

Dispute Resolution & ADR

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- Continuing infringement involving irreparable injury may fulfil the urgency test for exemption from pre-suit mediation
- Interpretation of a similar clause in a prior proceeding is not a ground for disqualification of an arbitrator
- Cumulative Redeemable Preference Shareholders cannot initiate insolvency
- Landowners cannot reopen an unchallenged acquisition claiming parity to relief received by other litigants
- Demurrer involves a temporary assumption of facts and does not preclude the right to challenge the facts during trial
- Speculative investors can participate in but cannot initiate CIRP

TABLE OF CONTENTS

- **Novenco Building & Industry v. Xero Energy Engineering Solutions Pvt Ltd**
Continuing infringement involving irreparable injury may fulfil the urgency test for exemption from pre-suit mediation
- **Steel Authority of India Ltd v. British Marine LLC**
Interpretation of a similar clause in a prior proceeding is not a ground for disqualification of an arbitrator
- **EPC Constructions India v. Matix Fertilizers and Chemicals Ltd**
Cumulative Redeemable Preference Shareholders cannot initiate insolvency
- **State of West Bengal v. Santi Ceramics Pvt Ltd**
Landowners cannot reopen an unchallenged acquisition claiming parity to relief received by other litigants
- **Urban Infrastructure Real Estate Fund v. Neelkanth Realty Pvt Ltd**
Demurrer involves a temporary assumption of facts and does not preclude the right to challenge the facts during trial
- **Mansi Brar Fernandes v. Shubha Sharma**
Speculative investors can participate in but cannot initiate CIRP

Continuing infringement involving irreparable injury may fulfil the urgency test for exemption from pre-suit mediation

Novenco Building & Industry v. Xero Energy Engineering Solutions Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 2278

The Supreme Court's recent clarification on the approach to determining 'urgency' to seek exemption from the mandatory pre-suit mediation in cases involving continuing Intellectual Property Right (IPR) infringement is likely to provide significant relief for intellectual property holders. Genuine cases of ongoing infringement, which expose rights holders to fresh wrongs and irreparable injury each day, cannot be defeated by procedural technicalities or delays construed rigidly. Further, the focus on viewing the urgency from the IPR-holder's standpoint ensures that legitimate rights holders are not left without remedy due to the requirement of mediation, particularly where mediation could cause unconscionable delays and further injury. However, it remains ever important for IPR-holders to substantiate the continuing nature of infringement, demonstrate irreparable harm, and establish the immediacy of the relief sought in their pleadings. This development sets an important precedent and will benefit clients facing protracted or ongoing IPR violations by ensuring that statutory mediation does not become an inadvertent shield for infringers or a bar to immediate judicial protection. As such, it balances the objective of alternative dispute resolution with the imperative of judicial protection in deserving cases.

SUMMARY OF FACTS

Novenco Building & Industry (NBI), a Danish manufacturer of industrial fans branded as 'Novenco ZerAx', alleged that Xero Energy Engineering Solutions Pvt Ltd and Aeronaut Fans Industry Pvt Ltd, previously associated with NBI, were manufacturing and selling fans identical to its products, thereby infringing its patents, designs, and trademarks.

NBI discovered the infringement in December 2023, collected expert evidence, and in June 2024, filed a suit before the Delhi High Court along with applications seeking an *ad interim* injunction and exemption from pre-suit mediation, which is mandatory under Section 12A of the Commercial Courts Act, 2015 (Act).

The Delhi High Court dismissed the suit as it did not demonstrate *bona fide* urgency to bypass pre-institution mediation, citing the delay between discovery and filing as defeating the claim of urgency. A Division Bench of the Delhi High Court affirmed this decision.

Aggrieved, NBI approached the Supreme Court of India.

DECISION OF THE COURT

Relying on its previous decisions¹, including *Yamini Manohar v. TKD Keerthi*² (argued by F&M), the Supreme Court allowed the appeal and restored the suit, fundamentally clarifying the test for determining urgency under the Act:

- **Continuing infringement constitutes ongoing harm:** Each infringing act is a fresh wrong causing continuous and irreparable injury to the intellectual property holder. As such, mere delay between discovery and filing does not in itself negate urgency for interim relief.
- **Plaintiff's perspective is central:** The test for urgency must be applied from the standpoint of the plaintiff. If the pleadings and supporting documents, on a *prima facie* reading, genuinely seek immediate judicial intervention to prevent ongoing harm, urgency can be recognised and pre-suit mediation exempted.
- **Purpose of Section 12A:** While the intent of Section 12A of the Act is to promote mediation and decongest Courts, it must not become an obstacle to judicial protection in cases involving genuine ongoing harm. The legislative intent is not to shield infringing acts from judicial scrutiny merely due to a procedural requirement.
- **No detailed inquiry on merits:** The Courts, at the threshold stage, should not conduct an in-depth examination on merits. The plausibility of urgency, evidenced by continuing infringement and risk of irreparable harm, is sufficient to bypass the mediation mandate.

The Supreme Court found that the Delhi High Court's restrictive approach, equating mere lapse of time with want of urgency, was incorrect and deprived the intellectual property holder of protection against continuing violation. Accordingly, the matter is remanded for consideration of interim relief on the merits.

¹ Patil Automation Pvt Ltd v. Rakheja Engineers Pvt Ltd, (2022) 10 SCC 1; Dhanbad Fuels Pvt Ltd v. Union of India, 2025 SCC OnLine SC 1129
² (2024) 5 SCC 815

Interpretation of a similar clause in a prior proceeding is not a ground for disqualification of an arbitrator

Steel Authority of India Ltd v. British Marine LLC

Delhi High Court | Original Miscellaneous Petition (Commercial) No. 20 of 2023



The ruling by Delhi High Court – prior interpretation of a similar clause cannot, by itself, disqualify an arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996 (Act) – reinforces a pragmatic balance between impartiality and domain expertise, rejecting theoretical apprehensions of bias. It affirms that issue conflict should be narrowly construed, and bias must be demonstrable, not presumed from prior experience. The judgment aligns with global arbitral standards that treat issue conflict as a narrow exception, not a broad disqualification tool. In practice, arbitrators with domain expertise often adjudicate similar issues across contracts within an industry. To hold that prior decision automatically implies bias would discourage qualified professionals from accepting appointments and significantly impair arbitral efficiency, particularly in cases of infrastructure projects and government contracts. By recognising that repeat appointments in similar subject areas are often inevitable, the Court ensures that expertise remains an asset and not a liability in arbitration.

SUMMARY OF FACTS

Disputes arose under a Contract of Affreightment between Steel Authority of India Ltd (SAIL) and British Marine PLC and were referred to arbitration under the Maritime Arbitration Rules of the Indian Council of Arbitration (ICA).

During the proceedings, SAIL objected to the appointment of 2 out of 3 arbitrators on the ground that both individuals had previously served as arbitrators in another arbitration involving SAIL, where the tribunal had interpreted Clause 62 of a similar Charterparty Agreement.

SAIL argued that since the present arbitration also involved the interpretation of a similar clause, the earlier award reflected a pre-existing opinion, thereby giving rise to 'issue conflict' and creating justifiable doubts regarding the arbitrators' independence and impartiality under Section 12(1) read with Entry 24 of the Fifth Schedule of the Act.

The ICA and the arbitral tribunal rejected SAIL's challenge, and the final award in favour of British Marine was challenged by SAIL before the Delhi High Court.

DECISION OF THE COURT

The Delhi High Court dismissed SAIL's petition, holding that mere participation of an arbitrator in a prior arbitration involving the interpretation of a similar clause does not amount to disqualification or bias. 'Issue conflict' must be established on objective grounds showing a real likelihood of prejudgment and not inferred merely from a previous experience or opinions rendered by the arbitrator.

The Court referred to international jurisprudence, including *CC/Devas (Mauritius) Ltd v. Republic of India*³ and *Caratube International Oil Co LLP v. Republic of Kazakhstan*,⁴ to explain that issue conflict arises only when an arbitrator's prior involvement demonstrates closed-mindedness or pre-judgment on materially identical issues. This must be assessed on a case-by-case basis.

Applying this test, the Court found no evidence suggesting that 2 of the arbitrators had prejudged the issues or were incapable of approaching the dispute with an open mind. Their prior interpretation of Clause 62 was merely an application of contractual principles in another context. The mere fact that the clause under consideration was similar did not automatically mean the issues were identical or that the arbitrators were biased.

Arbitration, especially in specialised sectors such as maritime law, involves a limited pool of qualified arbitrators. Treating prior service in similar disputes as grounds for automatic disqualification would undermine the efficiency and expertise that commercial arbitration demands.

³ Permanent Court of Arbitration Case No. 2013/09

⁴ International Centre for Settlement of Investment Disputes Case No. ARB/13/13

Cumulative Redeemable Preference Shareholders cannot initiate insolvency

EPC Constructions India Ltd v. Matix Fertilizers and Chemicals Ltd

Supreme Court of India | 2025 SCC OnLine SC 2293

The Supreme Court decision – holders of Cumulative Redeemable Preference Shares (CRPS) are not financial creditors under the Insolvency and Bankruptcy Code, 2016 (Code) – adopts a strict statutory lens, reaffirming that CRPS constitute share capital, not debt, regardless of the commercial intent behind their issuance. By prioritising the legal form over economic substance, the Court underscores that once receivables are voluntarily converted into CRPS, the holder’s rights are confined to those under the Companies Act, 2013, and not the Code. This judgment draws a clear boundary between equity and debt, preserving the Code’s integrity against hybrid interpretations.

Companies and investors should carefully structure financial instruments to reflect their intended legal consequences – if debt-like enforceability, including remedies under the Code, is desired, the arrangement must clearly qualify as a financial debt involving disbursal against consideration for the time value of money.

SUMMARY OF FACTS

In an engineering, procurement, and construction contract between EPC Constructions India Ltd (EPCC) and Matix Fertilizers and Chemicals Ltd (Matix), EPCC had substantial receivables outstanding from Matix.

At Matix’s request, a portion of the said receivables was converted into CRPS redeemable at par after 3 years, carrying a dividend at 8% for each year. Accordingly, Matix allotted CRPS of INR 250 crore to EPCC.

Before the lapse of 3 years, when the CRPS would become redeemable, EPCC was admitted into insolvency, and the Resolution Professional (RP) issued a demand notice to Matix calling upon the payment of all outstanding amounts, including the amount due and payable upon redemption of CRPS.

Owing to non-payment against the CRPS, EPCC, through its Liquidator, filed an application seeking initiation of insolvency against Matix, which was dismissed by the National Company Law Tribunal, Mumbai (NCLT) and the National Company Law Appellate Tribunal, New Delhi (NCLAT). Accordingly, EPCC approached the Supreme Court, contending that the underlying intent behind the issuance of CRPS indicates that the said amount is in the nature of a financial debt.

DECISION OF THE COURT

The Court accepted Matix’s argument that EPCC’s acceptance of the offer to convert the outstanding amount to CRPS amounted to EPCC becoming an investor by virtue of being a preference shareholder and not a creditor of Matix. CRPS issued to EPCC are part of Matix’s share capital and not a loan, and therefore the paid-up preference shares do not constitute a debt.

Preference shares carry dividend rights only when the company has sufficient profits. Under Section 55 of the Companies Act, 2013, they cannot be redeemed using the company’s capital. Redemption must be made either from profits available for dividends or from the proceeds of a new share issue made specifically for that purpose. Accordingly, non-redemption does not automatically convert a preference shareholder into a creditor.

For the purposes of the Code, a financial debt requires a disbursal against consideration for the time value of money. The mere allotment of redeemable preference shares, even if cumulative, does not satisfy this essential element.

As such, EPCC continued only as a preference shareholder and not as a financial creditor and accordingly, no default under Section 3(12) of the Code.



Landowners cannot reopen an unchallenged acquisition claiming parity to relief received by other litigants

State of West Bengal v. Santi Ceramics Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 2220

The Supreme Court reaffirmation that its landmark 2016 decision in *Kedar Nath Yadav*⁵ was a class-specific remedy confined to vulnerable cultivators whose objections under Section 5-A of the Land Acquisition Act, 1894 (Act) were summarily dismissed provides significant clarity on the disposal of land acquisition claims based on parity. It cannot be invoked as a blanket precedent for commercial entities or industrial landowners that consciously accepted acquisition and compensation. The judgment reiterates 2 critical principles: first, social justice-driven reliefs cannot be extended to financially capable parties under the guise of parity; and second, acquisition proceedings that have attained legal finality cannot be reopened merely because of later favourable outcomes for others. The decision thus draws a clear boundary around the doctrine of parity, curtails ‘free-rider’/opportunistic claims, and restores certainty to land acquisition processes. It reinforces finality in government and industrial projects, ensuring that once compensation is accepted, infrastructure development and public-private investments are not jeopardised by retrospective challenges.

SUMMARY OF FACTS

In 2006, over 1000 acres of land were acquired in Singur for the Tata Motors Nano project. This included land owned by Santi Ceramics Pvt Ltd as well as by farmers and cultivators.

While Santi Ceramics filed objections under Section 5-A of the Act (which were rejected), it accepted the subsequent award passed by the Land Acquisition Collector for INR 14.54 crore without protest or challenge. As such, possession was taken and handed over to Tata Motors.

Farmers, however, pursued litigation, which culminated in the Supreme Court’s 2016 judgment in *Kedar Nath Yadav*, *vide* which the acquisition proceedings were quashed for violating Section 5-A of the Act and the Court directed restoration to the original landowners/cultivators.

Only after this judgment did Santi Ceramics seek restoration of its erstwhile land on parity grounds. The Calcutta High Court allowed their plea and ordered restoration of the land and structures, leading to the State’s appeal before the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court held that *Kedar Nath Yadav* was a class-specific remedy focused on vulnerable cultivators who faced displacement without the capacity to pursue litigation. Industrial entities do not fall within this protective framework.

The Court reaffirmed that quashing of an acquisition based on a vitiated Section 5-A inquiry operates *in personam* for those who actually contested the acquisition. Non-objectors and passive parties cannot claim benefits based on parity.

Acceptance of compensation, failure to challenge the acquisition for 10 years, and the intervening changes in land use created finality that could not be disturbed. Belated claims after favourable judgments constitute ‘passive opportunism’, which is something the Courts cannot endorse.

Restoration was therefore denied. However, Santi Ceramics was permitted to remove remaining structures or seek auction of its plant and machinery.

⁵ Kedar Nath Yadav v. State of West Bengal, (2017) 11 SCC 601

Demurrer involves a temporary assumption of facts and does not preclude the right to challenge the facts during trial

Urban Infrastructure Real Estate Fund v. Neelkanth Realty Pvt Ltd

Supreme Court of India | Special Leave Petition (Civil) No. 26660 of 2025

The Supreme Court decision clarifying the limited scope of the plea of demurrer (a legal objection assuming the truth of the opponent's pleaded facts but challenging that they are insufficient in law to sustain the claim, without weighing evidence), holding that it can be invoked only on pure questions of law apparent from the pleadings and not on issues requiring factual determination, is a landmark judgement shaping procedural law. The decision restores the balance between judicial efficiency and fairness, ensuring that Courts do not prematurely dismiss suits involving factual disputes under the guise of legal objections. While such procedural tools are essential to filter legally unsustainable claims, they cannot substitute a full trial where facts are contested. As such, efficiency must always operate within the bounds of natural justice. Further, in the context of arbitration, the Court clarified that party autonomy under Section 19(2) of the Arbitration and Conciliation Act, 1996, cannot override the mandatory fairness requirement under Section 18, which guarantees equal treatment and a fair opportunity to present one's case.

SUMMARY OF FACTS

To fund the development of a large integrated township and resort project in Pune, Maharashtra, Neelkanth Realty Pvt Ltd (**Neelkanth**) and Urban Infrastructure Real Estate Fund (**UIREF**) entered into a Share Subscription Agreement (**SSA**) containing an arbitration clause.

Disputes arose, and UIREF invoked arbitration. Neelkanth challenged the claims on the grounds of limitation and urged the arbitral tribunal to decide it as a preliminary issue.

The tribunal cautioned that if the said issue was to be decided preliminarily, it would be decided on the basis of a demurrer and Neelkanth would be barred from contesting or leading evidence against any fact in UIREF's pleadings, and to reargue it subsequently.

Neelkanth's counsel accepted proceeding on the basis of demurrer. The tribunal decided the issue in favour of UIREF and passed an interim award.

Aggrieved by the bar on contesting the facts on the point of limitation, Neelkanth approached the Bombay High Court, which modified the interim award, allowing Neelkanth to lead evidence on the point of limitation.

This order was challenged by UIREF before the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court held that a plea of demurrer is confined to testing the legal sufficiency of the plaint, assuming (without admitting) all facts stated therein to be true.

It clarified that:

- A demurrer cannot extend to factual or mixed questions, such as limitation, where determining the starting point requires evidence.
- Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (providing for rejection of a plaint at the preliminary stage) operates on the same principle – rejection of a plaint is permissible only when the bar of law is apparent on the face of the plaint.
- If a demurrer fails, the defendant is not precluded from later contesting those facts during trial; the assumption of truth is only temporary for the purpose of testing legal maintainability.
- Limitation may be decided at the threshold only if it is purely a question of law; otherwise, it must proceed to trial.
- Demurrer is a procedural safeguard and not a substitute for trial. Party autonomy in arbitration cannot justify a procedure that denies a party a fair chance to lead evidence.

Ultimately, the Supreme Court emphasised that procedural tools must aid, not obstruct, justice. It warned against the growing misuse of demurrer pleas to delay or defeat genuine claims, reiterating that efficiency cannot come at the cost of fairness, evidence, or natural justice.

Speculative investors can participate in but cannot initiate CIRP

Mansi Brar Fernandes v. Shubha Sharma

Supreme Court of India | Civil Appeal No. 3826 of 2020

The Supreme Court's ruling – whereas speculative investors cannot initiate insolvency, they are not barred from filing their claims in case insolvency proceedings are initiated otherwise – draws a decisive line between genuine homebuyers and speculative investors, ensuring that the Code is not reduced to a mere recovery mechanism for profit-seeking individuals. The Court's reasoning reflects a deeper judicial concern about the increasing trend of invoking insolvency proceedings as a coercive recovery tool, particularly in the real estate sector. It underscores that intent and conduct must govern the determination of whether an allottee qualifies as a financial creditor. The presence of buy-back clauses, assured returns, or multiple allotments are clear indicators of speculative intent, which falls outside the legislative intent of Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016 (Code) (financial creditor). Further, by affirming the State's duty to protect bona fide homebuyers and ensuring institutional efficiency through directions to strengthen the infrastructure of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), the judgment extends beyond mere statutory interpretation – it positions housing not as a speculative commodity, but as a constitutional entitlement.

SUMMARY OF FACTS

For the purchase of 4 flats in the project 'Gayatri Life' at Greater Noida, Mansi Brar Fernandes and Gayatri Infra Planner Pvt Ltd entered into a Memorandum of Understanding (MoU), containing a clause that allowed the developer to buy back the units for INR 1 crore within a year. Mansi paid INR 35 lakh as part consideration under the MoU.

When the developer failed to either repurchase the units or deliver possession, and the post-dated cheques were dishonoured, Mansi filed a petition under Section 7 of the Code, seeking to initiate insolvency as a financial creditor.

While the NCLT admitted the petition, the NCLAT reversed the order in appeal, holding that Mansi was not a genuine homebuyer but a speculative investor, as the arrangement was structured purely for financial gain.

A similar controversy had arisen in *Sunita Agarwal v. Antriksh Infratech Pvt Ltd*, where the buyer had invested INR 25 lakhs with a promise of 25% annual returns under a 'buy-back plan'. The NCLAT had held that this was also speculative in nature.

In both matters, the buyers approached the Supreme Court, arguing that the existence of a buy-back clause should not exclude them from the definition of financial creditors under the Code, and that they intended to take possession of the property.

DECISION OF THE COURT

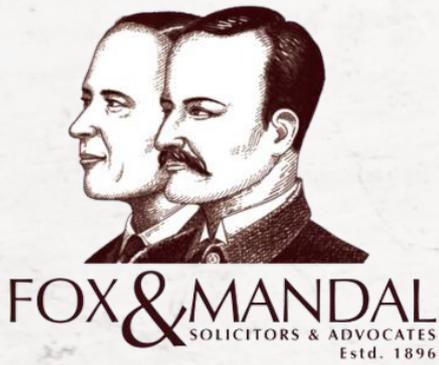
The Supreme Court dismissed the appeals, affirming the NCLAT's view that both buyers were speculative investors, and therefore not entitled to initiate proceedings under Section 7 of the Code.

The intent of the parties is central to determining whether an allottee qualifies as a genuine homebuyer or a speculative investor. Indicators such as the inclusion of buy-back clauses, assured returns, or unusually high interest components reveal investment intent rather than a genuine desire for possession: possession remains the *sine qua non* (essential condition) of a true homebuyer's intent.

In both cases, the agreements offered disproportionate returns – INR 1 crore on INR 35 lakh in one instance, and 25% interest per annum in the other – without any real commitment to occupy the flats. Such arrangements amounted to financial speculation, not genuine homebuying, and allowing such claims would distort the insolvency regime.

Importantly, the Court reaffirmed that the right to housing is an integral part of Article 21, imposing a constitutional obligation on the State to ensure that homebuyers receive timely possession. It urged the Government to strengthen real estate regulatory mechanisms and directed that vacancies in NCLT/NCLAT be filled expeditiously, and that dedicated insolvency benches be constituted in the NCLT to address the growing volume of cases.

Concluding that speculative misuse of the Code undermines its objective of resolution and revival, the Court upheld the NCLAT's orders while granting liberty to the purchasers to pursue alternative remedies under RERA, consumer law, or civil proceedings, or to file their claims with the resolution professional in case CIRP is otherwise initiated.



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