THE CENTRE FOR CORPORATE LAW
NATIONAL LAW UNIVERSITY ODISHA

#INSIGHTS

JULY, 2025

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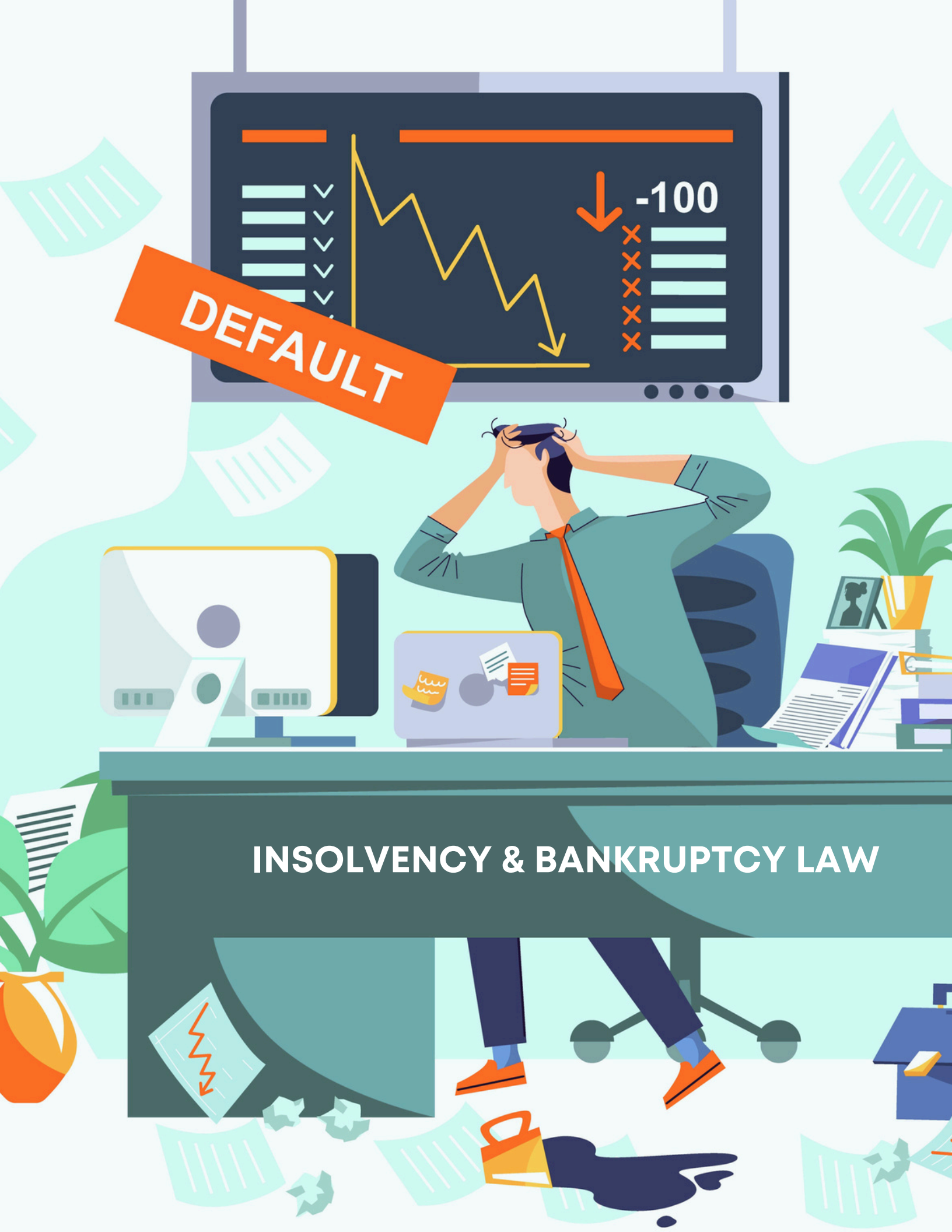


INSOLVENCY & BANKRUPTCY LAW

The National Company Law Appellate Tribunal ("NCLAT") closes the Corporate Insolvency Resolution Process ("CIRP") through the Reverse-CIRP model [*Satish Chander Verma v. Grand Reality Pvt. Ltd. & Ors.*]. [Link]

The NCLAT, New Delhi Bench, closes CIRP after settlement of all financial claims through the Reverse-CIRP model. This model, formulated under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), aims to help revive real estate projects. It prioritizes granting possession of property to homebuyers over the repayment of debts by the promoters.

The Appellant in this case challenged the order given by the National Company Law Tribunal ("**NCLT**"), New Delhi, under Section 7 of IBC. This was done as a consequence of the unsuccessful and untimely handover of flats in a real estate project by Grand Reality Pvt. Ltd, which was the Respondent in the case. Following the appeal, an Interlocutory Application was filed by the developer requesting the completion of the stalled project under 'court-monitored supervision' or 'Reverse-CIRP Framework'.

Upon completion of the construction, Occupation Certificates were obtained, and a court-appointed Local Commissioner verified the status of the construction. The Supreme Court ("**SC**") directed the NCLAT to expedite the disposal process. After the filing of an affidavit by the Resolution Professional, the Income Tax Department stated that it had no objections to the closure of the CIRP process. All the homebuyers had received possession of the flats, and no other claims were pending.

The present judgment complements the case of *Sachin Malde v. Hemant Nanji Chheda & Anr*, wherein it was held that the filing of an application under Section 12A of IBC was deemed unnecessary once the claims with all the Financial Creditors have been settled. The Tribunal also referred to the decision of the SC in *GLAS Trust Company LLC v. BYJU Raveendran & Ors*, thereby affirming the court's power to close insolvency proceedings wherever it is suitable.

This case reflects a growing shift where tribunals are ensuring a more pragmatic resolution. The new Reverse-CIRP model can be used as a viable method to resolve real-estate insolvency proceedings. It allows the promoters to complete the projects timely and avoid the legal risks which come with the regular CIRP. This benefits the homebuyers by ensuring they receive possession of the property they have already paid for.

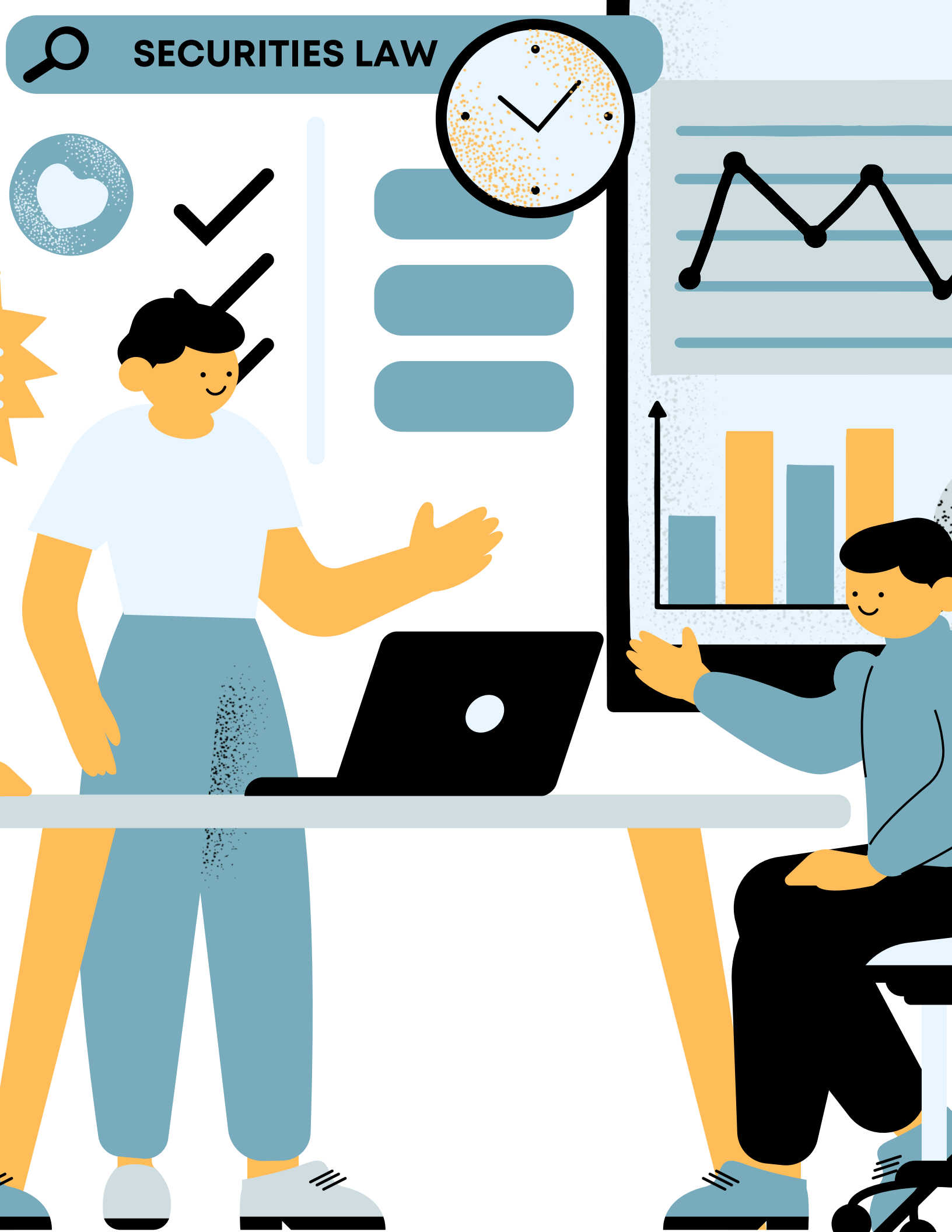
The Insolvency and Bankruptcy Board of India ("IBBI") issues the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025 ("FAR"). [Link]

The IBBI has issued the FAR, addressing critical disclosure gaps in the treatment of avoidance transactions during the CIRP. These amendments revise Regulations 36 and 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") by mandating comprehensive disclosure requirements and restricting undisclosed assignments in resolution plans.

Under the existing framework, the CIRP Regulations contained significant disclosure gaps that created information asymmetries. While Regulation 35A of the CIRP Regulations required Resolution Professionals ("**RP**") to forward copies of avoidance transactions, the CIRP regulations did not mandate comprehensive disclosure in the Information Memorandum ("**IM**"). The Regulation 36 of the CIRP Regulations also required RPs to prepare and submit the IM to the Committee of Creditors ("**CoC**") by the 95th day of CIRP, without requiring avoidance details or periodic updates. Regulation 38 (2016), which governs the contents of resolution plans, lacked restrictions on the assignment of avoidance transactions, thereby allowing potential backdoor assignments without proper disclosure to all stakeholders.

The FAR mandates periodic updates to IM through Regulation 36(1), requiring RP to update and share the IM whenever new information emerges. Regulation 36(2) now mandates that the IM must contain details of all identified avoidance transactions under Chapter III or fraudulent trading under Chapter VI.

Sub-regulation (2A) of Regulation 38 stipulates that resolution plans cannot include the assignment of avoidance transactions unless these were disclosed in the information memorandum and notified to all prospective resolution applicants under Regulation 35A(3A) before the submission deadline. The FAR aims to prevent backdoor assignment of avoidance claims and to ensure transparent treatment during competitive bidding. The mandatory disclosure requirements eliminate regulatory ambiguity and strengthen legal certainty for all stakeholders, ensuring that the CoC and all bidders are consistently informed of any avoidance applications, while reinforcing the IBC's fundamental goals of value maximisation and equal treatment of creditors.


SECURITIES LAW

SC rules that Securities Exchange Board of India ("SEBI") can charge interest on penalties imposed for the violation of SEBI (Prohibition of Insider Trading) Regulations, 1992, after expiry of compliance period in Adjudication Order ("AO"). [*Jaykishor Chaturvedi & etc. v. SEBI*]. [Link]

A two-judge bench of the SC dealt with the powers of SEBI in imposing penalties. Through this judgment, the Court settled the question of whether the interest becomes payable from the date of the AO or from the date of the demand notice.

The 2014 amendment to the SEBI Act, 1992 added Section 28A, which mentions the provisions for recovery in case of default in payment of penalties. It also empowered SEBI to charge interest over such penalty. But there was ambiguity over whether interest automatically applies in case of defaults or needs to be demanded specifically. Additionally, the question of whether AO itself would constitute a demand notice or a separate demand notice must be given still remained.

In this case, the Appellants were ordered to pay the penalties for the violation of SEBI (Prohibition of Insider Trading) Regulations, 1992, by an AO in 2014. On their failure to pay, SEBI issued a demand notice in 2022 for the payment of penalties

Further, the Court ruled that the interest becomes payable from the expiry of the compliance period mentioned in the AO. Here, the order of the adjudicating officer itself constitutes a demand for payment. Accordingly, the subsequent notice by SEBI should be understood as a mere reminder and not the first demand notice

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Earlier, defaulters delayed the payment of penalties through years of litigation. Thus, this judgment not only brings clarity to the regulatory framework, but also prevents unnecessary litigation by parties seeking delay. It would also strengthen the effect of grace period by ensuring the timely payment of penalties. Through this judgment, the Apex Court also rejected the common excuse of waiting for formal orders to indefinitely delay the payment of penalties. along with an interest of 12% p.a. computed from the date of AO.

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Therefore, this judgment seeks to preserve the overall purpose and efficacy of the entire compensatory framework that SEBI seeks to establish.

The Reserve Bank of India ("RBI") issues the RBI (Investment in AIF) Directions, 2025 ("Directions"). [Link]

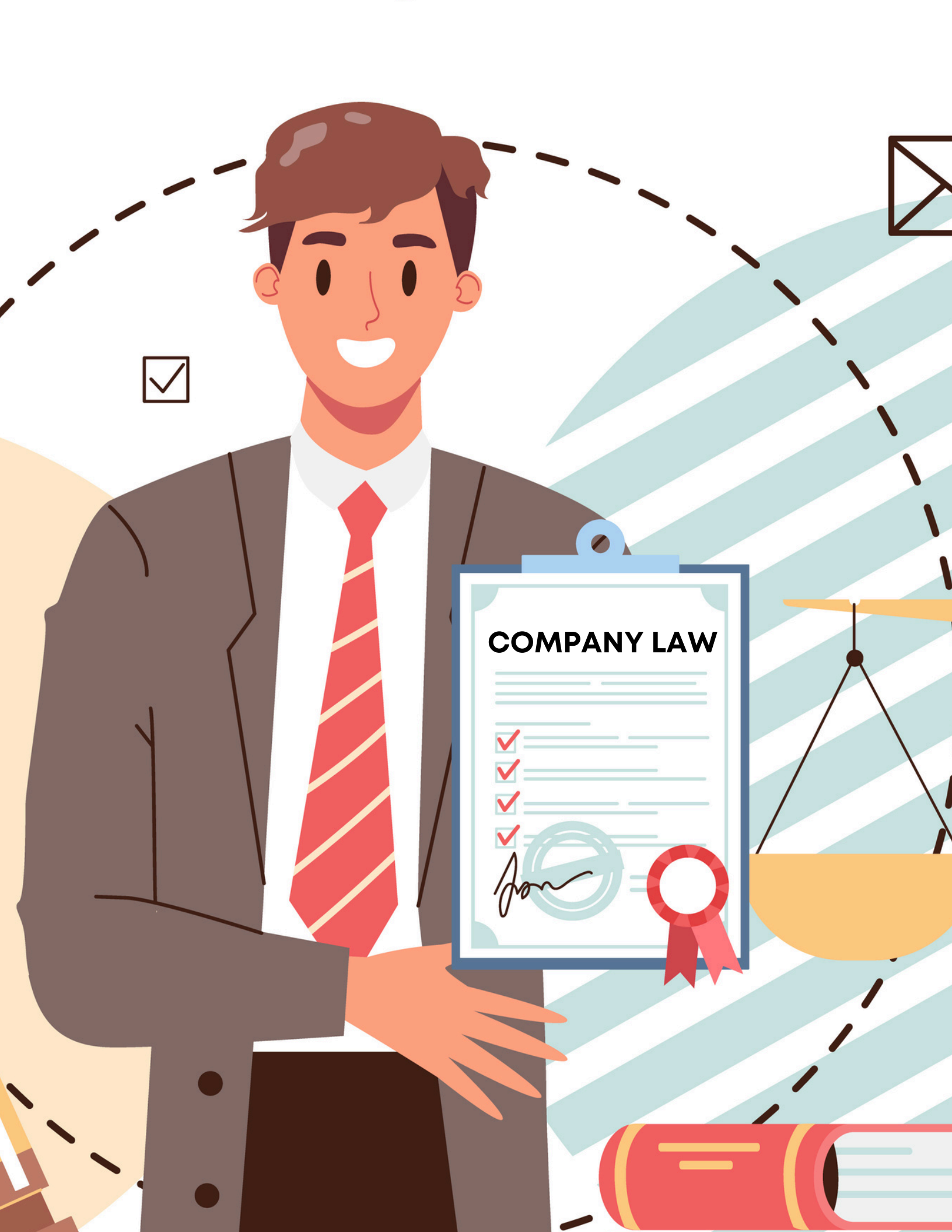
The RBI vide notification dated July 29, 2025, has revised its regulatory framework for Regulated Entities ("**REs**") investments in Alternative Investment Funds ("**AIFs**"). This change addresses the misuse of AIFs for evergreening stressed loans. The Directions replace the December 2023 and March 2024 circulars. These introduce tighter exposure limits, mandatory provisioning, and a stronger focus on investment-linked risk.

In December 2023, the RBI barred REs from investing in AIFs that had direct or indirect exposure to their debtor companies. It required them to exit such investments within 30 days or make a 100% provision. The March 2024 notification offered partial relief by allowing equity-based downstream investments and limiting provisioning to actual exposure. However, key concerns remained, including the treatment of hybrid instruments and the operational challenges of coordinating between AIFs and REs under tight timelines

The Directions introduce clear investment and provisioning thresholds. A single RE can invest up to 10% of an AIF scheme's corpus. The cumulative investment from all REs in an AIF cannot exceed 20%. Provisioning is required only if two conditions are met. Firstly, the RE's investment exceeds 5% of the corpus of an AIF; secondly, the AIF holds non-equity instruments in a company that owes money to the RE. Furthermore, if AIF invests only in equity shares or compulsorily convertible instruments, no provisioning is required.

The Directions, effective from January 1, 2026, or earlier at an RE's discretion, signal a shift from blanket prohibition to nuanced governance. By allowing REs with existing AIF investments to either follow the earlier notifications or adopt the new Directions, the RBI provides flexibility and relief to these entities.

The Directions mark progress in balancing evergreening concerns with legitimate investment needs. While they offer greater clarity, challenges like compliance costs and limited market liquidity, particularly for non-banking financial companies still persist.


COMPANY LAW

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

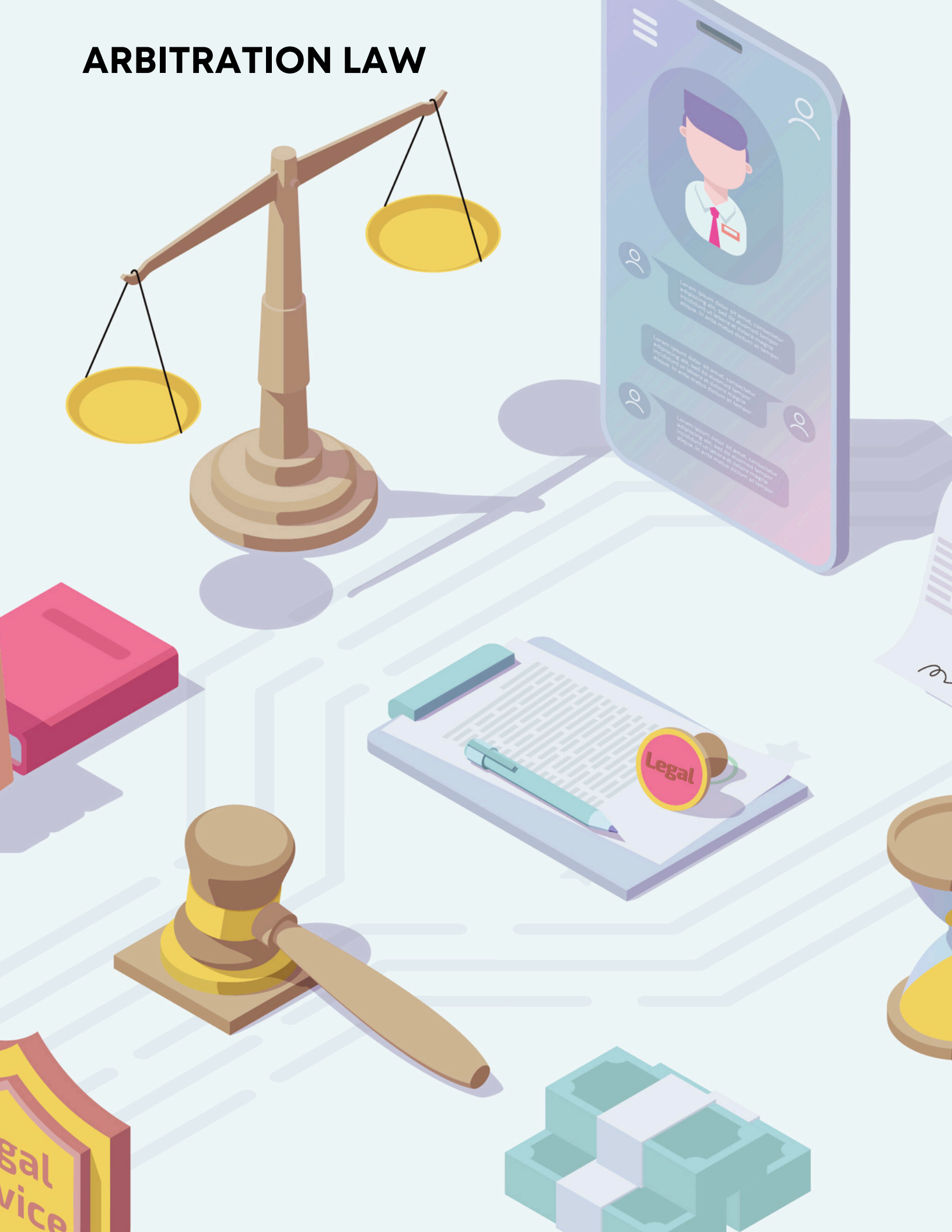
On June 26, 2025, MCA proposed to amend Rule 11(2) of the 2014 Rules to include Finance Companies registered with the International Financial Services Centres Authority ("**IFSCA**") in the exemption provided to Non-Banking Financial Companies ("**NBFCs**") under Section 186(11)(a) of the Companies Act, 2013 ("**CA, 2013**").

Currently, as per Section 186(11)(a) of CA, 2013, read together with Rule 11(2) of the Rules, only NBFCs are exempt from the requirements of Section 186, which regulates loans and investments made by companies in India. This exemption allows NBFCs registered with the RBI, and engaged in the business of providing loans or guarantees in their normal course of business, to bypass all of the compliance requirements pursuant to Section 186. The only exception is sub-section (1), which pertains to compliance with prescribed limits and approvals.

After this amendment, finance companies under the jurisdiction of IFSCA will receive the same treatment as the RBI-regulated finance companies. Among other exemptions, these Finance Companies will no longer have quantitative limits on the Loans and guarantees they give.

The suggestion is aimed at providing ease of doing business for the Finance Companies under IFSCA Jurisdiction and also reducing the regulatory parity with NBFCs. This can accelerate GIFT City's emergence as a preferred hub for corporate treasury and structured finance. This is a lucrative way of reducing the compliance burdens of the companies and also streamlining operations.

ARBITRATION LAW



SC rules that mention of 'may be sought' in an arbitration clause does not make it binding [*BGM and M-RPL-JMCT v. Eastern Coal Fields Limited*]. [Link]

The SC held that the phrase 'may be sought through arbitration' in the arbitration clause, when interpreted to ascertain whether a binding arbitration clause exists, operates only as a mere enabling clause or a tentative arrangement to arbitrate and does not constitute a binding agreement. The Court also noted that any agreement that requires the parties to provide further consent before proceeding to arbitration would not constitute a binding agreement.

Here, the Court agreed with the High Court ("**HC**") of Calcutta, finding that 'may be sought' indicates that when entering the contract, parties were not 'ad idem' in referring disputes to arbitration. The Court also explored the limited powers of the court in determining the existence of an arbitration agreement.

Referring to the scope of examination under Section 11(6A) of the Arbitration and Conciliation Act, 1996 ("**A&C Act**"), the Court settled that the referral court can only determine a prima facie existence of an arbitration agreement. In this regard, the referral court cannot examine any evidence in detail, and its view is not binding on the arbitral tribunal. Thus, the tribunal may still investigate the presence of an arbitration clause in depth.

This judgment of the Court again emphasizes the need for an unambiguous language in arbitration clauses. In the future, this judgment may serve as an explanation of the requirements for a valid arbitration clause, as mentioned under Section 7 of the A&C Act.

Delhi HC's recent ruling reinforces the power of civil courts to grant Anti-Arbitration Injunction ("AAI") [*Engineering Projects (India) Limited v. MSA Global LLC (Oman)*]. [Link]

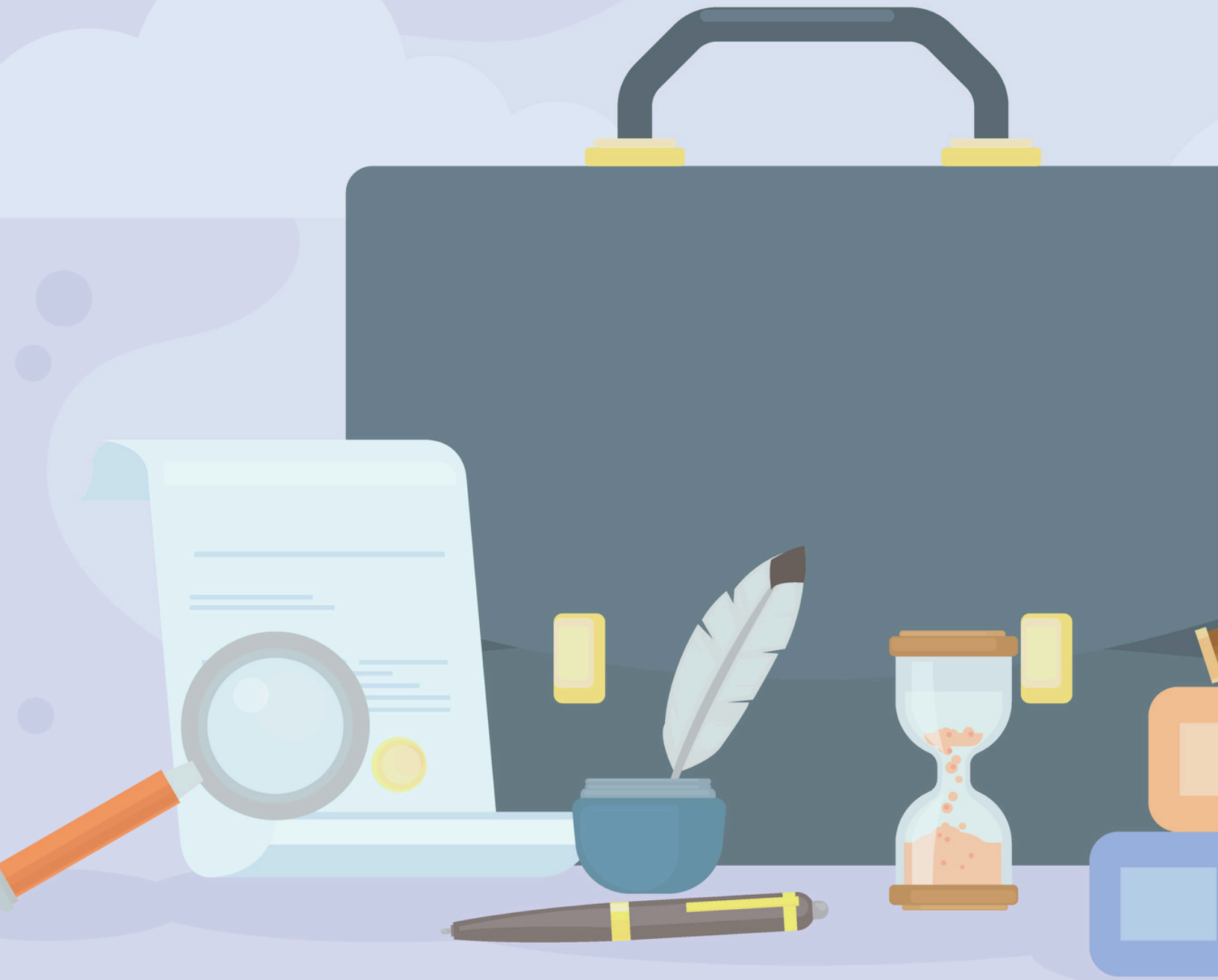
On July 25, 2025, the Delhi HC reaffirms that domestic civil courts are empowered to grant AAI as interim relief in cases involving vexatious and oppressive arbitral proceedings, even in cases of foreign-seated arbitration.

The case involved a dispute concerning the impartiality of a co-arbitrator, which the plaintiff raised before the International Chamber of Commerce ("**ICC**"). Although the ICC acknowledged the conduct as "regrettable," it took no corrective action. The plaintiff then approached the Indian civil courts. The Court observed that, under Section 9 of the Code of Civil Procedure, 1908, civil courts are vested with the authority to hear all civil matters, unless their jurisdiction is explicitly excluded by law. It further emphasised the traditional prerequisites for granting injunctions: a prima facie case, the risk of irreparable harm, and the balance of convenience.

In 2019, the SC ruled that any challenge to the existence or validity of an arbitration agreement should be addressed before the arbitral tribunal itself, and that filing a suit seeking a declaration or injunction on such grounds was not legally permissible. However, the Delhi HC relied on World Sport Group to hold that civil courts may grant AAIs in exceptional cases, where the arbitration clause itself is at risk, or the agreement is "null, void, inoperative or incapable of being performed."

By affirming the power of civil courts to intervene in vexatious and oppressive arbitration proceedings, the Delhi HC creates a protective space for parties facing unfair arbitral conduct. The ruling is likely to influence future litigation, particularly in the context of international arbitrations seated outside India. It reflects a judicial approach where courts, while exercising caution in granting such relief, maintain their role as a check on arbitral excesses, thereby balancing party autonomy in arbitration with the imperatives of justice and fairness.

MISCELLANEOUS



SC rules that Hyatt International Southwest Asia Ltd. ("Hyatt International") has a Permanent Establishment ("PE") in India and is liable to pay tax [*Hyatt International Southwest Asia Ld. v. Additional Director of Income Tax*]. [Link]

SC upheld that Hyatt International has a PE in India under Article 5(1) of the Indo-UAE Double Taxation Avoidance Agreement ("**DTAA**"). It stated that Hyatt International's income derived under the Strategic Oversight Services Agreement ("**SOSA**") with Asian Hotels Limited, India, is taxable in India. This is due to its extensive and significant control over the managerial, financial, and strategic operations of the hotels, even if it did not have any physical office.

Earlier, the taxing rights of the source State under DTAAs were dependent upon the existence of the foreign company's PE. This was determined by the presence of some physical location, such as an office or a fixed place of business. This allowed foreign companies to avoid paying taxes by organising their operations in a way that left no physical trace, making it harder for the source country to tax the business they did there.

Here, the Court held that, beyond a right of disposal over premises, functional control, regular oversight, and operational involvement are enough to establish a PE. It relied on *Formula One World Championship Ltd. v. CIT (2017)*, wherein it was stated that as long as the business was being carried out through the shared use of space, possession of the same is not required.

The 20-year duration of the SOSA, in addition to the extent of Hyatt International's control, influence, functional and operational presence, clearly indicates that the business was being carried out through the hotel premises. This conforms to the conditions under Article 5(1) of DTAA. Its executives and employees' regular visits to India for overseeing the operations are immaterial in determining the presence of a PE.

This decision brings significant changes to the way foreign entities operate in India, particularly in the absence of physically established offices or workspaces. Companies must now ensure the extent to which they exercise control over domestic operations, even indirectly, as this may lead to tax liabilities. They may need to restructure their cross-border agreements to clearly define roles, limit operational involvement, and mitigate the risk of being deemed to have a PE in India.

Delhi HC provides clarity regarding taxation of Category III Alternative Investment Funds ("AIFs") [*Equity Intelligence AIF Trust v. The Central Board of Direct Taxes & Anr*]. [Link]

On July 29, 2025, the Delhi HC read down Circular No. 13 of 2014 ("**2014 circular**") issued by the Central Board of Direct Tax ("**CBDT**"). The court stated that Category III AIFs should not be classified as "indeterminate trust" solely because the trust deed of the AIF does not name the investors. In Category III AIFs, beneficiaries and their shares can be ascertained through contribution agreements and Net Asset Value ("**NAV**") calculations. This ruling has provided much-needed relief to Category III AIFs by protecting them from being subjected to the Maximum Marginal Rate ("**MMR**") of around 40% for taxation purposes.

Category III AIFs are treated as private trusts and are taxed according to Sections 161 to 164 of the IT Act. Accordingly, the income of determinate trusts (wherein the beneficiaries are identifiable) is taxed as if its directly earned by those beneficiaries. However, the income of an indeterminate trust (wherein the names of beneficiaries are not identifiable) is taxed at MMR.

The 2014 circular issued by CBDT treats all trusts lacking names of beneficiaries in the original trust deed as "indeterminate", consequently to be taxed at MMR. This led to uncertainty, as the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**") prohibit naming investors in the trust deed prior to its registration with SEBI. Thus, a paradox is created as AIF Regulations 3(1), 4(c), 6(5) and Section 12 of the SEBI Act, 1992 mandate that trust deeds must register themselves first and then accept any investment, while the tax circular requires naming them upfront.

The Delhi HC, while reading down the 2014 circular, stated that beneficiary shares ascertainable via NAV or contribution agreement fulfil the statutory test laid down by Explanation 1 of Section 164 of IT Act. Further, the court relied on the doctrine of impossibility, stating that since SEBI AIF Regulations require the trust deed to be registered before raising funds, naming investors in the original trust deed would be legally impossible.

Consequently, Category III AIFs in Delhi, Tamil Nadu, and Karnataka have legal certainty and can expect normal taxation rates. This move also increases investor confidence as institutional investors don't have to worry about MMR audit disputes. AIF managers should now focus on creating strong contribution agreements and transparent audit trails to clearly ascertain trust beneficiaries and their shares. However, it remains to be seen whether CBDT will withdraw or amend the 2014 circulars, as continuing with it may attract further litigation in the future. In the absence of a pan-India mandate on this issue, some states may continue to tax Category III AIFs at MMR by default.

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Contributors

Aditya Danturty

Gauri Dudeja

Kavya Jindal

Manya Bansal

Paavanta Arya

Roshan Kumar Behera

Sohini Chakraborty

Shubham Singh

Shreya Tiwari

Shivam Gupta

Surbhi Goyal

Contact Us