



# Dispute Resolution & ADR

Monthly Newsletter

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# An implemented resolution plan may be rejected *post facto* if it is found to be non-compliant with the Insolvency and Bankruptcy Code, 2016

## Kalyani Transco v. Bhushan Power & Steel Ltd

Supreme Court of India | 2025 SCC OnLine SC 1010

The Supreme Court's recent rejection of an implemented resolution plan years after its approval reflects a hyper-technical view of procedural lapses and weakens the core objectives of the Insolvency and Bankruptcy Code, 2016 (**Code**) of value maximisation and timely resolution, in addition to undermining the commercial wisdom of the Committee of Creditors (**CoC**). Citing procedural non-compliance – such as delayed payments, timeline breaches, and non-compliance with disclosure requirements under Section 29, which provides the eligibility criteria to be a resolution applicant – the Court's direction to liquidate does not seem to have considered mitigating factors such as payment of INR 19350 crore to creditors and equity infusion of INR 8550 crore by the successful resolution applicant, the continued status of the company as a going concern, and the absence of any demonstrated harm or *mala fide* conduct. We believe this decision opens the door for successful resolution plans to be challenged years later on compliance grounds, and may cause resolution applicants to approach the process with increased caution, possibly resulting in more conservative bids and reduced participation in future Corporate Insolvency Resolution Processes (**CIRPs**). To strengthen confidence in the process, stakeholders would be well advised to ensure meticulous adherence to procedural requirements and proactively seek expert counsel in cases of ambiguity and risk.

### SUMMARY OF FACTS

During the CIRP of Bhushan Power and Steel Ltd (**BPSL**), claims amounting to about INR 47800 crore had been admitted, and the resolution plan submitted by JSW Steel Ltd (**JSW**), proposing an upfront payment of INR 19350 crore, was approved by the CoC.

The plan was approved by the National Company Law Tribunal (**NCLT**) and the National Company Law Appellate Tribunal (**NCLAT**).

Meanwhile, proceedings under the Prevention of Money Laundering Act, 2002 (**PMLA**) had been initiated, and a Provisional Attachment Order (**PAO**) was issued against BSPL's assets, which was subsequently set aside by the NCLAT.

Appeals were filed before the Supreme Court challenging the resolution of BSPL on the basis of several instances of non-compliance with provisions of the Code and the resolution plan, as well as the jurisdiction of the NCLAT to set aside the PAO. During the pendency of such appeals, the plan was implemented by JSW.

### DECISION OF THE COURT

5 years after the NCLAT accorded its approval, the Supreme Court rejected the resolution plan despite complete implementation thereof, and directed liquidation of BPSL, basis the following instances of procedural non-compliance:

- **Timelines:** JSW delayed the plan's implementation as well as upfront payments and equity infusion by 2 years without seeking any formal extension.
- **Prioritisation of payments:** The plan failed to prioritise payments to operational creditors over financial creditors as mandated under the Code. Secured statutory dues of operational creditors were wrongly treated as unsecured.
- **Section 29A:** The resolution professional failed to adhere to procedural compliance under Section 29A. JSW suppressed the existence of a joint venture agreement, potentially making it a related party.

The Court also held that while any order or action under the PMLA can be challenged before the authorities under the PMLA, such as the PMLA Appellate Tribunal, the jurisdiction of the NCLT and NCLAT is strictly limited within the framework of the Code, and they cannot review orders passed by the PMLA authorities.

# An arbitral tribunal can implead parties not served with a notice invoking arbitration

## Adavya Projects Pvt Ltd v. Vishal Structurals Pvt Ltd

Supreme Court of India | 2025 SCC Online SC 806

The Supreme Court held that an arbitral tribunal can implead a person who has not been served a notice invoking arbitration under Section 21 (**Section 21 Notice**) of the Arbitration and Conciliation Act, 1996 (**Act**) and has not been referred to arbitration by the Court under Section 11 (at the stage of appointment of the arbitral tribunal), so long as the person is a party to the arbitration agreement. The decision reaffirms the twin principles that a non-signatory may be impleaded as a party to the agreement and that the scope of such impleadment is not confined to procedural formalities but hinges on the substantive question of whether the person has assumed rights or obligations under the arbitration agreement. For claimants, this is a significant ruling as it offers flexibility in bringing relevant parties into arbitration proceedings, particularly where group entities or individuals have played a key role in the underlying transaction. From a drafting and dispute strategy perspective, parties would be well advised to define the scope of the arbitration agreement broadly and document the involvement of key individuals and entities during contract execution and performance.

### SUMMARY OF FACTS

Adavya Projects Pvt Ltd (**APPL**) and Vishal Structurals Pvt Ltd (**VSPL**) entered into an agreement to form a Limited Liability Partnership (**LLP**), under the terms of which Kishore Krishnamoorthy, the director of VSPL, was to be the CEO of the LLP (**LLP Agreement**). APPL and VSPL were the only signatories to the LLP Agreement.

A dispute arose between APPL and VSPL pertaining to the execution of a contract awarded to the LLP. APPL issued a notice under Section 21 of the Act to VSPL, invoking arbitration under the LLP Agreement, and subsequently applied for the appointment of an arbitral tribunal under Section 11, impleading VSPL as a party (**Section 11 Application**).

After the appointment of the arbitrator, APPL filed its Statement of Claim (**SoC**) impleading the LLP and Krishnamoorthy as parties to the arbitration. The arbitral tribunal's jurisdiction was challenged as not being maintainable *qua* the LLP and Krishnamoorthy, as they were not made parties to the Section 21 Notice and the Section 11 Application.

The arbitrator held that service of the Section 21 Notice and impleadment in the Section 11 Application are mandatory requirements and rejected the impleadment of the LLP and Krishnamoorthy. This order was upheld by the High Court.

Aggrieved, APPL approached the Supreme Court.

### DECISION OF THE COURT

The Supreme Court held that while the service of a Section 21 Notice is a mandatory prerequisite to filing a Section 11 Application, non-service thereof does not denude the arbitral tribunal's jurisdiction to implead other persons who are parties to the arbitration agreement.

Similarly, given the Court's limited scope of examination while appointing an arbitral tribunal under Section 11 (the *prima facie* existence of an arbitration agreement), the jurisdiction of the arbitral tribunal to implead a party is not denuded, merely because it has not been referred to arbitration.

While impleading a person in an arbitration, the arbitral tribunal shall consider whether the person is a party to the arbitration agreement. The LLP and Krishnamoorthy, despite not being signatories, were held to be parties to the arbitration agreement, based on their conduct in pursuance of the LLP Agreement, and were thus impleaded in the arbitral proceedings.

# Redevelopment projects cannot be stalled on objections by minority members

## Elite Housing LLP v. Spectrum CHS Ltd

Bombay High Court | 2025 SCC OnLine Bom 1372

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In a significant ruling for Mumbai's redevelopment landscape, the Bombay High Court highlighted the importance of safeguarding redevelopment projects from being stalled by objections from minority members disguised as interim relief pleas. The decision highlights the Court's pragmatic approach in affirming that redevelopment projects cannot be derailed by minority dissenting members impugning the fairness of the terms of the Development Agreement (**Agreement**) or asserting intra-family title disputes, and emphasises the limited scope of Court interference while granting interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (**Act**). For developers and co-operative societies, this is a reassuring precedent: as long as majority consent is secured and statutory processes are followed, frivolous or isolated objections will not stall the project. It also reinforces that grievances concerning redevelopment terms must be addressed before the appropriate forums, not under the guise of interim relief.

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### SUMMARY OF FACTS

Elite Housing LLP (**Developer**) entered into a Development Agreement (**Agreement**) with Spectrum Co-operative Housing Society Ltd (**Society**) for the redevelopment of a residential property.

18 out of 20 members of the Society consented to vacate, while 2 flats remained occupied, resultantly stalling the redevelopment.

One flat owner raised objections to the Agreement, alleging inadequate security for the obligations of the Developer, unequal treatment of terrace rights, and absence of terms covering *force majeure*. However, these objections were not shared by the majority of the Society. The second flat was subject to an eviction dispute between the co-owners and was occupied by a family member who was not a titleholder but resisted vacating.

The Developer, who had paid hardship compensation to the consenting members of the Society and settled dues with the previous developer, approached the Bombay High Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief to enable possession and continuation of the project.

### DECISION OF THE COURT

Affirming the collective redevelopment will of the Society, the Bombay High Court held that individual objections to the terms of the Agreement, such as issues of fairness, security, or procedural lapses, should be resolved through designated regulatory or quasi-judicial authorities and cannot be allowed to derail the redevelopment.

Redevelopment was permitted to proceed independently of family or ownership disputes, with the Court isolating the Developer and the Society from such *inter se* issues.

The Court granted liberty to the Developer to approach the Court Receiver to execute agreements and take possession of the 2 disputed flats if they were not vacated within a reasonable period after issuance of the revised development approvals.

The Court directed that redevelopment proceeds, such as compensation, rent, and brokerage, be paid to the current occupants for cash flow management, without adjudicating ownership claims.

# Content containing fair criticism of judicial orders does not warrant censorship

## Wikimedia Foundation v. ANI Media Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 1075

In a timely reaffirmation of the fundamental right to freedom of speech and the role of public discourse in a democracy, the Supreme Court set aside an order directing a media platform to take down an opinion piece, which criticised a High Court order in a pending defamation suit. The decision rightly cautions Courts against overreach through contempt jurisdiction, especially where criticism is fair and rooted in public interest. This judgment sets a crucial precedent by establishing that mere discomfort with public commentary cannot justify censorship unless there is a demonstrable risk to justice. While the ruling offers protection to justified criticism and discourse, media actors and commentators should continue to ensure accuracy, avoid imputing motives to judges, and engage constructively. Corporates, particularly in sectors like digital platforms, pharmaceuticals, fintech, and environmental services, where business rights often encounter conservative judicial approach or evolving legal standards, can draw confidence from this judgment, as it affirms their right to offer fair, reasoned commentary on legal and regulatory issues – even in ongoing matters – without fear of undue legal repercussion.

### SUMMARY OF FACTS

ANI Media Pvt Ltd (ANI) filed a defamation suit before the Delhi High Court against Wikimedia Foundation Inc (WMF) for an article hosted on Wikipedia stating that ANI had been accused of serving as a propaganda tool for the Central Government.

The Court passed an order seeking details of the editors of the article, which was criticised on various media platforms, including in an opinion piece published in the Indian Express and on Wikipedia, as being violative of the freedom of speech and information that could allow powerful organisations to censor media they do not like.

In appeal against the said order, the Court took note of the opinion piece and directed WMF to take it down, as such comments amounted to interference in Court proceedings and bordered on contempt of Court.

Aggrieved, WMF approached the Supreme Court.

### DECISION OF THE COURT

The Supreme Court set aside the High Court's directive to take down the opinion piece, reiterating that fair criticism, even of judges, is permissible and does not amount to contempt, unless it scandalises or materially obstructs justice, such as by making unfounded allegations or imputing motives against the judge.

Postponement or restriction of publication can be ordered only if there's a real and substantial risk to the administration of justice.

The Court emphasised the importance of the right to freedom of speech and public debate, and observed that Courts should exercise restraint in invoking contempt jurisdiction and instead foster dignified tolerance, recognising that responsible public discourse, even on pending matters, along with dissent and media scrutiny, are vital safeguards for judicial accountability and the health of a constitutional democracy.

# A property holder is not required to seek cancellation of dubious transfer instruments to which he is not a party

## Hussain Ahmed Choudhury v. Habibur Rahman

Supreme Court of India | 2025 SCC OnLine SC 892

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In a welcome relief for landowners, heirs, and donees, the Supreme Court has clarified that *bona fide* property holders are not obligated to initiate cancellation proceedings against dubious instruments to which they are not parties. The judgment provides much-needed clarity to parties facing fraudulent or unauthorised claims on their property affirming that such documents, executed without title or authority, are treated as *void* and non-existent, and lifts an unnecessary procedural burden on genuine title-holders to formally invalidate such documents. The judgment serves as a strong precedent that possession, clarity of title, and proper documentation are sufficient grounds to assert ownership, even in the face of subsequent dubious transactions. For buyers, the ruling underscores the importance of exercising heightened diligence in verifying the title and legal capacity of sellers, since a sale deed executed by someone without ownership is treated as never having existed.

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### SUMMARY OF FACTS

Haji Abdul Aziz Choudhury transferred a piece of land to his grandson, Siraj, *vide* a gift deed.

Thereafter, Habibur, a third-party, allegedly purchased part of the land from certain relatives who had no title or saleable interest *vide* a sale deed.

Siraj filed a suit seeking a declaration of title and possession, which was decreed in his favour by the Trial Court and the First Appellate Court.

However, while upholding the gift deed's validity, the High Court dismissed the suit solely on the ground that Siraj had not sought cancellation of the alleged sale deed.

Aggrieved, Siraj approached the Supreme Court.

### DECISION OF THE COURT

The Supreme Court held that where the original title-holder is not a party to a subsequent transfer instrument and such instrument is executed by persons with no title, it is *void* and not binding on the original title-holder.

The original title-holder instituting the suit may treat a *void* deed as non-existent and is not required to seek cancellation. Only those bound by the instrument must seek cancellation.

The High Court's decision to reject the suit despite concurrent findings by the Lower Courts that the gift deed was valid, possession had been delivered, and the boundaries in the deed clearly identified the land, was unjustified.

Mere declaratory relief is not barred where no other consequential relief is required to make the declaratory relief fruitful. Cancellation of the sale deed was not necessary, as it was never operative against Siraj.

# Independent directors are not automatically liable in cheque dishonour cases

## KS Mehta v. Morgan Securities & Credits Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 492

This judgment is a welcome reaffirmation of the legal principle that vicarious liability under Section 141 of the Negotiable Instruments Act, 1881 (**NI Act**) cannot be mechanically extended to non-executive or independent directors, appointed often to enhance governance oversight without any executive authority or financial decision-making power in the company. The Court rightly emphasised the need for specific allegations showing active involvement in the conduct of business, preventing harassment of individuals whose role is limited to corporate governance and oversight. Companies should maintain clear documentation distinguishing executive and non-executive roles, and independent directors must avoid involvement in operational decisions beyond their mandate. The judgment offers much-needed clarity and will likely encourage competent professionals to continue serving as independent directors without undue legal exposure.

### SUMMARY OF FACTS

Blue Coast Hotels & Resorts Ltd (**BCHRL**) and Morgan Securities and Credits Pvt Ltd (**MSCPL**) entered into an Inter-Corporate Deposit Agreement (**ICDA**) involving a secured financial facility of INR 5 crore.

BCHRL issued 2 post-dated cheques of INR 50 lakh each, which were dishonoured due to insufficient funds.

Criminal proceedings under Section 138 of the NI Act were initiated against BCHRL and its directors, including its non-executive directors KS Mehta and Basant Kumar Goswami (**Appellants**).

The Appellants sought quashing of the criminal proceedings *qua* them as they were neither in attendance at the board meeting when the transaction was approved, nor were they signatories to the ICDA or any related financial instruments.

### DECISION OF THE COURT

The Supreme Court held that in cheque dishonour cases, vicarious criminal liability cannot be imposed on the independent and non-executive directors, unless there is any indication of direct involvement.

The Court quashed the criminal proceedings *qua* the Appellants basis the following findings:

- The Appellants had neither issued nor signed the cheques in question.
- The records of Corporate Governance Reports and Registrar of Companies consistently reflected their non-executive roles.
- The complaints lacked specific averments linking the Appellants to the financial transactions in question.
- Attendance at board meetings does not equate to control over financial operations.

The Court re-emphasised the principle that mere directorship does not create automatic liability, without specific allegations of active participation in the conduct of business at the relevant time, as held previously in *SMS Pharmaceuticals Ltd v. Neeta Bhalla*<sup>1</sup> and *National Small Industries Corporation Ltd v. Harmeet Singh Paintal*<sup>2</sup>.

<sup>1</sup> (2005) 8 SCC 89

<sup>2</sup> (2010) 3 SCC 330

# Disclosure

## Courts and sub-registrars are required to report claims made in legal documents of cash transactions of INR 2 lakh or more

### **RBANMS Educational Institution v. B Gunashekar**

Supreme Court of India | 2025 SCC OnLine SC 793

In a bid to curb unaccounted money, the Supreme Court issued directions to all Courts and registrars to intimate to the income tax authorities, any claims of cash transactions of INR 2 lakh and above as made in suits/pleadings and transfer instruments. The judgment has significant compliance implications for litigants and corporates in sectors where cash dealings are common – particularly real estate, education, healthcare, and construction. Parties should ensure adherence to statutory limits under Section 269ST of the Income Tax Act, 1961 (**Act**) by avoiding large cash transactions, and must proactively assess their transactional methods to remain fully compliant with reporting obligations. Importantly, any contravention of Section 269ST may attract a penalty under Section 271DA equal to the amount received in cash. Corporations and institutions should review their transaction practices, digitise payments, and maintain documentary trails to mitigate risk.

#### **SUMMARY OF FACTS**

RBANMS Educational Institution (**REI**) had been in possession of a property since 1905.

In 2018, the Respondents filed a suit seeking a permanent injunction against REI from alienating rights in the said property, relying on an agreement with a third-party to purchase the said property for INR 9 crore, in pursuance of which an advance of INR 75 lakh was paid in cash.

In addition to challenging the validity of the agreement, REI sought rejection of the suit on the ground that an agreement to sell in the absence of a sale deed did not create any right in the property in favour of the Respondents.

As REI's prayer was rejected by the Trial Court and the High Court, it approached the Supreme Court of India.

#### **DECISION OF THE COURT**

While proposing to deal with the issue in detail, the Supreme Court took note of the fact that a substantial sum of INR 75 lakh had been paid in cash under the sale agreement.

The Court observed that Section 269ST of the Act (prohibiting cash transactions of INR 2 lakh or more) was introduced to curb unaccounted money by digitalising significant cash transactions with the onus on the recipient to prove the source of such transactions.

Observing that such large cash transactions go unnoticed by the authorities on most occasions, the Court issued directions to all Courts and sub-registrars requiring them to intimate the jurisdictional income tax department of any claim made in a suit or transfer deed that an amount of INR 2 lakh or above has been paid in cash towards the transaction.



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