic institutional investors such as mutual funds, insurers, pension funds, by SEBI also enhances credibility and transparency, apart from encouraging participation in Initial Public Offers.

SEBI issues November 2025 Consultation Paper to Clarify Pro-Rata Rights Framework for Alternative Investment Funds ("AIF") Investors [Link]

SEBI, on November 7, 2025 issued a consultation paper ("**the 2025 paper**") proposing detailed guidelines for maintaining pro-rata rights of investors in AIF ecosystem. The 2025 paper follows the 2024 amendment to the SEBI (AIF) Regulations, 2012 and the circular released on December 13, 2024. The paper outlines the practical implementation of the pro-rata framework and addresses concerns regarding drawdowns of capital, profit distribution and treatment of carried interest.

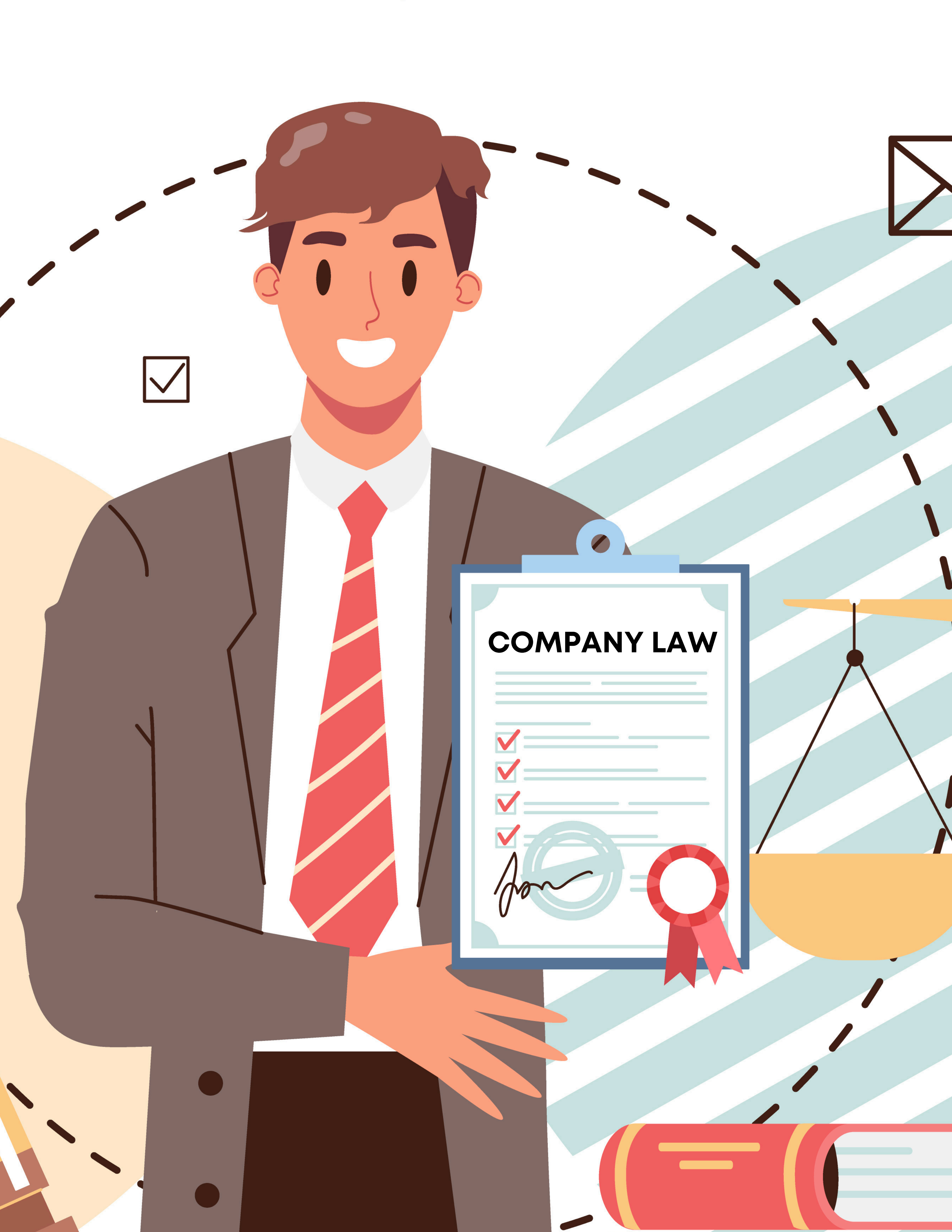
Previously, there was no standard method to manage drawdowns and distributions in AIFs. This has resulted in confusion regarding the capital contribution of each investor and the distribution of the profits. The previous 2024 circular also explained that the pro-rata rules would not be applicable to the manager's or sponsor's allocated share of the profits. However, it did not answer a number of questions, mainly regarding Category III AIFs and situations in which some investors were exempt from certain investments.

The 2025 paper offers clearer operational guidance on implementing pro-rata rights. SEBI has proposed that AIFs may adopt one of the two approaches for calculating drawdowns. Either on the basis of total commitment or undrawn commitment. This is to ensure that investors' proportional rights are maintained. The chosen method must be explicitly stated in the Private Placement Memorandum ("**PPM**") and cannot be changed subsequently. SEBI has also clarified that undrawn commitment refers to the total committed amount minus the portion already drawn, and that the chosen drawdown method must not cause any investor to hold a stake beyond the prescribed proportional limits.

Further, distributions can now be structured either strictly in proportion to each investor's contributions or on a time-weighted basis, as long as the approach is clearly disclosed at the outset. If an investor is excused from participating in a particular investment, the portion of their commitment that was not used for that deal cannot be deployed in future investments. The exemption from the pro-rata requirement has also been extended to employees, directors and partners of the AIF manager. Moreover, all commitments are required to be recorded in INR to ensure consistency across the fund.

For existing schemes, moving to one of the two prescribed drawdown methodologies will not be regarded as a material change, so fresh investor consent will not be required. Schemes that already follow either of these approaches may continue as they are, while those using any other method will need to align on a prospective basis. Investors who choose not to participate in future drawdowns will not be treated as breaching minimum corpus or investment limit requirements. Open-ended category III AIFs will continue to issue and redeem units at Net Asset Value, but schemes that primarily invest in unlisted securities will also have to comply with the pro-rata drawdown framework.

The paper moves the AIF structure from general guidelines to specific regulations. With the combination of capital calls and the explanation of the use of pro-rata rights, SEBI is aiming to make funds operations more transparent and uniform. This method also simplifies management and builds more investor trust even though it puts more disclosure requirements on managers.


COMPANY LAW

The Ministry of Corporate Affairs ("MCA") proposes an amendment in the Companies (Meetings of Board and its Powers) Rules, 2014 ("the Rules"). [Link]

On November 3, 2025, MCA has notified the Companies (Meetings of Board and its Powers) Amendment Rules, 2025 ("**the Amendment**"), further modifying the Rules. The Amendment substitutes sub-rule (2) of Rule 11 to refine the interpretation of the expression "business of financing industrial enterprises" under clause (a) of sub-section (11) of Section 186 of the Companies Act, 2013 ("**the CA, 2013**").

The current system provides that loans, guarantees, securities, and investment by companies are governed by Section 186 of the CA, 2013, which sets thresholds and a requirement of approval. Nevertheless, sub-section (11)(a) provides an exception when dealing with Non-Banking Financial Companies ("**NBFCs**") including other financing entities dealing with the business of financing industrial enterprises, as long as they are subject to the regulatory scope of the reserve bank of India.

Rule 11(2) of the Rules previously elaborated on this phrase, acknowledged the routine lending and guaranteeing operations of NBFCs as one of the businesses of such financing. As a result, NBFCs had had the freedom of operation in the extension of loans and guarantees in their normal operations with little regulation under Section 186(1).

Although this gave transparency to entities registered with RBI, there was still ambiguity in the finance companies that are registered with the International Financial Services Centres Authority ("**IFSCA**") and function under a different regulatory regime at GIFT City, Gujarat.

The newly introduced Amendment resolves this ambiguity by expressly expanding the definition of "business of financing industrial enterprises." The revised sub-rule (2) now includes:

1. **NBFCs registered with the RBI**, explicitly recognized for providing loans, guarantees, or securities for loan repayments in their ordinary business; and

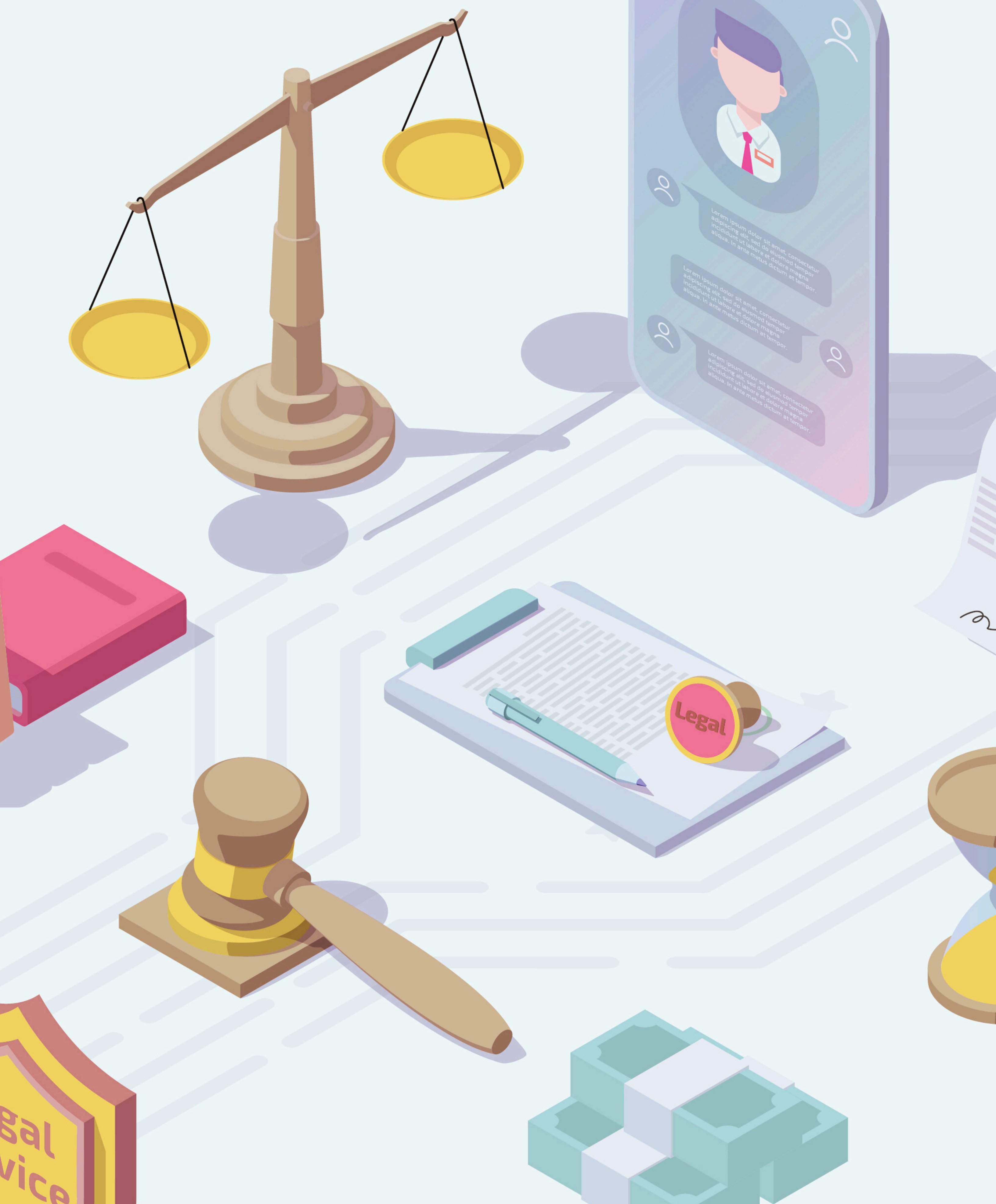
2. **Finance Companies registered with the IFSCA**, whose permissible activities are defined under sub-clauses (a) and (e) of Regulation 5(1)(ii) of the IFSCA (Finance Company) Regulations, 2021.

This addition equates the IFSCA-registered Finance Companies to be on par with NBFCs for subject to exemption under section 186(11)(a), appreciating their legitimate lending and financing operations.

This is an important step in regulating harmonization between the domestic financial system and the changing IFSCA model. The Amendment also provides the offshore and onshore financial entities of GIFT City with the ease of doing business efficiently since the Finance Companies registered by the IFSCA are now considered to be under the same legal scope as NBFCs, eliminating unnecessary layers of compliance. This brings equality between the institutions that are regulated by the RBI and the IFSCA and builds up the investor confidence and encourages uniformity. The Amendment will help promote capital movement into the International Financial Services Centre because it will be a jurisdiction where operational autonomy is provided with regulatory predictability.

But a word of caution has to be noted concerning the overlap of regulation and systemic risk assessment. Since the IFSCA entities are working in an emerging financial structure, it is also important to ensure that there is a strong system of checks and balances to prevent arbitrage between the standards set by the RBI and those set by IFSCA. This is a positive step taken by the MCA, yet its effectiveness would be determined by the coherent coordination of the regulators and the homogeneity of the enforcement process.

ARBITRATION LAW



Karnataka High Court (“HC”) holds that mere change in Arbitral Rules does not frustrate Arbitration Agreement [*L & T Infra Investment Private Limited v. Bhoruka Power Corporation Limited*]. [Link]

Recently, the Karnataka HC set aside an interim injunction granted by a Commercial Court that prevented proceedings under the London Court of International Arbitration (“**LCIA**”). The Court held that a mere amendment in the procedural rules does not vitiate the Arbitration Agreement.

In this case, the agreement to Arbitrate was based on the LCIA Rules applicable at the time of the agreement. However, the rules were later replaced by the LCIA Rules, 2020. Rejecting the contention of the plaintiff, the Court noted that apart from the question of a higher fee, there was no disadvantage to the plaintiff due to the LCIA Rules, 2020. Additionally, the difference in the fee is not substantial, in light of the value of claims.

Thus, it was concluded that the rules of Arbitration were clearly procedural and do not have an effect on the substantive rights of the parties. Parties had agreed to refer dispute to Arbitration under the rules then in effect. This would mean the rules in effect at the time of reference to Arbitration.

Further, the Court noted that the Commercial Court could not grant the injunction restraining arbitration irrespective of the change in rules due to the statutory bar under Section 5 of the Arbitration Act.

This principle was also enunciated in *Offshore Infrastructures Limited v. M/s Bharat Petroleum Corporation Limited* where it was held that merely because the procedure to appoint an arbitrator had changed, it does not vitiate the Arbitration Agreement. The arbitration agreement must be interpreted purposively but not literally, so that parties can pursue the intended dispute redressal mechanism.

This judgment largely reiterates a settled principle of law, that the core of the Arbitration Agreement must be preserved and that there must be minimum interference by courts in such matters due to the statutory bar under Section 5. Through this judgment, the Court has also clarified that changes in procedural law with no substantial impact on the rights of the parties do not make the arbitration agreement nugatory. Further, the procedural laws applicable in the proceedings would be that applicable at the time of reference to arbitration

Madras HC sets aside award, ruling that prejudice is irrelevant, rather consent of parties is essential for the tribunal constitution. [*M/s Nilakantan & Brothers Constructions Pvt Ltd v. Board of Trustees of the Port of Chennai & Anr*] [Link]

On October 23, 2025, the MHC held that the constitution of an Arbitral Tribunal without the consent of all Joint Venture ("**JV**") partners is a fundamental jurisdictional defect, rendering the resulting award non est in law. The MHC held that the "test of prejudice" is irrelevant when the Tribunal itself was formed in violation of mandatory statutory requirements.

Prior to this judgment, the tribunals emphasised on the presence of all necessary parties as important, but consent was not always treated as determinative. If parties participated in the arbitration and did not suffer "prejudice," the Tribunal's jurisdictional defect could be overlooked. Participation was often interpreted as submission to jurisdiction, and a lack of prejudice meant the tribunal's constitution was treated as valid de facto.

While contrary to the existing position of law, this case clarifies that the constitution of an Arbitral Tribunal without the mandatory consent of a JV Partner is a defect that affects the very root of the jurisdiction of the Tribunal. This defect undermines the test of prejudice. Further, the case also reinforces the importance of party autonomy and the proper procedure of constitution of an Arbitral Tribunal.

The present case strengthens the protection for JV partners and ensures that JVs are not bound by unconsented jurisdiction of Arbitral Tribunals. Further, the compliance requirement for invoking arbitration and the constitution of arbitral tribunals is subject to stricter regulations and compliance. Additionally, now the appointed arbitrators are also subjected to increased levels of scrutiny and accountability. The new position of law aims at reducing procedural challenges and increasing discipline among the parties to arbitration.

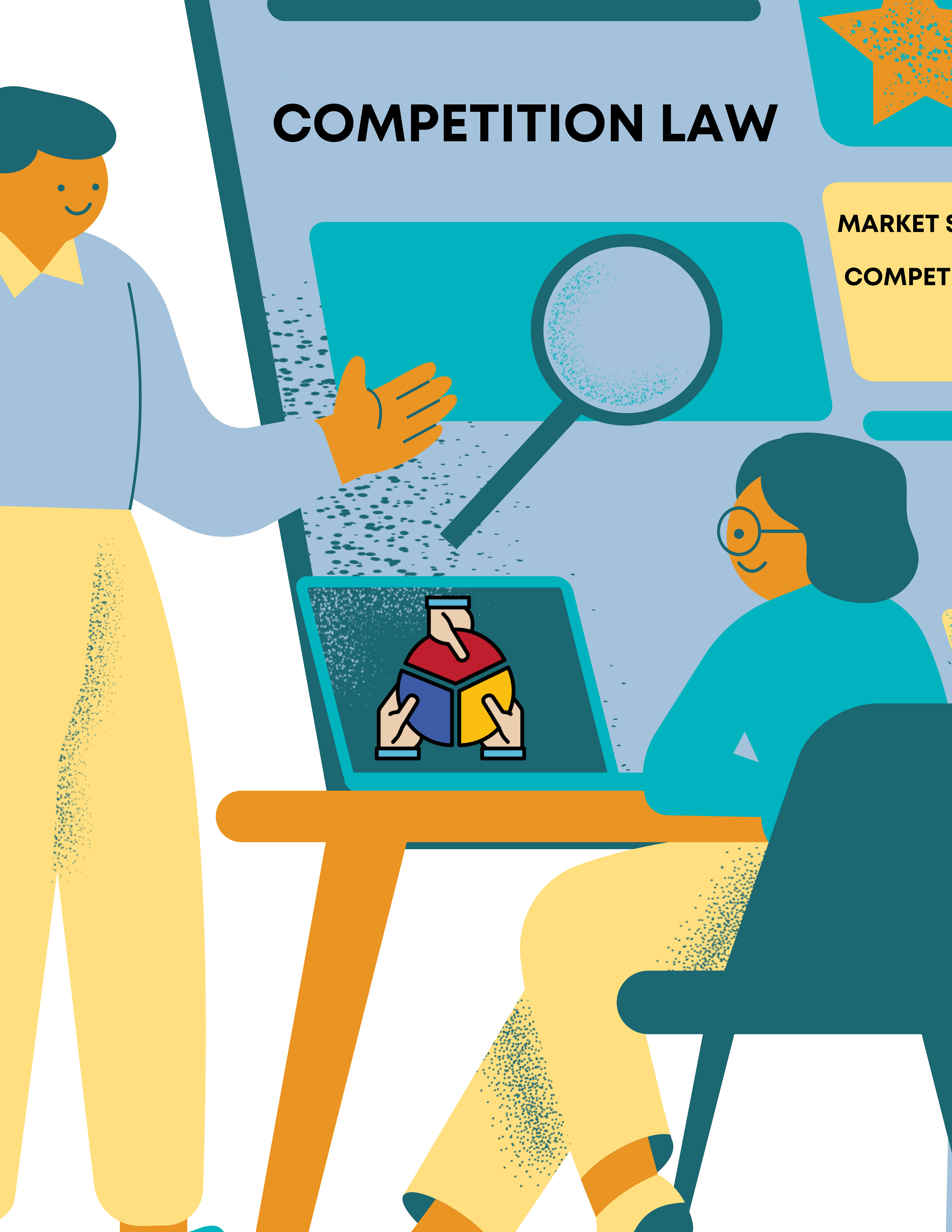
SC holds that delay in awarding arbitral awards renders the decision unworkable and vitiates the Arbitral Award. [*M/s. Lancor Holdings Limited versus Prem Kumar Menon and others*] [Link]

On October 31, 2025, the SC in the case of M/s. Lancor Holdings Limited vs. Prem Kumar Menon and others clarified that even if Section 34 of the Arbitration & Conciliation Act ("**A&C Act**") fails to provide delay as an independent ground, but delay becomes relevant when it affects the quality, fairness and accuracy of the decision.

Before this observation by the SC, Section 34 of the A&C Act provided as a straitjacket provision for grounds to challenge arbitral awards. Courts, while exercising the power under Section 34, required a reasonable nexus to be established between the patent illegality, prejudice or impairment of the decision-making process. Inordinate delay was nevertheless treated as undesirable, but was not an independent ground affecting the validity of the award.

The SC, through this judgment, laid down the process for invoking inordinate delay as a ground to challenge an arbitral award. It clarified that the challenge of an arbitral award under section 14(2) is an essential checklist before approaching the courts under section 34 of the A&C Act. Further unworkable contracts affecting parties' rights and warranting fresh litigation are contrary to arbitration's public policy, as unexplained delay may indicate non-application of mind resulting in vulnerable awards.

Through this judgment, SC attempts to increase accountability in the process of arbitration in cases of unexplained and unreasonable delays. The new position of law further binds the arbitral tribunals and the parties to stricter timelines and ensures dispute resolution in a time-bound manner. The ruling ultimately promotes efficiency, fairness, and finality in India's arbitral framework.


COMPETITION LAW

SC upholds Competition Commission of India's ("CCI") power to impose penalties and remedies under Section 27 of the Competition Act, 2002 ("the 2002, Act"). [*Competition Commission of India v. Kerala Film Exhibitors Federation*]. [Link]

The SC has confirmed the statutory authority of CCI, by what is said in Section 27 of the 2002, Act under the statutory power of imposing both monetary penalties and structural or behavioural remedies. The Court explained that the authority of CCI does not limit itself to cease-and-desist orders but can impose neutralising and proportional penalties aimed at protecting the well-being of the consumer and re-balancing of the markets.

Section 27 of the 2002, Act gives CCI the ability to issue such orders as it deems fit where it has determined a breach of either Section 3 (anti-competitive agreements) or section 4 (abuse of a dominant position). Such orders dictating that the offending enterprise cease such practices, imposing monetary fines or prescribing remedies of behaviour. The 2002, Act, in contrast to the Monopolies and Restrictive Trade Practices Act, 1969, ("**MRTP**") gives the Commission a more enforcement-focused regime with more emphasis on deterrence and correction. Controversy in this case arose from the Kerala Film Exhibitors Federation's allegation that the CCI's penalty orders lacked procedural fairness and amounted to overreach, breaching Article 19(1)(c). The court rejected this argument, reaffirming the CCI's discretion to determine penalties so long as due process and proportionality are maintained.

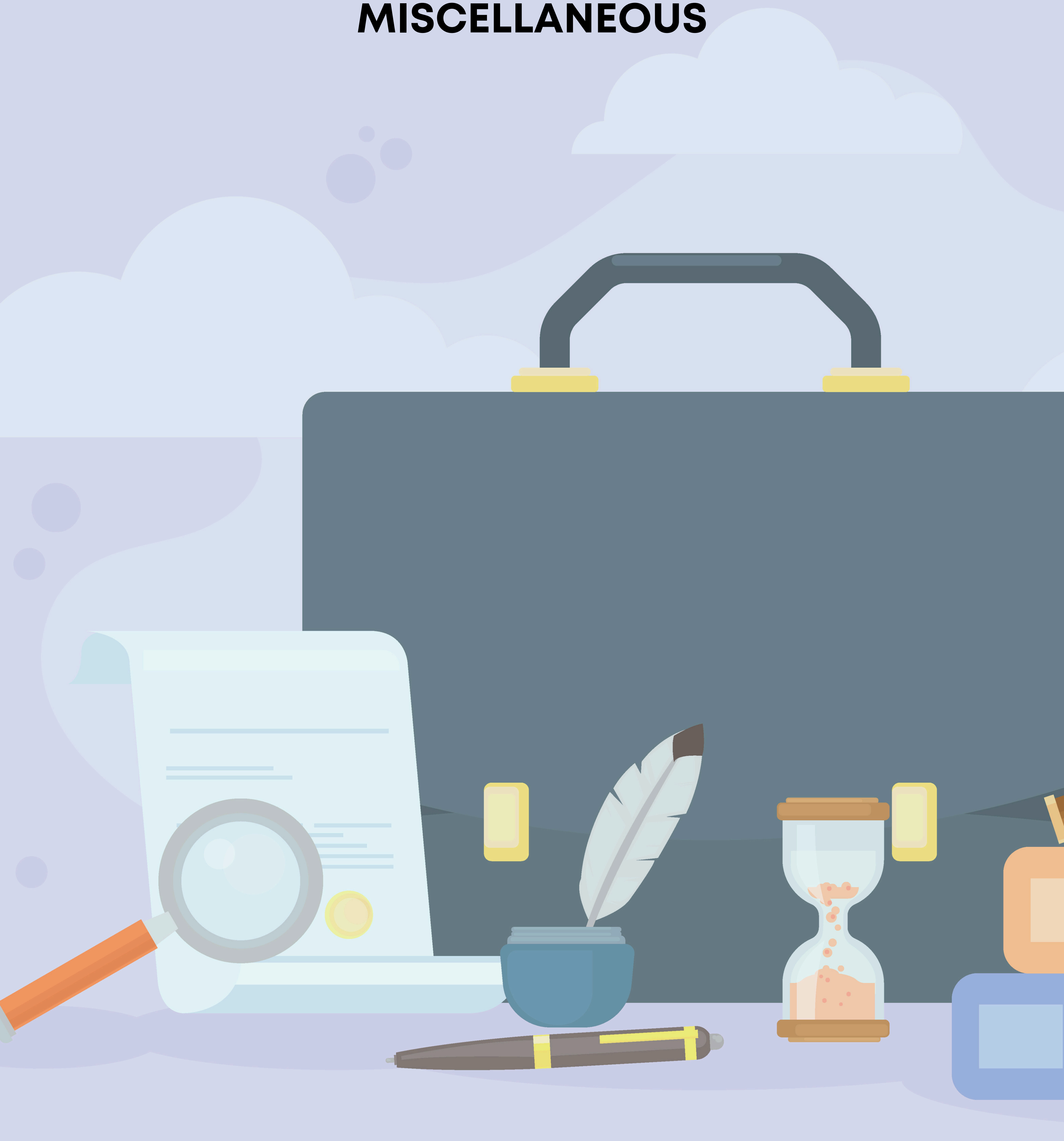
Moreover, it upheld the legislative intent of the Section 27 to give CCI the whole gamut of remedial powers, which are punitive and corrective. The ruling follows the line of the change of the MRTP regime into the Competition framework, but the new law is not only defensive but also remedial and allows the market correction by taking structural action.

In addition, the SC made clear that only one show-cause notice is required by the Act. It only has to state the purported breach, and not the penalty to be imposed which is in line with the principles of natural justice. The accused, therefore, gets a chance to answer the content of the charge, whereas the CCI reserves the right to impose the amount and type of punishment given to him after listening. The SC also appreciated the fact that according to Sections 53A and 53T of the 2002, Act, any appellate body has the power to reduce or increase penalties to achieve proportionality without having to remit the situation to provide efficiency and finality.

This ruling has entrenched the CCI as an institution and has eliminated any doubt on whether it has the power to impose penalties and market-wide remedies. Nonetheless, the decision also poses essential concerns of balance between punishment and excessive penalization. The SC has supported administrative efficiency by restricting procedural disputes and closely predicting that no external notice of penalties is necessary, however its effect is arguably to reduce procedural examination.

This insistence on timely adjudication and proportionality by the SC can be used as a template of quicker and more responsible implementation. However, the increased penal jurisdiction of CCI should develop in tandem with sound in-house transparency and rational decision-making normatives.

MISCELLANEOUS



IFSCA notifies rules for launch of the Foreign Currency Settlement System ("FCSS") [Link]

The IFSCA has taken a major step toward strengthening cross-border financial infrastructure by launching the FCSS. FCSS will operate as a dedicated system for settlement of transactions involving foreign currency within the GIFT International Financial Services Centre ("**IFSC**"). The system is designed to establish a secure and resilient payment infrastructure that facilitates international trading, clearing, and settlement operations for financial market participants.

Previously, entities relied on the correspondent banking route which was the conventional route for settling foreign currency transactions between banks. This method required banks to open an account with one or more correspondent banks and then use those accounts to make or receive payments from other banks for settling transactions undertaken by the bank itself or those of its customers. This was followed by confirmation messages via the Society for Worldwide Interbank Financial Telecommunication platform for initiating and confirming such settlements. Although this was a tried and tested method, the involvement of multiple banks resulted in some transactions taking up to 48 hours to process.

To solve this, FCSS, like other foreign currency settlement systems, appoints a local commercial bank as the settlement bank, and requires all other member banks to open an account with it. Transactions between the member banks are then settled directly through these settlement accounts. The new FCSS will now be able to settle transactions on a real-time basis, significantly reducing the settlement time in comparison to the traditional correspondent bank route.

The launch of FCSS represents India's intention towards achieving monetary self-reliance. By enabling foreign currency settlements within Indian jurisdiction, IFSCA strengthens GIFT City's position as a truly functional global financial hub.

RBI amends regulations to now allow Indian exporters to open Foreign Currency Accounts ("FCAs") abroad [Link]

RBI amended Regulation 5(CA) of the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Seventh Amendment) Regulations, 2025 ("**currency Regulations**"), permitting Indian exporters to open FCAs abroad, including in IFSCs. This amendment strengthens Indian IFSCs by making them more attractive for exporters to route their foreign currency transactions.

Sub-regulation CA of Regulation 5 was inserted via an amendment earlier in January 2025. It allowed Indian exporters to open, hold, and maintain FCAs with a bank outside India for receiving the full export value or any advance payments for their exports. The exporters could use the money in this account to pay for their imports into India or bring the money back to India within the end of the next month from the date they received it.

The latest amendment relaxes the repatriation timeline in certain cases. If the account is maintained with a bank located in an IFSC, such as GIFT City in Gandhinagar, then the exporters are now allowed to keep the funds for an extended period of three months, compared to the initial one-month deadline. But it must be noted that the timeline remains the same for accounts held with banks in any other foreign jurisdiction, meaning the money must be repatriated within one month.

By relaxing the timeline, this amendment gives exporters greater flexibility in managing foreign exchange flows and meeting business commitments. This move effectively localises more foreign currency operations within India's regulatory ambit while at the same time maintaining global competitiveness. It also aligns with the government's broader goal of developing IFSCs like the GIFT City as global financial hubs and reducing dependence on offshore banking jurisdictions.

SC clarifies tax liability of Non-Resident Companies without Indian offices. [*Pride Foramer S.A. v Commissioner of Income Tax*]. [Link]

On October 17, 2025, the Supreme Court delivered a landmark judgment stating that even if a non-resident company does not have a permanent office, it can be taxed based on income accruing from business activities within the country. In reviewing the case under Sections 4, 5(2), and 9(1)(i) of the Income Tax Act, 1961 ("**IT Act**"), the bench stressed that Section 28 determines liability to pay tax not based on presence of a Permanent Establishment ("**PE**") but whether income has "accrued or arisen" through business activity in India.

This was not the case in the past, as liability to pay tax arose for non-resident companies only when they had a PE in India, a notion that was established through Double Tax Avoidance Agreements. This concurred with the view taken by tax authorities and courts, which frequently helped foreign entities to avoid tax liability. By conducting their operations remotely or through intermediaries, several enforcement challenges were created for the authorities.

In response to the alleged gap, SC has rejected this restrictive approach. In the present case, Pride Foramer, a French offshore drilling company, continued to carry on business in India during a "lull" period even after its contract with Oil and Natural Gas Corporation expired. The court held that, to determine continuity, a company's conduct, intent, and business activities, including those incidental to carrying on the operations, must be considered. Temporary suspension and mere failure to secure a contract do not automatically refer to cessation of business.

Accordingly, the constant correspondence, bidding efforts, and administrative costs indicated the ongoing business intent of Pride Foramer. Further, the court held that the absence of a PE did not amount to termination of business, restoring the earlier decision of the Income Tax Appellate Tribunal and setting aside the Uttarakhand High Court's contrary judgment.

This ruling has significant future implications, widening India's taxing power over non-resident entities and strengthening enforcement. Foreign companies will now have to revisit their cross-border contracts and mode of operational structures to determine whether they fall under the requirements of tax liability within the Act.

Reserve Bank of India ("RBI") notifies draft on bank's capital-market exposure and acquisition finance. [Link]

On October 24, 2025 RBI released the Draft RBI (Commercial Banks – Capital Market Exposure) Directions, 2025 ("**the CME Directions**"). The draft explicitly allows commercial banks to finance corporate acquisitions (domestic and overseas) subject to detailed eligibility, security, Loan to Value ("**LTV**") and prudential limits. The draft also prescribes borrower/target eligibility, valuation by two independent valuers, security (primary pledge of target shares), continuous monitoring and board-approved policies.

Historically Indian banks were heavily restricted from financing domestic acquisitions (outside certain infrastructure/Public Sector Undertaking ("**PSU**") contexts), with tighter limits on direct capital-market investment and lending against equity. Banks could fund acquisitions only in limited circumstances and typically played a secondary role in Merger & Acquisition ("**M&A**") financing compared with NBFCs, private credit or sponsor equity. The new draft is a marked departure from that precautionary stance.

The draft provides that banks may fund up to 70% of the acquisition value (buyer to provide the remaining 30% equity). Aggregate bank exposure to acquisition finance must be within 10% of Tier-1 capital (with other draft ceilings proposed for direct and total CME exposures). Banks must set board-approved acquisition-finance policies and carry out two independent valuations. Further, only Indian corporates (not financial intermediaries such as NBFCs/AIFs) or SPVs set up by such listed acquiring companies that satisfy profit/net-worth tests may take acquisition finance for purchases that intend to secure control of the target. Eligible targets must have audited records (3 years) and not be related parties.

Additionally, the CME directions provide that the primary security for acquisition financing must be a pledge of the target company's shares, subject to the limits under Sections 19(2) and 19(3) of the Banking Regulation Act, 1949. They also specify that any additional collateral must fall within the RBI-defined list of Eligible Securities, and the applicable LTV ceilings must be strictly followed for such securities. Further, the draft directions prohibit banks from lending against their own shares, partly-paid shares, securities under lock-in, certain inter-bank instruments, Indian Depository Receipts, or for the purpose of companies buying back their own shares.

To safeguard against market-linked risks, banks are additionally required to maintain continuous monitoring systems, carry out stress testing, and implement early-warning mechanisms throughout the tenure of the financing.

The CME Directions could meaningfully change how M&A deals are financed in India by letting domestic banks take a much bigger role in buy-outs, consolidation deals, and even PSU-related acquisitions. This may reduce reliance on NBFCs and private credit, as long as banks strengthen their risk controls.

However, there are still concerns, such as the risk of banks becoming too exposed to capital markets, the possibility that share values may fluctuate sharply (especially when listed shares are the main collateral), and compliance issues when SPVs are involved. How actively banks can use these new rules will ultimately depend on the RBI's final decisions on limits like Tier-1 exposure caps, risk weights, LTV ratios, and what exactly counts as "control."

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