



AU COURANT

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

October – December, 2025

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PREFACE

It gives us immense joy to share the October to December edition of our quarterly newsletter, “*Au Courant*,” with our readers.

In this edition, major happenings in various fields of law such as Insolvency Law, Arbitration, Competition Law, Technology Law, Banking Law and Securities Law have been recorded in the ‘*News Updates*’ segment to keep the readers abreast of the latest legal developments. The current on-goings in various fields of law have been analysed succinctly in the ‘*Weekly Highlights*’ section to provide readers with some food for thought.

Further, in the ‘*Courts this Quarter*’ section, Supreme Court’s Decisions in the *Offshore Infrastructures Limited v. Bharat Petroleum Corporation Limited* and *EPC Constructions India Limited v. M/s Matix Fertilisers and Chemicals Limited* have been analyzed. Moreover, we have introduced two new sections for our readers to explore, namely, ‘*Lex Simplifica*’ and ‘*Clause & Effect*’.

We hope that this Edition of the *Au Courant* finds you well and is once again an enjoyable and illuminating read for you!



NEWS UPDATES

NEWS UPDATES: SECURITIES

SEBI's Debt Revolution: Master Circular Unifies Issuance Norms for NCS, CP, SDI, SR, and Municipal Bonds

On October 15, 2025, the Securities and Exchange Board of India (SEBI) promulgated a Master Circular consolidating antecedent directives on the issuance and listing of debt instruments, encompassing non-convertible securities (NCS), commercial paper (CP), securitised debt instruments (SDI), security receipts (SR), and municipal debt securities. This amalgamative framework refines mandatory disclosure obligations, expedites listing timelines, and standardizes trading protocols, thereby attenuating information asymmetry and bolstering securitization risk disclosures. It thereby catalyzes efficacious fundraising for corporates and municipalities while enhancing regulatory robustness in India's debt capital markets.

SEBI Extends Deadlines for Derivatives and Settlement Reforms

SEBI extended the deadlines for implementing the new eligibility requirements for derivative indexes on October 30, 2025. The deadlines for Bank Nifty and Bankex were extended to March 31, 2026, and December 31, 2025, respectively. With the top constituent capped at 20% weight, new indices require a minimum of 14 constituents. Furthermore, citing issues with system readiness, SEBI indefinitely delayed the implementation of the T+0 settlement cycle for brokers

NEWS UPDATES: SECURITIES

SEBI Warns Investors Against Unregulated Digital Gold Platforms

The Securities and Exchange Board of India (SEBI) has cautioned investors against trading in “digital gold” or “e-gold” products offered through online platforms, noting these fall outside its regulatory ambit. Such products are neither classified as securities nor governed by commodity market regulations, exposing investors to significant counterparty and operational risks. SEBI urged the public to invest only through regulated avenues like Gold Exchange-Traded Funds (ETFs) and Electronic Gold Receipts (EGRs). The advisory reflects SEBI’s proactive effort to ensure investor protection amid rising fintech innovations and unregulated virtual commodity schemes.

Securities and Exchange Board of India (SEBI) notified the “Issue of Capital and Disclosure Requirements (Third Amendment) Regulations, 2025

The Securities and Exchange Board of India (SEBI) notified the “Issue of Capital and Disclosure Requirements (Third Amendment) Regulations, 2025,” effective 30 days from October 31, 2025. SEBI also issued warnings regarding digital gold investments, urging public caution and clarifying investment options through regulated products. Additionally, SEBI proposed easing transmission of securities from nominees to legal heirs to simplify transfer formalities.

NEWS UPDATES: SECURITIES

Securities Markets Code Bill, 2025 introduced in Parliament

The Securities Markets Code Bill, 2025 was introduced in the Lok Sabha on December 18, 2025 to modernise India's capital market laws. It consolidates the Securities Contracts (Regulation) Act, SEBI Act, and Depositories Act into a unified code, strengthens SEBI's governance, enhances investor protection, simplifies enforcement, decriminalises minor violations, and streamlines compliance to deepen markets and improve ease of doing business.

NEWS UPDATES: INSOLVENCY

Sixth Amendment to CIRP Regulations, 2025

The IBBI's Insolvency Resolution Process for Corporate Persons (Sixth Amendment) Regulations, 2025 came into force recently, omitting Regulation 39C prospectively. The change aims to simplify procedural mechanics in ongoing and future Corporate Insolvency Resolution Processes (CIRP), removing a previously mandated step. No other major overhauls were introduced in this amendment, reflecting a targeted regulatory refinement rather than wholesale change.

NEWS UPDATES: INSOLVENCY

NCLT admits insolvency case against Blu-Smart Mobility Tech

Due to unpaid operational dues of ₹5.84 crore owed to Lepton Software Export and Research for Google services rendered between April 2024 and April 2025, the NCLT Ahmedabad bench admitted Blu-Smart Mobility Tech, an electric vehicle startup, into corporate insolvency proceedings. The company was placed under moratorium, its board was suspended while the resolution process was underway, and an interim resolution professional was appointed by the tribunal.

ED-IBBI Coordination Enables Release of Attached Assets to Aid Insolvency Resolutions

In a major policy advancement, the Enforcement Directorate (ED) has initiated the release of assets attached under the Prevention of Money Laundering Act (PMLA) to facilitate corporate resolutions under the Insolvency and Bankruptcy Code (IBC). The measure aims at optimising recoveries for creditors including financial institutions and homebuyers.

Following extensive inter-agency consultations, the Insolvency and Bankruptcy Board of India (IBBI) issued a circular on 4 November outlining a standardised procedure. Under the new framework, Insolvency Professionals (IPs) will submit a formal undertaking before the designated PMLA court, enabling the de-attachment and restitution of assets for creditor benefit, while ensuring that no advantage accrues to the accused parties. This strikes the balance between punitive objectives and protection of creditor rights.

NEWS UPDATES: INSOLVENCY

Calcutta High Court held that writ petitions under Article 226 cannot be used to halt Section 95 personal insolvency proceeding

The Calcutta High Court held that writ petitions under Article 226 cannot be used to halt personal insolvency proceedings initiated under Section 95 of the Insolvency and Bankruptcy Code, 2016. The Court observed that the IBC is a complete code providing specific remedies before the NCLT and appellate authorities. Entertaining writ petitions at the initial stage would frustrate the objective of time-bound insolvency resolution. The judgment reinforces judicial restraint and limits High Court interference in insolvency matters except in exceptional circumstances.

Select Committee Urges Specific Reforms for NCLAT Appeals

The Select Committee on the IBC Amendment Bill, 2025 highlighted the need of the National Company Law Appellate Tribunal (NCLAT) to dispose of appeals within three months of receipt to curb delays. It also recommended de-criminalising technical lapses like breach of a resolution plan or non-disclosure of repayment status, removing criminal penalties for them. Additionally, it said a resolution professional (RP) involved in a case should not become the liquidator for the same case, and to codify cross-border insolvency principles into the Code.

NEWS UPDATES: ARBITRATION

Madras High Court Strikes Down Arbitral Award for Contradictory Findings

The Madras High Court set aside an arbitral award in Truliv Properties and Services Pvt. Ltd. v. C. Ravishankar, terming it patently illegal for containing mutually contradictory findings. Justice N. Anand Venkatesh observed that the arbitrator's final award conflicted with his earlier interim order under Section 17 of the Arbitration Act. The Court also criticised the arbitrator for rewriting a written lease as an oral contract and violating principles of natural justice.

Bombay HC orders MMRCL to deposit ₹250 crore to stay execution of arbitral award

The Bombay High Court directed Mumbai Metro Rail Corporation Ltd (MMRCL) to deposit roughly ₹250 crore plus interest with the court registry within eight weeks to obtain a stay on the execution of an arbitral award in favour of the L&T-STEC JV. The award arose from a decade-old contract dispute concerning metro station and tunnel construction, and the court found no "prima facie case of perversity" to justify an unconditional stay

NEWS UPDATES: ARBITRATION

Arbitration — Use of ‘Arbitration’ Word Standing Alone Doesn’t Engineer Arbitration Agreement

In *Alchemist Hospitals Ltd. v. ICT Health Technology Services* (SC, Nov 6, 2025), the Court confirmed that a one size “arbitration” label does not fit all – there must be an intention and reasonable framework to arbitrate (Section 7).

The relevant clause authorized the parties to go to civil court if “arbitration” didn’t resolve things within 15 days, so the SC found out shows an absence of a mandatory arbitral process.

Non-Signatory Cannot Invoke Arbitration Without Privity: Supreme Court

The Supreme Court has held that a non-signatory to an arbitration agreement cannot invoke an arbitration clause unless it is shown to be a veritable party to the contract. Setting aside a Bombay High Court order appointing an arbitrator, the Court ruled that mere commercial or legal connection is insufficient in the absence of clear intent to bind the non-signatory. The Bench of Justices J.B. Pardiwala and K.V. Viswanathan emphasised that privity of contract and demonstrable intent are essential. Relying on *Cox and Kings v SAP India*, the Court clarified that referral courts must prima facie assess veritable party status and cannot mechanically refer disputes to arbitration.

NEWS UPDATES: ARBITRATION

Delhi High Court Forecloses Collateral Fraud Challenges: Arbitral Award Finality Fortified Against Internal Misconduct Claims

The Delhi High Court ruled unequivocally that civil lawsuits cannot invalidate arbitral awards based solely on claims of fraud involving internal party misconduct. In *MMTC v. Anglo American*, the Court distinguished "fraud-on-tribunal" (a jurisdictional vitiating factor) from internal collusion between parties' officials, finding the latter barred by Section 5 finality, *res judicata*, and constructive *res judicata* principles.

NEWS UPDATES: COMPETITION

Supreme Court Rejects Asian Paints' plea Challenging CCI Probe

The Supreme Court of India has rejected Asian Paints' plea challenging a Competition Commission of India (CCI) probe, following a complaint by Grasim Industries' paints division, Birla Opus. Grasim accused Asian Paints of abusing its dominant market position, alleging it restricted dealers from stocking rival products and coerced third parties to block competitors. The CCI had found *prima facie* evidence warranting investigation under Sections 4(2)(a), (c), and (d) of the Competition Act. Asian Paints argued procedural lapses, but both the Bombay High Court and Supreme Court upheld the probe's legality.

NEWS UPDATES: COMPETITION

CCI Clears Torrent Pharma's Stake Acquisition in JB Chemicals with Conditions

The Competition Commission of India (CCI) has approved Torrent Pharmaceuticals Ltd acquiring a stake in JB Chemicals & Pharmaceuticals Ltd, subject to voluntary modifications offered by the parties. The deal involves a major share purchase and proposed amalgamation, positioning Torrent to become India's second-most valued pharma company. The approval follows the June announcement of the deal worth about ₹19,500 crore.

Competition Law CCI Raids Paper Mills

The CCI carried out pan-India searches on various large-sized paper mills in Maharashtra, Punjab, Uttar Pradesh and Delhi on charges of cartelisation of supplies to NCERT. Authorities confiscated documents and digital records, examining allegations of price-fixing and bid rigging that were making some school text book production more expensive. The move is a sign of the regulator's sharper lens on essential-goods markets and procurement-related cartels, an area to which it has been paying more attention over the past few years.

NEWS UPDATES: COMPETITION

Apple Challenges India's Antitrust Penalty Law

Tech giant Apple has moved the Delhi High Court to challenge amendments to India's competition law that allow the Competition Commission of India (CCI) to compute antitrust penalties based on a company's global turnover rather than just its Indian revenue. Apple argues the provision could lead to excessively large fines, potentially up to about USD 38 billion, for alleged abuses in India's app market, calling the rule arbitrary, disproportionate and unconstitutional. The legal challenge comes amid an ongoing CCI probe into Apple's App Store practices involving third-party payment restrictions.

CCI holds regulatory functions immune from antitrust scrutiny

In December 2025, the Competition Commission of India dismissed complaints against Haryana's town-planning authorities, holding that certain sovereign and statutory regulatory functions fall outside the scope of the Competition Act, 2002. The ruling reinforces that competition law cannot be used to challenge public functions rooted in statute, thereby delineating the boundary between regulatory decision-making and market conduct. It offers critical clarity for infrastructure, real-estate stakeholders, and antitrust practitioners.

RBI Issues New Nomination Rules for Bank Accounts

Bank customers may designate up to four people for deposit accounts, either consecutively or concurrently, according to new Nomination Directions issued by the RBI on October 28, 2025, which will take effect on November 1, 2025. Banks must complete nomination requests within three working days. The regulations simplify the nomination process while safeguarding the interests of depositors and are in line with the Banking Laws (Amendment) Act, 2025. They also repeal 31 previous circulars.

From 1 November 2025, under the Banking Laws (Amendment) Act, 2025, customers in India can nominate up to four individuals for each bank deposit account

From 1 November 2025, under the amended Banking Laws (Amendment) Act, 2025, customers will be allowed to nominate up to four individuals for each bank account, locker, or article kept in safe custody. For deposit accounts, nominations can be made either simultaneously, allowing shared entitlements among nominees, or successively, enabling one nominee to inherit after another. In the case of lockers and safe custody items, only successive nominations are permitted. Depositors must clearly specify the percentage share for each nominee when opting for simultaneous nomination. This seeks to enhance flexibility, and minimise the accumulation of unclaimed deposits.

NEWS UPDATES: BANKING AND FINANCE

Government has notified the enforcement of key provisions of the Banking Laws (Amendment) Act, 2025

The Central Government has notified the enforcement of key provisions of the Banking Laws (Amendment) Act, 2025. The amendments update regulatory references and compliance provisions under existing banking statutes, including the Banking Regulation Act and the RBI Act. These changes aim to improve regulatory clarity, streamline governance, and enhance efficiency in the banking sector by aligning statutory provisions with contemporary regulatory practices.

Delhi High Court mandates strict e-KYC for domain registrations

In a significant December 2025 ruling, the Delhi High Court mandated compulsory e-KYC verification for all domain name registrants in India to curb phishing, impersonation, and large-scale cyber fraud. Privacy masking of registrant data will now be limited unless sought after successful verification, and registrars are required to cooperate with law enforcement and NIXI. The decision strengthens accountability in India's digital ecosystem and raises compliance expectations for domain service providers.

NEWS UPDATES: BANKING AND FINANCE

RBI Announces Major Liquidity & Banking Measures

The Reserve Bank of India (RBI) unveiled plans to inject about \$32 billion (≈₹2.90 lakh crore) into the banking system through government bond purchases starting Dec 29 and a long-term dollar-rupee swap. The measures aim to ease tight liquidity conditions, support banks' funding needs at year-end, stabilise money markets, and ensure adequate credit flow into early 2026.

NEWS UPDATES: TMT

India proposes strict IT rules to label AI-content amid rising deepfake concerns

The Indian government has proposed draft rules under the IT Ministry requiring platforms to clearly label AI-generated content, such as putting markers covering at least 10% of the display area for visuals or the first 10% of the duration for audio clips, to counter misinformation and deepfakes. Social-media companies must also collect user declarations on AI content uploads and deploy technical safeguards, with public consultation open till November 6.

NEWS UPDATES: TMT

Notification of DPDP Rules, 2025: ED's comments reveal the contentious nature of the Rules

The Centre has issued the Digital Personal Data Protection Rules, 2025, impactful of key provisions relating to DPDP Act. The rules impose tougher safeguards on the processing of children's data, require additional parental consent and provide a clear legal framework for the cross-border transfer of such information. A staggered timeline has been specified to allow for compliance. The Rules represents a significant step toward an accountable, rights-based framework for charting the data governance rules of play for digital platforms in India.

DPIIT Signals Copyright Law Changes to Address AI Training Concerns

The Department for Promotion of Industry and Internal Trade (DPIIT) has indicated that amendments to the Copyright Act, 1957 may be introduced within the next three years to address challenges posed by artificial intelligence. A recent DPIIT working paper proposes a "blanket licensing" framework allowing AI firms to scrape online content for training large language models, with royalty payments due only after commercialisation through a proposed copyright collective. The move seeks to balance AI development with publisher compensation amid rising global disputes. However, tech firms, including those represented by Nasscom, have raised concerns over opt-out rights and the burden of proof in copyright infringement claims.

NEWS UPDATES: TMT

DPIIT Unveils Transformative AI Copyright Framework

DPIIT Unveils Transformative AI Copyright Framework with Mandatory Blanket Licensing Model: India's Department for Promotion of Industry and Internal Trade announced a mandatory blanket licensing framework for AI training that is unprecedented in the country's constitution. In addition to requiring statutory royalties through a centralized CRCAT and eliminating creator opt-out rights, the model raises Article 300A property-rights issues that are not present in EU opt-out regimes or Japan's extensive exemptions. India's generative AI competitiveness is threatened by the unequal compliance burdens faced by constitutional scholars and more than 890 Indian AI startups, despite the country's positioning as pro-innovation through deferred payment.

NEWS UPDATES: LABOUR LAW

Launch of the Employees' Provident Fund Organisation's Employees' Enrolment Scheme, 2025

A significant initiative is the launch of the Employees' Provident Fund Organisation's Employees' Enrolment Scheme – 2025 on November 1, aimed at extending EPF coverage through voluntary enrolment and past compliance regularization for employees left out between July 2017 and October 2025.



HIGHLIGHTS OF THE QUARTER

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Banking Law Amendments to Enhance Depositor Rights from November 1, 2025

The Ministry of Finance has announced that key provisions of the Banking Laws (Amendment) Act, 2025, specifically Sections 10 to 13, will come into force from November 1, 2025. These reforms introduce significant improvements to nomination facilities for bank deposit accounts, safety lockers, and items held in safe custody.

For the first time, depositors will be allowed to make multiple nominations, up to four nominees per account, either simultaneously or successively. Simultaneous nominations will enable depositors to allocate specific shares to each nominee, while successive nominations ensure seamless transfer of rights upon the death of a nominee. For lockers and safe custody articles, only successive nominations will apply. Beyond nomination flexibility, the Amendment Act seeks to strengthen governance in the banking sector, enhance depositor and investor protection, and ensure uniformity in reporting and audit practices across banks. Detailed procedures under the forthcoming Banking Companies (Nomination)

Rules, 2025 will soon operationalise these reforms, marking a move towards greater transparency, efficiency, and depositor empowerment in India's banking framework.

NCLAT Upholds Meta Data-sharing Penalty

NCLAT Upholds Meta Data-sharing Penalty- In its order, dated November 4, 2025, the National Company Law Appellate Tribunal (NCLAT) affirmed the Competition Commission of India (CCI) to fine Meta Platforms and WhatsApp 213.14 crore. The CCI concluded that the privacy policy of WhatsApp adopted in 2021 compelled users to accept the act of data-sharing with Meta entities in order to use the service, which was an unfair condition as mentioned in the Competition Act, 2002, Section 4(2)(a) in terms of Section 4(2) (a)(i). The NCLAT however reversed the five-year data-sharing ban on WhatsApp and Meta by the CCI, finding such a ban to be disproportionate, and that the CCI lacked proof of any injury to competition in the targeted market.

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CCI had no evidence to prove that WhatsApp was leveraging dominance in the digital advertising market but this was overturned by the NCLAT. This ruling is a delicate balance between user privacy and government overreach. It confirms that the competition law can be asserted against unfair data practice of dominating digital platforms to protect users. Nevertheless, it also puts emphasis on the fact that restrictions, such as user rights, should also be reasonable according to the evidence. This decision will probably guide the future trends of influence competition and information protection policy flows in the Indian digital economy.

DPDP Act comes into effect

India's Digital Personal Data Protection (DPDP) Rules, 2025 mark a significant step in data privacy regulation, coming into effect more than two years after the DPDP Act was passed.

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The rules adopt a phased implementation approach spanning 12 to 18 months, allowing organizations time to align with new legal requirements while mandating immediate changes to critical areas. Critical rules applicable to Data Fiduciaries- the entities responsible for processing personal data-revolve around breach reporting and reasonable security measures. Immediately upon notification (from November 13, 2025), provisions establishing the Data Protection Board of India came into effect. This Board will oversee compliance, receive breach notifications, and impose penalties.

Organizations must notify the Board and affected individuals of any personal data breach within 72 hours, providing details about the breach, potential effects, and remediation measures. By November 14, 2026, organizations, especially significant platforms like social media companies, must appoint Consent Managers who facilitate managing user consent, providing greater control to individuals over their data. By May 12, 2027, all substantial requirements will be fully in force, including the legal necessity to obtain clear and verifiable consent, implement reasonable security safeguards (such as encryption, access control, and data masking), timely report breaches, and adhere to stringent data retention and deletion policies. Data must be retained only as long as necessary for the stated purpose, after which it must be deleted following prior notice to the data principal, preserving the right to intervene.

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Restrictions on cross-border data transfers also play a key role. Data cannot be stored or processed outside India without government approval, particularly barring countries flagged for security risks. The law includes exceptions for government or research purposes but maintains a careful balance between end-user privacy and national interest.

The DPDP Rules form a nuanced framework rooted in protecting individual privacy while facilitating practical and accountable data processing. Setting clear timelines and defining core responsibilities- especially regarding breach notification and security measures signals a mature data regime. This ensures Data Fiduciaries a robust governance of personal information in an increasingly digital India.

Deficit at Decade High: India Rolls Out \$5 Billion Shield for Tariff-Hit Exporters

India's merchandise trade deficit reached an all-time high of \$41.68 billion in October 2025. With a staggering monthly increase of around 200 per cent in gold imports, which totalled \$14.72 billion, and a decline in merchandise exports of almost 12 per cent compared to last year, India's economy continues to be adversely affected by pressure on growth.

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The steep increase can be traced back to U.S. tariffs of 50 per cent on major Indian exports (textiles, gems and jewellery, and engineering goods), which went into effect in August of this year (2025), reducing export activities to the United States by approximately 9 per cent in October 2025.

In response to these challenges, the Indian government announced a comprehensive assistance package valued at over \$5 billion. This includes a ₹200 billion credit guarantee program for short-term (collateral-free) loans, as well as a ₹250.6 billion, six-year Export Promotion Mission. Meanwhile, on November 15, 2025, the Reserve Bank of India (RBI) announced significant relief in the form of four-month moratoriums on just about all loan repayments until December 31, 2025, and extending the period for repaying export credits to up to 450 days from the earlier limit. These coordinated efforts are designed to ease the existing financial pressure on 20 of India's most vulnerable export sectors as the country deals with increasingly protectionist trade policies.



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Offshore Infrastructures Limited v. Bharat Petroleum Corporation Limited

Facts:

Bharat Oman Refineries Limited (now merged with Bharat Petroleum Corporation Limited) (Respondent) awarded a composite works contract to Offshore Infrastructure Limited (Appellant) in December 2016 for upgradation works at the Bina Refinery. Although the project was completed belatedly in January 2018, the Appellant raised its final bill in March 2018 and issued a 'No Claim Certificate' in October 2018. After issuance of the completion certificate and partial payment in June 2019 (subject to deduction of liquidated damages) the Appellant raised consolidated claims in April 2021 and invoked arbitration and issued a notice for appointment of Arbitrator as per Clause 8.6 of the General Conditions of Contract (GCC). As the clause designated the Respondent's Managing Director (MD) or nominee as Arbitrator, the Appellant sought appointment of an independent arbitrator in light of post-2015 statutory amendments of the Arbitration and Conciliation 1996 Act

COURTS THIS QUARTER

(1996 Act). The Respondent rejected the claims, and the High Court dismissed the Section 11(6) application on the grounds of limitation and alleged invalidity of the arbitration mechanism.

Issues:

- i. Whether statutory amendments rendering the named arbitrator ineligible nullify the entire arbitration agreement.
- ii. Whether the Section 11(6) application under the 1996 Act was barred by limitation, considering part-payment and COVID-19 exclusion orders.

Contentions

The counsel of Appellant submitted that the named arbitrator (the MD of Respondent or their nominee) is disqualified by the provisions of Section 12(5)-1996 Act (Amended) but courts can operate in an alike manner under Section 11(6)-1996 Act through appointment of an independent arbitrator. HSCC (India) Ltd. . Limited on 11-06-2019 under Section 19, Limitation Act, 1963, part payment, by virtue of COVID-19 orders, extended the period until 28-02-2022 under Cognizance for Extension of Limitation, In Re.

Respondent argued that Clause 8.6(a) GCC only gave authority to its MD, and amendments invalidated the whole arbitration procedure, entitlement to invocation being defeated.

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Holding:

The Court decided that the statutory ineligibility of the designated arbitrator did not disavow the essence of the arbitration agreement; the arbitration agreement could be appointed by the courts without any reference to Section 11 and 12(5). Application under Section 11(6) submitted 15-03-2022 was a post-COVID exclusion within the limitation and was kept aside the orders of the High Court and deferred to the Delhi International Arbitration Centre.

COURTS THIS QUARTER

EPC Constructions India Limited VERSUS M/s Matix Fertilizers And Chemicals Limited

Facts:

EPC Constructions India Ltd. (EPCC) entered into an EPC contract with M/s. Matix Fertilisers and Chemicals Ltd. (Matix) regarding the installation of a fertiliser plant, but due to the delayed payments from Matix; EPCC agreed to convert the outstanding receivables to it into Cumulative Redeemable Preference Shares (CRPS). Consequently, when Matix refused to pay the demand notice from EPCC's liquidator due from the CRPS, EPCC filed a Section 7 application under the Insolvency and Bankruptcy Code 2016 (IBC) claiming financial debt.

Issues before the Court

The primary issue that arises before the court is whether the transfer of an operational debt to Cumulative Redeemable Preference Shares (CRPS) extinguishes the original debt, thus rendering the holder not a "financial creditor" (FC) under Section 5(7) of the IBC, since a preference shareholding does not amount to holding a financial debt.

COURTS THIS QUARTER

Arguments:

The respondents, Matix argued that allowing the appellant to file for a CIRP against Matix as an FC under S. 7 of the Code would be against the nature of a shareholder. Relying on the Companies Act 2013, Matix stated that CRPS is clearly share capital, thus, precluding it from being classified as a financial debt.

Judgment:

The Supreme Court affirmed the decisions of both NCLT and NCLAT that CRPS are part of share capital and cannot be considered to be a financial debt. Preference shareholders cannot be considered creditors, and their non-redemption of preference shares cannot work as financial debt or default under the IBC. Since redemption is contingent upon profits or the fresh issue of shares, no enforceable debt arose. Consequently, EPCC was not an FC and could not file CIRP under Section 7 of the Code. The decision supports that debt and equity are classified differently under the Insolvency and Bankruptcy Code and that preference shares, even having an assured return, cannot grant a creditor-debtor relationship.



LEX SIMPLIFICA

Buy Now, Pay Later as a Concept in India

Buy Now, Pay Later (BNPL) is a short-term financing concept that allows consumers to purchase products immediately and pay for them later, either in installments or in lump sum. It has emerged as a flexible alternative to credit cards for the new generation, as it splits costs into smaller, manageable payments for consumers while boosting merchant sales. For instance, while shopping on Amazon, one may see Amazon Pay Later option, which allows to receive product immediately but payment can be made after 30 days. It may look like the app is letting the users borrow directly but that is not fully true.

BNPL operates through a three-part structure including: a consumer, a BNPL platform (fintech apps which act as intermediary) and a regulated tender such as a bank or a non-banking financial company (NBFC). In India, BNPL is mainly offered through apps and platforms such as Amazon Pay Later, Flipkart Pay Later, LazyPay, Simply, Paytm, etc.

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LEX SIMPLIFICA

When a user selects 'BNPL' as mode of payment at checkout, the BNPL platform checks the user's basic details and eligibility through Know Your Customer (KYC) verification. This includes a quick PAN verification and sometimes Aadhaar-based OTP or video KYC for higher spending limits. Since, BNPL acts as a short-term loan, the system assesses whether the customer can repay the amount based on past payment behaviour, credit score information and spending pattern. Upon approval, the loan is sanctioned by a partner bank or NBFC, not by the BNPL platform itself. The full amount is paid to the merchant immediately, ensuring completion of transaction. The customer later repays the loan to the bank or NBFC using UPI or bank auto-debit options. The BNPL company merely acts as a technology platform connecting the borrower and lender. The loan may be one-time short-term facility, usually ranging 6-12 weeks, or part of a credit line. If payments are made on time, many BNPL plans charge no interest. However, delay in payments may lead to late fees and harm customer's credit score.



CLAUSE AND EFFECT

CLAUSE AND EFFECT

Securities Markets Code, 2025: A Critical Look at the New Architecture

Introduction:

The Indian securities market is ready for an overarching transformation with the introduction of the Securities Markets Code, 2025 (the Code). Introduced in December 2025, this Code is pitched by the Union government as a single modern framework that consolidates the SEBI Act, 1992, the Depositories Act, 1996, and the Securities Contracts (Regulation) Act, 1956 into a “principle-based” code for India’s increasingly technology-driven capital markets. The rationale behind it stays unambiguous; to remove overlapping and outdated provisions, reduce compliance burden, improve regulatory governance, and strengthen investor protection and capital mobilisation for a fast-growing economy. The Bill has been referred to the Parliamentary Standing Committee on Finance for a detailed scrutiny, marking the first comprehensive legislative review of Indian securities law in decades.

CLAUSE AND EFFECT

While the Code, holds considerable promise, it still entails notable deficiencies that might trade its efficacy. The Code's foundational objectives are unequivocal, yet its provisions frequently obscure essential principles of procedural equity, the delineation of Union government roles and the risks of centralized authority. Thus, these structural flaws warrant a thorough reevaluation to facilitate a seamless transition.

Key Changes and Amendments:

First, the Code looms large on coercive powers and due process, the Code significantly enlarges SEBI's powers of inspection, search, seizure, freezing of accounts and recovery through Recovery Officers, with only limited ex ante judicial oversight; interim and ex-parte orders can operate for extended periods, imposing serious civil consequences for intermediaries and issuers before final adjudication, raising concerns about proportionality and fairness.

Second, although the statutory Ombudsperson for investors is a much-needed addition, it mirrors the "non-res judicata" pattern. Clause 78 clarifies that the orders of the Ombudsperson do not bar SEBI from further action on the same matter, undermining finality and exposing entities to multiple proceedings on identical causes.

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Third, the lack of institutional independence is quite evident, as unlike the RBI's ombudsman or the UK's Financial Ombudsman Service, the Code permits SEBI to designate its own officers as Ombudspersons, collapsing the distinction between a regulator and a redressal forum, eroding the very idea of an impartial adjudication.

Fourth, investor-facing safeguards are much diluted, with the touted Investor Charter framed in enabling rather than mandatory terms, its contours left to delegated legislation and risking under-specification or uneven implementation for retail investors.

Fifth, the concentration of functions within SEBI persists, as despite some separation between investigation and adjudication, rule-making, enforcement, and first-instance powers remain unified in one institution, perpetuating concerns about checks and balances in India's securities enforcement architecture.

Way Forward:

For an efficacious implementation, the Standing Committee should mandate robust due process for coercive measures, establishing Ombudsperson as an independent authority separate from SEBI

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CLAUSE AND EFFECT

aligning with the principle of res judicata, formulate a mandatory Investor Charter aligned with the International Organization of Securities Commissions (IOSCO) and enforce investigative-adjudicatory separation under appellate oversight. Parliament may also consider incorporating a triennial statutory review of impacts on efficiency, and outcomes, fostering an accountable equitable regime that empowers India's capital market.

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