

# MONTHLY LITIGATION NEWSLETTER

## MAY 2025

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates on latest verdicts from the Supreme Court of India and various High Courts.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at [mail@lexport.in](mailto:mail@lexport.in).

Regards,  
Team Lexport



### ABOUT US

Lexport is a full-service Indian law firm offering Consultation, litigation, and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website [www.lexport.in](http://www.lexport.in).

### OUR LITIGATION TEAM

Rohan Garg  
Rohit Dutta  
Shyam Kishor Maurya  
Sorokhaibam Shantijyoti Singh

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## PART A: COURT RULINGS

### **1. MR. RAMPRASAD VISHVANATH Vs. MR. DINESH KUMAR DEORA AND ORS., COMPANY APPEAL (AT) (INSOLVENCY) NO. 442 OF 2025**

**Issue:** - Whether a single homebuyer has the locus to challenge an approved Resolution Plan under the IBC?

The Hon'ble NCLAT dismissed the appeal of a single homebuyer challenging the approved Resolution Plan, noting that the applicant's earlier plea for replacing the Resolution Professional had already been rejected and attained finality. It held that under Section 43 of the IBC, only the Resolution Professional is empowered to file for avoidance of preferential transactions, and thus, the homebuyer's application was not maintainable. Emphasizing that the appellant is one among 600 homebuyers, the Tribunal stated that the vote of the class, not an individual, prevails. The Authorised Representative voted in accordance with the majority 83.46% supported the Resolution Plan. Relying on Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022), the Tribunal reaffirmed that a single homebuyer cannot challenge an approved plan. Finding no infirmity in the Adjudicating Authority's order, the appeal was dismissed.

**Lexport Comments:-** *The decision reinforces the principle that collective will of the creditors prevails over*

*individual dissent in insolvency proceedings.*

## 2. ASHA BASANTILAL SURANA Vs. STATE BANK OF INDIA & ORS., COMPANY APPEAL (AT) (INSOLVENCY) NO. 84 OF 2025

**Issue:** - Whether issuance of a notice under Section 13(2) of the SARFAESI Act to a Personal Guarantor, demanding payment in accordance with the Guarantee Agreement, constitutes a valid invocation of the guarantee so as to give rise to a cause of action under Section 94(1) of the Insolvency and Bankruptcy Code, 2016?

The Hon'ble NCLAT examined whether a Section 13(2) SARFAESI Act notice addressed to a Personal Guarantor constituted a valid invocation of the guarantee, thereby giving rise to a cause of action under Section 94(1) of the IBC. It held that the notice, titled "Notice to Guarantor," clearly demanded payment and was compliant with the terms of the Guarantee Agreement, which did not prescribe a specific format. Thus, any such demand could be treated as invocation. The tribunal found that the notice's language clearly invoked the guarantee by demanding ₹28.56 crores. Relying on *Mavjibhai Nagarbhai Patel vs. State Bank of India & Anr.*, 2024, the NCLAT affirmed that a Section 13(2) notice demanding payment per the agreement amounts to valid invocation. Therefore, such a notice can trigger personal insolvency proceedings under Section 94(1) of the IBC.

*Lexport Comments:- The NCLAT's ruling reinforces that a SARFAESI Section 13(2) notice can validly invoke a personal guarantee, paving the way for insolvency proceedings under Section 94(1) of the IBC.*

## 3. VISA COKE LIMITED Vs. M/S MESCO KALINGA STEEL LIMITED, CIVIL APPEAL NO. 357 OF 2025

**Issue:** - Whether the service of a Section 8 IBC demand notice on the corporate debtor's Key Managerial Personnel constitutes valid and sufficient service under the Insolvency and Bankruptcy Code?

The Hon'ble Apex Court, setting aside the NCLAT ruling, allowed the Operational Creditor's appeal, holding that delivery of the Section 8 IBC demand notice to the corporate debtor's Key Managerial Personnel (KMP) constitutes deemed service. Justice R. Mahadevan, writing for the bench, emphasized that no prejudice was shown by the corporate debtor from such service, and substantive rights should not fail on mere technicality. Citing *Rajneesh Aggarwal v. Amit J. Bhalla* (2001) 1 SCC 631 (under Section 138 NI Act) and approving *K.B. Polychem (India) Ltd. v. Kaygee Shoetech Pvt. Ltd.*, the Court affirmed that service on a director or KMP suffices for insolvency triggers. It noted that the corporate debtor even approached the creditor for settlement during the Section 9 proceedings. Accordingly, the Court remanded the matter to the NCLT for fresh consideration on merits.

*Lexport Comments:- The Supreme Court rightly held that serving the Section 8 IBC notice on the corporate debtor's KMP is valid service, prioritizing substantive justice over procedural technicalities and ensuring effective insolvency resolution.*

## 4. GAYATRI BALASAMY Vs. M/S ISG NOVASOFT TECHNOLOGIES LIMITED, SLP (C) NO. 15336-15337/2021

**Issue:** - Whether and to what extent appellate courts can remit or modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996?

The Constitution Bench (4:1) held that appellate courts have only limited powers to modify arbitral awards under Sections 34 or 37 of the Arbitration and Conciliation Act, 1996. Awards can only be remitted if defects are curable, but where there is substantial injustice or patent illegality, remand should be avoided. Section 34(4) allows the tribunal to fix limited defects but not to rewrite or fully set aside the award, and the court must assess if correction is even legally possible. The bench emphasized proportionality, cautioning against remand if it causes inefficiency, costs, or places the tribunal in difficulty. It clarified that the request to remit can be oral, not just written, and can be made even after a Section 34 application is decided. The court's appellate powers under Section 37 are as wide as under Section 34, allowing remand under both. Referring to past judgments, the bench reaffirmed that awards must be reasoned—proper, intelligible, and adequate—but Section 34(4) does not permit reviewing prior tribunal findings. Overall, the power to remit must be used carefully and not mechanically, guided by the nature and correctability of the defect.

*Lexport Comments:- The Constitution Bench's decision underscores the principle that judicial interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, must be exercised with restraint, confining remand to instances of curable defects, and eschewing a reappreciation of the arbitral tribunal's findings on merits.*

#### **5. VINOD INFRA DEVELOPERS LTD. Vs. MAHAVEER LUNIA & ORS [CIVIL APPEAL NO. 7109 OF 2025]**

**Issue:** - Whether a plaint can be rejected in its entirety under Order VII Rule 11 CPC when some reliefs are untenable, but others involve distinct, triable causes of action?

The Supreme Court held that a plaint cannot be rejected in its entirety under Order VII Rule 11 CPC merely because one of the reliefs is untenable, if other reliefs arise from distinct causes of action supported by separate facts. It ruled that selective severance of prayers is impermissible, and the presence of a triable issue precludes summary rejection. In a case where the appellant challenged sale deeds executed after revoking a power of attorney, the Court found the Rajasthan High Court erred in dismissing the suit by treating all reliefs as a single claim. Citing *Central Bank of India v. Prabha Jain*, it reaffirmed that partial rejection and adverse observations on individual reliefs at the preliminary stage are not permissible. Rejection is limited to cases where the plaint, on its face, discloses no cause of action, is barred by law, undervalued, or insufficiently stamped. Accordingly, the Court allowed the appeal and restored the suit.

*Lexport Comments:- The Supreme Court's reaffirmation that a plaint cannot be summarily rejected under Order VII Rule 11 CPC if it discloses distinct and triable causes of action, even if one relief appears untenable.*

#### **6. M/S PATANJALI FOODS LIMITED (FORMERLY KNOWN AS M/S RUCHI SOYA INDUSTRIES LTD.) Vs. UNION OF INDIA & ORS. [CIVIL APPEAL NOS. 3833-3835 OF 2025]**

**Issue:** - Whether the coercive encashment of bank guarantees by the Customs Department, not constituting payment of customs duty, can be retained under Section 27 of the Customs Act and the doctrine of unjust enrichment?

The Supreme Court held that Section 27 of the Customs Act and the doctrine of unjust enrichment do not apply to the coercive encashment of bank guarantees, as such encashment does not constitute payment of customs duty. Allowing the appeal by Patanjali Foods Ltd. (formerly Ruchi Soya Industries Ltd.), the Court

directed the Customs Department to refund the encashed amount with 6% interest within four months. The dispute arose from a 2002 demand for higher customs duty on crude soybean oil, later declared illegal in *Union of India v. Param Industries Ltd.* Despite this, the Department encashed bank guarantees following the Gujarat High Court's 2012 dismissal of Patanjali's petitions. Justice Ujjal Bhuyan, writing for the Bench, held the encashment to be arbitrary and beyond legal authority, stating that the Department cannot retain funds not paid as duty.

*Lexport Comments:- The Supreme Court's ruling appropriately affirms that coercive encashment of bank guarantees, not constituting payment of customs duty, falls outside the ambit of Section 27 of the Customs Act and the doctrine of unjust enrichment, thereby warranting restitution with interest.*

**END OF THE NEWSLETTER**

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