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NEWSLETTER

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BELATED JURISDICTIONAL OBJECTIONS BARRED AFTER PARTICIPATION IN ARBITRATION PROCEEDINGS

Case: Municipal Corporation of Greater Mumbai vs. M/s R.V. Anderson Associates Ltd.
Case Details: Civil Appeal Nos. of 2026 (Arising Out of SLP (C) Nos. 23846-47 of 2025) | Supreme Court
Coram: Justices JK Maheshwari and Atul S. Chandurkar

The Supreme Court has held that a party which actively participates in arbitral proceedings without raising a timely objection to jurisdiction cannot subsequently challenge the tribunal's jurisdiction after an adverse award. The Court observed that jurisdictional objections must be raised at the earliest stage in terms of the Arbitration and Conciliation Act, and cannot be reserved as a tactical defence to be invoked later.

Rejecting the belated challenge, the Court emphasised that a party cannot keep a "jurisdictional ace" up its sleeve and raise it only after participating in multiple hearings and suffering an unfavourable outcome. Such conduct amounts to acquiescence and undermines the integrity and efficiency of arbitration.

To access the full text, click here.

SET-OFF PERMISSIBLE AS DEFENCE DESPITE EXTINGUISHMENT OF CLAIM UNDER RESOLUTION PLAN

Case: Ujaas Energy Ltd. vs. West Bengal Power Development Corporation Ltd.
Case Details: Civil Appeal of 2026 (Arising Out of SLP (C) No. 29651 of 2024) | Supreme Court
Coram: Justices Dipankar Datta and Augustine George Masih

The Supreme Court has held that while claims not included in an approved resolution plan under the Insolvency and Bankruptcy Code stand extinguished, a limited plea of set-off may nevertheless be permitted as a defence in arbitral proceedings, provided it does not result in any affirmative recovery.

The Court reiterated that upon approval of a resolution plan under Section 31 of the IBC, all claims not forming part of the plan stand irrevocably extinguished and cannot be pursued independently, including by way of counterclaim. However, distinguishing between a claim for recovery and a defensive adjustment, the Court recognised that a plea of set-off does not necessarily amount to enforcement of a claim but may operate merely to resist or reduce the liability asserted by the opposite party.

On a careful reading of the resolution plan, the Court found that while it expressly barred all claims for "payment or settlement," including counterclaims, it did not expressly or impliedly prohibit the use of such claims as a defence. Interpreting the plan strictly, the Court held that in absence of an explicit bar, a plea of set-off could be permitted in a limited capacity.

Accordingly, the Court held that although the respondent was barred from pursuing its counterclaim owing to non-inclusion in the resolution plan, it could raise the same as a defence by way of set-off to the extent necessary to defeat or diminish the appellant's claim, without deriving any positive or affirmative relief.

To access the full text, click here.

ORDER 23 RULE 1 CPC APPLIES TO SECTION 11 ARBITRATION PROCEEDINGS; FRESH APPLICATION BARRED AFTER WITHDRAWAL

Case: Rajiv Gaddh vs. Subodh Parkash
Case Details: Civil Appeal Nos. of 2026 (Arising Out of SLP (C) Nos. 4430 of 2025) | Supreme Court
Coram: Justices PS Narasimha and Alok Aradhe

The Supreme Court has held that the principles underlying Order 23 Rule 1 of the Code of Civil Procedure apply to applications under Section 11 of the Arbitration and Conciliation Act, thereby barring a fresh application for appointment of an arbitrator where an earlier application has been unconditionally withdrawn without liberty to refile.

The Court observed that although Section 11 proceedings are not strictly governed by the CPC, the underlying principles of procedural discipline and finality are equally applicable to arbitration proceedings. It was held that permitting a party to withdraw an application and subsequently re-agitate the same cause of action would defeat the objective of expeditious dispute resolution and encourage forum shopping.

Rejecting the maintainability of the subsequent application, the Court emphasised that unconditional withdrawal amounts to abandonment of the claim and precludes re-litigation on the same cause of action. It further clarified that while the bar operates in respect of identical claims, it would not prevent invocation of the same arbitration clause in respect of a distinct and subsequent cause of action.

To access the full text, click here.

GENERAL REFERENCE TO TENDER DOCUMENT DOES NOT INCORPORATE ARBITRATION CLAUSE

Case: Maharashtra State Electricity Distribution Company Ltd. vs. R.Z. Malpani
Case Details: Civil Appeal Nos. of 2026 (Arising Out Of SLP (C) Nos. 36889 of 2025) | Supreme Court
Coram: Justices JK Maheshwari and Atul S. Chandurkar

The Supreme Court has held that a mere general reference in a Letter of Intent to tender documents containing an arbitration clause does not amount to incorporation of such clause into the contract, in absence of a specific and conscious intention to do so.

Setting aside the appointment of an arbitrator by the High Court, the Court reiterated that incorporation of an arbitration clause from another document requires a clear and specific reference demonstrating the parties' intention to be bound by such clause. A general reference to tender conditions, without expressly incorporating the arbitration clause, is insufficient to constitute a valid arbitration agreement under Section 7(5) of the Arbitration and Conciliation Act.

The Court further observed that a Letter of Intent is ordinarily only a precursor to a formal contract and does not, by itself, create a binding legal relationship unless there is clear consensus ad idem. In such circumstances, contractual terms, including dispute resolution mechanisms, cannot be foisted upon parties without explicit acceptance.

Emphasising the distinction between "reference" and "incorporation," the Court held that while contractual terms relating to performance may be referred to generally, an arbitration clause being a separate and significant agreement must be specifically incorporated. In absence thereof, no valid arbitration agreement can be said to exist..

To access the full text, click here.

MERE PARTICIPATION DOES NOT BAR CHALLENGE TO INHERENT LACK OF JURISDICTION IN ARBITRATION

Case: M/s Bharat Udyog Ltd. vs. Ambernath Municipal Council
Case Details: SLP (C) Nos. 1127 of 2017 | Supreme Court
Coram: Justices PS Narasimha and Alok Aradhe

The Supreme Court has held that mere participation in arbitral proceedings does not estop a party from challenging the inherent lack of jurisdiction of the arbitrator, particularly where the defect strikes at the root of the tribunal's authority.

Reiterating settled principles, the Court clarified that jurisdiction cannot be conferred by consent, acquiescence, or participation, and any arbitral proceedings conducted without a valid legal foundation are rendered non est in law. It was observed that objections relating to inherent lack of jurisdiction are non-waivable in nature and may be raised at any stage, including post-award or even at the stage of enforcement.

The Court further emphasised that participation in proceedings or failure to object at an earlier stage cannot cure a jurisdictional defect, especially where the arbitrator is ineligible or where the arbitration itself lacks a valid legal basis. Any such defect goes to the root of the matter and renders the proceedings void ab initio.

Distinguishing between procedural objections and foundational jurisdictional defects, the Court held that while certain objections may be deemed waived if not raised timely, objections concerning inherent jurisdiction stand on a different footing and cannot be defeated by conduct of the parties.

To access the full text, click here.

FOREIGN AWARD CANNOT BE CHALLENGED IN INDIA ON GROUNDS REJECTED BY SEAT COURT; TRANSACTIONAL ISSUE ESTOPPEL APPLIES

Case: Nagaraj V. Mylandla vs. PI Opportunities Fund-I
Case Details: Civil Appeal Nos. of 2026 (Arising Out of SLP (C) Nos. 23846-47 of 2025) | Supreme Court
Coram: Justices Sanjay Kumar and K. Vinod Chandran

The Supreme Court has held that a foreign arbitral award cannot be resisted in India on grounds that have already been considered and rejected by the court at the seat of arbitration, invoking the doctrine of transnational issue estoppel.

The Court clarified that enforcement proceedings under Section 48 of the Arbitration Act are not an avenue for re-litigation of issues already adjudicated upon by a competent court at the seat. Where such court has conclusively determined questions relating to the validity, interpretation, or legality of the award, the same cannot be reopened before Indian courts under the guise of public policy objections.

Recognising and applying the doctrine of transnational issue estoppel, the Court held that parties are precluded from re-agitating issues across jurisdictions once they have attained finality before the seat court. It was emphasised that permitting such re-litigation would amount to a disguised merits review, which is impermissible under the narrow scope of Section 48.

The Court further observed that objections framed as violations of Indian public policy cannot be used as a device to revisit findings of fact or contractual interpretation already examined by the arbitral tribunal and upheld by the seat court. Only those grounds which fall strictly within the limited parameters of Section 48 such as fundamental policy violations or fraud can justify refusal of enforcement.

To access the full text, click here.

ARBITRAL TRIBUNAL CANNOT AWARD PRE-AWARD OR PENDENTE LITE INTEREST WHEN CONTRACT PROHIBITS IT

Case: Union of India & Ors. vs. Larsen & Tubro Ltd. (L&T)
Case Details: Civil Appeal Nos. of 2026 (Arising Out of SLP (C) Nos. 14989 of 2023) | Supreme Court
Coram: Justices Sanjay Karol and Vipul M Pancholi

The Supreme Court has held that an arbitral tribunal cannot grant pre-award or pendente lite interest where the underlying contract expressly prohibits payment of such interest, reiterating the primacy of contractual terms in arbitration.

Setting aside the grant of interest upheld by the High Court, the Court observed that Section 31(7) of the Arbitration Act empowers tribunals to award interest, but such power is subject to the agreement between the parties. Where parties have consciously agreed to exclude interest for a particular period, the arbitral tribunal lacks jurisdiction to override such stipulation by awarding interest in the guise of compensation.

The Court emphasised that arbitration is fundamentally a creature of contract, and the tribunal is bound by the terms agreed upon by the parties. Any award of interest contrary to an express contractual bar would amount to rewriting the contract, which is impermissible in law.

To access the full text, click here.

NON-SIGNATORY DISSENTING MEMBER CANNOT BE COMPELLED TO ARBITRATE UNDER DEVELOPMENT AGREEMENT

Case: M/s. Space Master Realtors vs. Mulund Sandhyaprakash CHS Ltd. & Anr.
Case Details: Arbitration Application (L) No. 35545 of 2025 | High Court of Bombay
Coram: Justice Sandeep V. Marne

The court has held that a dissenting member of a cooperative housing society, who is not a signatory to the development agreement, cannot be compelled to arbitrate disputes under the arbitration clause contained in such agreement.

The Court clarified that arbitration is founded on consent, and in absence of a clear arbitration agreement between the developer and the individual member, no reference under Section 11 can be made. It was observed that while a society may bind its members collectively in certain contexts, the arbitration clause in a development agreement must be strictly construed, and cannot

be extended to non-signatories merely on the basis of their membership or alleged benefit under the contract.

Rejecting the developer's attempt to invoke doctrines such as "group of companies" or "veritable party," the Court held that a conscious refusal by a member to sign the development agreement is a significant factor negating any inference of consent to arbitrate. The Court emphasised that mere participation in the redevelopment process or execution of subsequent agreements does not automatically result in incorporation of the arbitration clause from the primary development agreement.

The Court further noted that while disputes under a Permanent Alternate Accommodation Agreement (PAAA) may be arbitrable if an arbitration clause exists therein, disputes arising specifically from the development agreement cannot be enforced against a non-signatory unless there is clear invocation and nexus. In the present case, since the disputes arose solely under the development agreement, and not under the PAAA, the arbitration clause could not be invoked against the dissenting member.

To access the full text, click here.

SUPREME COURT UPHOLDS THAT TECHNICAL MEMBER MAJORITY DOES NOT VITIATE NCLAT ORDERS

Case: Pannalal Bhansali vs. Bharti Telecom Limited & Ors.

Case Details: Civil Appeal No. 7655 of 2025 | Supreme Court

Coram: Justices Sanjay Kumar and K.V. Chandran

The Supreme Court has held that an order of the NCLAT cannot be invalidated merely because the bench comprised a majority of technical members. Rejecting challenges to bench composition, the Court clarified that Section 418A of the Companies Act, 2013 mandates only at least one judicial member and one technical member per bench, without requiring judicial majority. The NCLAT bench here headed by a judicial member with two technical members issued a unanimous decision, satisfying statutory requirements.

The Court distinguished prior rulings like Union of India v. Madras Bar Association (2010), emphasizing that technical members are not inferior adjudicators but bring essential expertise to commercial disputes. Concurrent NCLT/NCLAT findings warrant no re-examination absent a pure question of law under Section 423.

This ruling arose in minority shareholder appeals against Bharti Telecom's capital reduction scheme under Section 66, upholding NCLT/NCLAT approvals.

To access the full text, click here.

SET-OFF MAINTAINABLE AS DEFENCE AGAINST CORPORATE DEBTOR DESPITE RESOLUTION PLAN BAR

Case: Ujaas Energy Ltd. vs. West Bengal Power Development Corporation Ltd.

Case Details: Civil Appeal No. … of 2026

[Arising Out of SLP (Civil) No. 29651 of 2024]

Coram: Justices Dipankar Datta and Augustine George Masih

The Supreme Court has held that while claims omitted from an approved resolution plan under the Insolvency and Bankruptcy Code, 2016 stand extinguished, a limited plea of set-off can still be raised purely as a defence in arbitral proceedings, provided it does not seek affirmative recovery or surplus payment.

Partially allowing Ujaas Energy's appeal against WBPDCL, the Court modified the Calcutta High Court order to permit the respondent's pre-approval counterclaim (raised before October 2023 plan approval) to survive defensively under equitable principles, distinguishing it from independent claims barred by Section 31 IBC. The Court clarified that resolution plans bind stakeholders per the Ghanashyam Mishra 'clean slate' doctrine but do not expressly prohibit using known pre-plan claims (RP-aware) to resist opposing demands via set-off, distinguishing Bharti Airtel v. Aircel (CIRP-stage set-off). This balances arbitration fairness with CIRP finality.

To access the full text, click here.

COC COMMERCIAL WISDOM NOT IMMUNE FROM JUDICIAL SCRUTINY

Case: M/s. Lamba Exports Pt. Ltd. vs. M/s. Dhir Global Industries Pt. Ltd. and Ors.

Case Details: Special Leave Petition (Civil) No. 12264 of 2024 | Supreme Court

Coram: Justices Vikram Nath and Sandeep Mehta

The Supreme Court has held that while the Insolvency and Bankruptcy Code, 2016 recognises the primacy of the Committee of Creditors' (CoC) commercial wisdom, this does not render every CoC decision immune from judicial scrutiny by the Adjudicating Authority or appellate tribunals. Clarifying the boundaries of judicial review under Sections 30-32 IBC, the Court ruled that CoC decisions particularly resolution plan approvals remain subject to limited scrutiny for compliance with mandatory statutory provisions, procedural fairness, and absence of material irregularity or arbitrariness.

The commercial wisdom doctrine yields to IBC's foundational objectives of maximising asset value, equitable creditor treatment, and time-bound resolution. The judgment emphasises that unchecked CoC discretion cannot override fundamental Code safeguards or discriminate arbitrarily among creditor classes, reinforcing judicial oversight as a necessary check against abuse while respecting creditors' primary decision-making role.

To access the full text, click here.

POST-MORATORIUM, CREDITORS CANNOT ADJUST PRE-CIRP DUES AGAINST SECURITY DEPOSITS

Case: Central Transmission Utility of India Limited vs. Sumit Binani & Ors.
Case Details: Civil Appeal Nos. 2216-2217 of 2025 | Supreme Court
Coram: Justices Sanjay Kumar and K. Vinod Chandran

The Supreme Court has held that after the moratorium period under the Insolvency and Bankruptcy Code, 2016 ends, a creditor cannot appropriate pre-CIRP dues from security deposits earlier furnished by the corporate debtor. Setting aside lower forum orders, the Court ruled that the moratorium under Section 14 IBC prohibits any recovery action including adjustment against security deposits during CIRP, and such prohibition extends to post-moratorium self-help remedies for pre-CIRP liabilities.

Creditors must pursue claims through the resolution plan process rather than unilateral appropriation, preserving the statutory framework's integrity. The judgment clarifies that security deposits retain their protective character post-moratorium for CIRP purposes, reinforcing IBC's objectives of collective resolution, creditor equality, and prevention of preferential individual recoveries outside the approved plan.

To access the full text, click here.

COURT CONDEMNS IBC MISUSE TO STALL SARFAESI PROCEEDINGS

Case: Rozina Firoz Hajiani & Ors. vs. Union of India & Ors.
Case Details: Writ Petition No. 5157 of 2026 | High Court of Bombay
Coram: Justices Manish Pitale and Shreeram V. Shirsat

The court has expressed serious concern over the misuse of Insolvency and Bankruptcy Code, 2016 provisions by chronic defaulters to stall SARFAESI Act, 2002 proceedings, quashing a DRT order that restrained possession of a secured asset post-auction. Noting a disturbing pattern of borrowers/guarantors invoking Sections 94/95 IBC and interim moratorium under Section 96 at critical

stages after auction completion and sale certificate issuance the Court held such collusive tactics constitute abuse of process, frustrating both statutory frameworks.

Even when NCLT/NCLAT/Supreme Court excluded the asset from moratorium, fresh IBC applications before DRT paralysed enforcement. The Court emphasised that IBC aims for timely economic resolution, not delaying lawful creditor recoveries, warranting writ intervention to prevent justice failure. Repeated filings across distant forums reveal deliberate design undermining SARFAESI objectives and auction purchaser rights.

To access the full text, click here.

SUPREME COURT FLAGS ₹2,983 CR ADAG COMPANIES CLAIMS SETTLED FOR MERE ₹26 CR IN IBC

Case: EAS Sarma vs. Union of India and Ors.
Case Details: W.P.(C) No. 1217/2025 | Supreme Court
Coram: Hon'ble the Chief Justice, Justices Joymalya Bagchi and Vipul M. Pancholi

The Supreme Court has expressed shock over an Enforcement Directorate report revealing claims worth ₹2,983 crores against Anil Dhirubhai Ambani Group (ADAG) companies settled for just ₹26 crores through Insolvency and Bankruptcy Code, 2016 proceedings. Noting potential systemic abuse via "Project HELP" where unrelated lenders funded by eight NBFCs initiated insolvency petitions the Court highlighted how such orchestrated settlements drastically erode creditor recoveries and asset values, undermining IBC's core objectives.

Directing ED and CBI to expedite joint investigations into collusion, undervaluation, and possible public functionary connivance, the bench led by CJI Surya Kant emphasised time-bound, unbiased probes to unearth irregularities in financial institutions and restore insolvency process credibility.

To access the full text, click here.

PRE-EXISTING DISPUTE ON DEFECTIVE WORK BARS SECTION 9 IBC APPLICATION

Case: Cross Marketing vs. Bridge & Roof Company (India) Ltd.
Case Details: C.P. (IB) No.320/KB/2024 | NCLT Kolkata
Coram: Labh Singh (Member Judicial) and Rekha Kantilal Shah (Member Technical)

The NCLT Kolkata has dismissed a Section 9 application seeking CIRP initiation against Bridge & Roof Company (India) Ltd., holding the petition not maintainable due to pre-existing disputes regarding defective paint work, incomplete obligations, and pending final bills. Noting the corporate debtor's communications including an email dated March 11, 2024 directing defect rectification and work completion before the Section 8 demand notice, the Tribunal ruled these issues fell within Section 5(6) IBC definition of "dispute".

The operational creditor's claim of ₹1.40 crores for electrodes supply and painting works was undermined by incomplete contracts, provisional completion certificates lacking contractual value, and a no-interest clause.

Relying on Mobilox Innovations v. Kirusa Software and Anita Jindal v. Jindal Buildtech, the Bench

emphasised IBC cannot serve as a debt recovery tool against solvent entities where substantial disputes exist prior to demand notice, dismissing the application accordingly.

To access the full text, click here.

CHEQUE FROM DIRECTOR'S PERSONAL ACCOUNT UNDER GUARANTEE ATTRACTS COMPANY LIABILITY

Case: SRK Devbuild Pt. Ltd. vs. Government of NCT of Delhi & Anr.
Case Details: 2026 DHC 1710 | High Court of Delhi
Coram: Justice Anup Jairam Bhambhani

The Delhi High Court has held that a company cannot evade liability under Section 138 NI Act merely because a cheque was drawn from a director's personal account pursuant to a deed of personal guarantee for company obligations.

Dismissing SRK Devbuild's petition to quash summoning order (issued post cheque dishonour in 2018, before company's 2020 CIRP moratorium/2021 liquidation), Justice Bhambhani ruled it premature to infer the ₹2 crore cheque linked to director Subhash Chand Aggarwal's 31.03.2017 guarantee was unrelated to company debt at pre-trial stage.

The Court clarified that NI Act proceedings institution isn't barred by Section 33(5) IBC moratorium (post-dishonour), with company liability determinable during trial vacating stay to allow proceedings.

To access the full text, click here.

NCLAT SETS ASIDE KLSR INFRATECH INSOLVENCY AFTER INFLUENCE ATTEMPT RECUSAL; IMPOSES ₹10 LAKH COSTS

Case: Attluru Sreenivasulu Reddy, Suspended Director of KLSR Infratech Ltd. vs. AS Met Corp Pt. Ltd. & Anr.
Case Details: Company Appeal (AT)(Insolvency) 210/2023 | NCLAT, Delhi
Coram: Justice Ashok Bhushan (Chairperson) and Barun Mitra (Technical Member)

The NCLAT has set aside NCLT Hyderabad's CIRP admission against KLSR Infratech Ltd., dismissing AS Met Corp's ₹3.79 crore claim and imposing ₹10 lakh costs, following Judicial Member Justice Sharad Kumar Sharma's August 2025 recusal over alleged influence attempts by a retired High Court judge.

Transferred to the Principal Bench, the Tribunal found genuine pre-existing disputes corporate debtor's June 15, 2022 reply alleging fictitious invoices (15 raised July-December 2021) via employee collusion, predating the May 31, 2022 demand notice under Section 8 IBC.

An internal audit and FIR (June 30, 2022) evidenced fraud claims. Directing costs to IBBI within 30 days and judgment forwarding for review, the order nullifies the July 14, 2023 NCLT admission, reinforcing IBC safeguards against abuse and judicial integrity amid the unprecedented recusal controversy.

To access the full text, click here.

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