



Dispute Resolution & ADR

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- An individual consortium member can initiate arbitration

A promoter's undertaking to infuse funds to meet financial covenants does not amount to a corporate guarantee under the IBC

UV Asset Reconstruction Co Ltd v. Electrosteel Castings Ltd

Supreme Court of India | 2026 SCC OnLine SC 26

This judgment clearly delineates commercial support commitments from legally enforceable guarantees. Lenders should therefore avoid relying on broadly worded undertakings and must insist on clearly drafted guarantee documents if promoter liability is commercially important. The Court held that a promoter's undertaking to infuse funds to meet financial covenants does not amount to a corporate guarantee under Indian law. At the same time, the Court reaffirmed that the liability of a valid security provider or guarantor is not automatically extinguished merely because the borrower's resolution plan is approved. For investors and financial institutions, this means recovery assessments should consider that security may still be enforced against third parties even after the borrower's insolvency process is complete.

SUMMARY OF FACTS

Electrosteel Steels Ltd (ESL) availed financial assistance from SREI Infrastructure Finance Ltd, *vide* transaction documents providing for a demand promissory note and post-dated cheques as security.

Further, ESL's promoter, ECL, issued a Deed of Undertaking (DoU) to arrange for infusion of funds into ESL to enable compliance with the financial covenants, and subsequently created a mortgage over its land in Tamil Nadu in favour of SREI as security for ESL's borrowings.

In 2017, ESL was admitted into insolvency, which culminated in a resolution plan providing for part-payment of SREI's admitted claim in cash and balance converted into equity shares.

While SREI issued an unconditional 'no dues certificate' upon implementation of the plan, it subsequently claimed that it was allotted a reduced number of shares upon conversion of balance debt, and assigned the residual debt to UV Asset Reconstruction Company Ltd (UV ARC).

UV ARC initiated insolvency against ECL, claiming it was a guarantor of ESL and liable as a security provider.

The NCLT and NCLAT rejected UV ARC's claims, culminating in the present matter before the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that the DoU did not constitute a guarantee in favour of SREI.

For an obligation to be construed as a guarantee under Section 126 of the Contract Act, 1872, there must be a direct and unambiguous obligation of the surety to discharge the liability of the principal debtor to the creditor upon default.

The DoU contained a promise, not to the creditor to pay the debt upon default, but to the borrower to facilitate compliance with financial covenants. An undertaking to infuse funds into a borrower or ensure financial discipline, so that it may meet its obligations, cannot, by itself, be equated with the promise to discharge the borrower's liability to the creditor.

The Court reiterated that approval of a resolution plan does not *ipso facto* discharge a security provider of their liabilities under the contract of security, an obligation explicitly reserved under the approved plan in relation to the unsustainable debt. As such, the plan's approval did not result in extinguishment of the entire debt, so as to bar any claim against ECL as a security provider/third-party surety.

Earnest money cannot be forfeited where both parties are at fault

Subhash Aggarwal v. Mahender Pal Chhabra

Supreme Court of India | 2026 SCC OnLine SC 1

The Supreme Court has held that in cases where both parties have defaulted in complying with their respective contractual obligations and specific performance is not possible or equitable, earnest money paid by one party cannot be forfeited, as forfeiture would result in unjust enrichment. By directing restitution, the Court reinforced that contractual breaches should not confer an undue advantage on either party. While specific performance remains a discretionary remedy and may be denied where readiness is unproven, or delay is excessive, Courts will still seek to balance equities through fair monetary compensation. The decision underscores the importance of maintaining clear evidence of funding and compliance on critical dates and signals that Courts may favour monetary resolution over enforcement of stale contracts. From a risk perspective, parties should structure exit and refund mechanisms at the outset to minimise prolonged disputes and uncertainty.

SUMMARY OF FACTS

Subhash Aggarwal sought specific performance of an Agreement to Sell dated January 22, 2008, with Mahender Pal Chhabra for a Delhi property worth INR 6.11 crore.

Subhash paid INR 60 lakh as earnest money and INR 30 lakh as part payment, and was required to pay the balance by May 10, 2008.

Disagreements arose between the parties, and Subhash filed a suit for specific performance of the Agreement, which was decreed in his favour by the Trial Court.

The High Court reversed the order, holding that:

- Subhash failed to prove readiness and willingness to perform his contractual obligation as required under Section 16 of the Specific Relief Act, 1963.
- Mahender Pal could forfeit INR 60 lakh, but must refund INR 30 lakh with interest.

Aggrieved, Subhash appealed to the Supreme Court.

DECISION OF THE COURT

The Supreme Court upheld the High Court's finding denying specific performance, observing that:

- Subhash had failed to prove financial capacity to pay the balance INR 5.21 crore on the due date.
- He had not appeared before the Sub-Registrar on the stipulated date.
- After 17 years, enforcing the Agreement would be inequitable.

However, Mahender was prohibited from forfeiting the earnest money of INR 60 lakh, noting that he had also breached his contractual obligations as he had failed to obtain mutation and conversion from leasehold to freehold. Where both parties are at fault, equity demands restitution of the parties to their original position as far as possible. Forfeiture of earnest money would cause unjust enrichment to Mahender and was therefore not permissible.

The Court directed Mahender to pay a cumulative sum of INR 3 crore to Subhash and closed the litigation.



Leave and licensing disputes may be referred to arbitration

Motilal Oswal Financial Services Ltd v. Santosh Cordeiro

Supreme Court of India | 2026 SCC OnLine SC 6

The Supreme Court has held that disputes under Leave and License Agreements involving post-termination monetary claims can proceed to arbitration despite provisions for jurisdiction of Special Courts, such as under Section 41 of the Presidency Small Cause Courts Act, 1882 (1882 Act). The ruling significantly strengthens the enforceability of arbitration clauses in commercial real estate arrangements. For businesses, it reduces the risk of counterparties blocking arbitration by invoking special statutes or jurisdictional technicalities. The Court's emphasis on minimal judicial interference at the appointment stage provides greater certainty and efficiency in dispute resolution, highlighting the primacy of arbitration even in regulated sectors like real estate. Clients should ensure that arbitration clauses are clearly drafted and anticipate that jurisdictional objections will likely be decided by arbitral tribunals, not Courts.

SUMMARY OF FACTS

In 2017, MOFSL entered into a Leave and License Agreement ([Agreement](#)) for a period of 60 months with Santosh Cordeiro, subsequently extended to 96 months with a lock-in period of 72 months.

Citing *force majeure* during COVID-19, MOFSL terminated the Agreement in 2020, returned possession, and sought a refund of the security deposit.

Santosh sought payment of arrears of license fee for the balance lock-in period of 3 years and was eventually constrained to invoke arbitration under Clause 33 of the Agreement.

MOFSL objected to the arbitration claiming exclusive jurisdiction of the Small Causes Court for licensor-licensee disputes in Greater Bombay relating to recovery of possession or license fee/rent. Reliance was placed on [Central Warehousing](#)³, where the Supreme Court held that Section 41 of the 1882 Act, introduced to prevent multiplicity of proceedings, was covered by the exception to the applicability of the Arbitration and Conciliation Act, 1996 ([1996 Act](#)) under Section 2(3), rendering such arbitration clauses invalid and inoperative as it would violate public policy to allow parties to contract out of the exclusive jurisdiction of Small Causes Courts under the 1882 Act.

DECISION OF THE COURT

The Supreme Court distinguished [Central Warehousing](#), noting that while it involved the issue of subsistence of the licence agreement and possession, the present dispute concerned only a purely monetary claim arising after termination.

Further, the statutory conferment of jurisdiction on a specific Court or the creation of a public forum, though eminently significant factors, may not be enough to accept the inference of implicit non-arbitrability. Section 41 of the 1882 Act, conferring jurisdiction on the Small Causes Court for certain types of disputes, cannot be interpreted to mean that it neutralises arbitration clauses in agreements.

The Court held that Section 11(6A) of the 1996 Act confines the appointing Court to a *prima facie* examination of the existence of an arbitration agreement, not a detailed enquiry into validity, arbitrability, or special-statute bars; those issues are determined by the arbitrator under Section 16 and by the Court post-award under Section 34 of the 1996 Act.

An examination under Section 11(6A) of the 1996 Act indicated the existence of an arbitration agreement between the parties. Whether the nature of the claim is in the form of debt or pertains to a matter covered by Section 41(1) of the 1882 Act would be decided by the arbitral tribunal.

³ Central Warehousing Corporation, Mumbai v. Fortpoint Automotive Pvt Ltd, Mumbai, 2009 SCC OnLine Bom 2023

Confidentiality, non-compete, intellectual property, and other similar claims under an employment agreement will proceed under the Commercial Courts Act, 2015

ARM Digital Media Pvt Ltd v. Ritesh Singh

Delhi High Court | Civil Suit (OS) No. 896 of 2024

The Delhi High Court has clarified the boundaries of 'commercial dispute' under the Commercial Courts Act, 2015 (Act) by excluding employment disputes. By reinforcing that jurisdiction depends on the nature of the relationship, not the sophistication of the contract or the employer's corporate profile, the ruling curbs forum-shopping as litigants can no longer assume that employment-linked disputes, including those involving senior executives, directors, or founders, will qualify as commercial disputes. As a result, even claims relating to confidentiality, non-compete, and intellectual property will proceed before ordinary Civil Courts, with different procedures, longer timelines, and without mandatory pre-institution mediation under Section 12A of the Act. This clarification would require companies to recalibrate enforcement strategies and contract drafting, particularly where senior management arrangements are embedded in shareholder or investment structures. Some nuance may nonetheless remain in cases involving remuneration or monetary claims arising from retainership-style relationships prevalent in India.

SUMMARY OF FACTS

ARM Digital Media Pvt Ltd sued its former Managing Director, Ritesh Singh, before the Delhi High Court for breaching his employment obligations by joining a competing business and misusing confidential information.

Ritesh sought rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), arguing that the dispute should lie before the Commercial Court since the employment contract formed part of a larger shareholders' arrangement.

DECISION OF THE COURT

The Delhi High Court rejected Ritesh's contention that the dispute fell within the jurisdiction of the Commercial Court.

The Act covers matters arising out of commercial documents, joint ventures, business cooperation, mercantile transactions, trade, and financial arrangements. It cannot include every agreement touching upon a company or its internal governance, but must relate to a relationship that is primarily commercial in character.

The inquiry must focus on whether the relationship at issue arises from a commercial or business-oriented engagement, rather than merely from the fact that one of the parties is a commercial entity.

While assessing employment contracts, the presence of business-related clauses, such as remuneration, confidentiality, intellectual property assignment, noncompete obligations, and termination, does not alter the essential nature of an employment relationship, which is governed by duties of fidelity, control, and personal service, into a commercial arrangement.

In *Elior India*⁴, a case involving a monetary claim under a long-term incentive plan containing detailed terms and performance-linked conditions, the Karnataka High Court observed that the dispute remained a money claim rooted in an employer-employee relationship and could not be characterised as a commercial dispute, as the incentive plan was inseparably grounded in the underlying contract of employment.

Citing more cases entailing rejection of such recharacterisation, the Delhi High Court held that any dispute relating to an employment agreement could not be treated to be a commercial dispute under the Act, which was designed to streamline the adjudication of genuine mercantile and business transactions.

⁴ Sanjay Kumar v. Elior India, Writ Petition No. 2584 of 2023

An individual consortium member can initiate arbitration

Andhra Pradesh Power Generation Co Ltd v. TECPRO Systems Ltd

Supreme Court of India | 2025 SCC OnLine SC 2851



The Supreme Court has permitted a consortium member to invoke arbitration and secure the appointment of an arbitral tribunal for disputes arising under a contract between the consortium and the counterparty. Whether such an invocation, without consent or representation from other consortium members, is valid or not remains a case-by-case question for the arbitral tribunal, determined by the terms of the principal contract and consortium agreement. This ruling upholds the core principle of arbitral competence-competence while further narrowing the referral Court's role under Section 11 of the Arbitration and Conciliation Act, 1996 (Act). Parties should proactively negotiate and stipulate member-consent thresholds, along with any exceptions, to minimise multifarious disputes.

SUMMARY OF FACTS

Andhra Pradesh Power Generation Co Ltd (GENCO) floated a tender for an Engineering, Procurement, and Construction (EPC) contract for the Rayalaseema Thermal Power Plant, governed by tender conditions containing an arbitration clause.

A consortium, constituted solely for the tender, emerged as the successful bidder. During execution, the original lead member suffered financial distress, resulting in the takeover of its scope by another consortium member and a change in lead membership.

Disputes arose between GENCO and the original lead member regarding project delays and alleged breaches, with the latter raising substantial monetary claims and unilaterally invoking arbitration.

Upon GENCO's non-response, the original lead member approached the Telangana High Court seeking appointment of the arbitral tribunal, which was allowed by the High Court despite objections that a single consortium member lacked authority to invoke arbitration under an agreement between GENCO and the consortium as a whole. This led to the present appeal before the Supreme Court.

DECISION OF THE COURT

The Supreme Court observed that whether a consortium member can invoke arbitration individually depends on the terms of the principal contract and the consortium agreement.

Objections to a consortium member invoking arbitration cannot be conclusively decided at the Section 11 stage. The referral Court, which must refrain from undertaking a detailed factual or evidentiary enquiry, is only required to form a *prima facie* view on the existence of an arbitration agreement. Questions relating to jurisdiction, validity, and applicability are reserved for determination by the arbitral tribunal under Section 16 of the Act.

Since the High Court was *prima facie* satisfied as to the existence of an arbitration agreement, its decision to constitute the arbitral tribunal did not warrant interference, and all objections regarding unilateral invocation and maintainability were left open to be decided by the arbitral tribunal.

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