



# Dispute Resolution & ADR

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- 3-fold test to determine which procedural orders can be challenged under Section 34 of the Arbitration and Conciliation Act, 1996
- Telecom spectrum cannot form part of an insolvency estate
- Simultaneous insolvency proceedings against the borrower and the guarantor are permissible
- Landowner is not liable for construction delays caused by the developer
- The State cannot rely on restrictive contractual covenants to deny regularisation to long-serving contractual staff
- NCLT cannot review *benami* property attachment orders

# 3-fold test to determine which procedural orders can be challenged under Section 34 of the Arbitration and Conciliation Act, 1996

## HS Nag v. Asian Hotels (North) Ltd

Delhi High Court | OMP (Commercial) No. 449 of 2025

The Delhi High Court has clarified that procedural orders passed during arbitration, such as the rejection of an amendment to the pleadings, do not constitute an ‘interim award’ that is challengeable under Section 34 of the Arbitration and Conciliation Act, 1996 (Act), unless they conclusively determine a substantive issue in dispute. By articulating a clear 3-fold test for identifying an ‘interim award’, the judgment provides clarity on the scope of challenge to an arbitral tribunal’s directions.

The ruling underscores that judicial review of interim awards is narrowly confined to decisions that finally determine substantive rights, thereby strengthening the procedural autonomy of arbitral tribunals, reducing tactical litigation that can delay the arbitral process, and reinforcing the legislative objective of minimal judicial intervention. Practically, the decision signals that parties must exercise procedural diligence and strategic consistency during arbitral proceedings, particularly when making or withdrawing applications such as amendments to pleadings. Once a party elects to proceed on the basis of existing pleadings, Courts are unlikely to permit later challenges to the tribunal’s procedural discretion.

### SUMMARY OF FACTS

In a dispute arising out of a commercial arrangement concerning retail/shop spaces located in a hotel property owned by Asian Hotels (North) Ltd ([Asian Hotels](#)), arbitration was initiated by 25 claimants who alleged that they had been wrongfully deprived of the use and enjoyment of the subject commercial units. For the purposes of the arbitral proceedings, the claimants were divided into Batches A, B, and C, based on the reliefs sought.

During the proceedings, Batches A and C sought to amend their pleadings, i.e. the Statements of Claim (SOCs), while Batch B informed the arbitral tribunal that they wished to proceed on the basis of their existing pleadings. The tribunal accordingly allowed the amendments sought by the Batches A and C, while Batch B continued with its original pleadings.

With the completion of pleadings, the tribunal framed the issues (points of determination) and directed the parties to proceed with evidence.

Thereafter, Batch B filed a fresh application seeking an amendment of their SOC. This was rejected by the tribunal, noting that Batch B had earlier consciously elected not to amend their pleadings and that the request was belated in view of the stage of the proceedings and the statutory timelines under Section 29A of the Act.

Aggrieved, Batch B approached the Delhi High Court under Section 34 of the Act, challenging the tribunal’s orders. Asian Hotels raised a preliminary objection to maintainability, contending that the impugned orders were procedural in nature and did not constitute a final or an interim award amenable to challenge under Section 34.

### DECISION OF THE COURT

The Delhi High Court dismissed the petitions as not maintainable under Section 34 of the Act. At the outset, the Court reiterated that Section 34 permits challenges only to an ‘arbitral award’, including an ‘interim award’. Not every order passed during arbitral proceedings qualifies as an interim award capable of challenge.

The Court laid down a 3-fold test to determine when an order may qualify as an interim award:

- If it finally adjudicates a substantive dispute between the parties.
- If it attains finality and becomes binding on that issue.
- If it renders the arbitral tribunal *functus officio* in respect of that issue, leaving no further adjudicatory discretion.

If all these conditions are satisfied, the order transcends the realm of a procedural direction and assumes the character of an interim award, thereby becoming amenable to challenge under Section 34.

Applying this test to the facts, the Court observed that the arbitral tribunal had merely rejected an application seeking amendment of pleadings, preserving them in their existing form. This did not involve adjudication of any substantive dispute and/or determination of the merits of any claim. In fact, the points of determination framed by the tribunal expressly left open the questions of entitlement, quantum, rate and period of compensation, all of which were to be decided on the basis of evidence during the arbitration.

Distinguishing precedents where rejection of amendments had effectively foreclosed substantive claims, the Court concluded that the impugned orders were purely procedural directions regulating the conduct of the arbitral proceedings. Accordingly, they could not be treated as interim awards amenable to challenge under Section 34 of the Act.



# Telecom spectrum cannot form part of an insolvency estate

## State Bank of India v. Union of India

Supreme Court of India | Civil Appeal No. 1810 of 2021

### SUMMARY OF FACTS

Aircel Group entities held telecom licences and spectrum usage rights granted by the Department of Telecommunications (DoT). The companies had borrowed substantial sums from financial institutions, including State Bank of India, and subsequently defaulted on both lender obligations and statutory dues payable to the DoT, including licence fee and spectrum usage charges.

Facing mounting liabilities, the Aircel entities initiated a voluntary Corporate Insolvency Resolution Process (CIRP) under Section 10 of the Code, wherein the DoT filed claims for unpaid telecom dues arising under the licence agreements.

A resolution plan was approved by the National Company Law Tribunal (NCLT), contemplating continuation of telecom operations under a new resolution applicant while treating the DoT's claims as operational debt, which would receive only a limited recovery under the insolvency distribution mechanism.

The DoT challenged the plan, contending that spectrum is a sovereign natural resource and that its transfer cannot occur without clearance of licence dues as required under the country's applicable telecom law. However, the National Company Law Appellate Tribunal (NCLAT) held that spectrum usage rights constituted intangible assets of the telecom service provider, capable of being dealt with under insolvency proceedings. This order was challenged before the Supreme Court of India.

### DECISION OF THE COURT

The Supreme Court held that telecom spectrum cannot form part of the insolvency estate of a telecom service provider. Spectrum is a finite natural resource held by the Union of India in public trust, and telecom operators acquire only a limited, conditional, and revocable right to use spectrum under licences granted pursuant to Section 4 of the Telegraph Act.

Although telecom operators may record spectrum usage rights as intangible assets in their financial statements, such accounting treatment does not confer ownership rights capable of forming part of the insolvency estate under Sections 18 and 36 of the Code.

The Court held that the attempt to treat spectrum as an insolvency asset would effectively allow the corporate debtor to transfer the benefit of spectrum to a resolution applicant while extinguishing past telecom dues owed to the government through the Code's waterfall mechanism. This would directly conflict with the telecom regulatory framework, which requires clearance of licence and spectrum dues before spectrum rights can be transferred or traded.

The Court held that the Code cannot be used as a device to evade statutory or regulatory liabilities arising from the grant and use of public resources. Since telecom operators do not own spectrum, its usage rights cannot be transferred to a successful resolution applicant as part of a resolution plan.

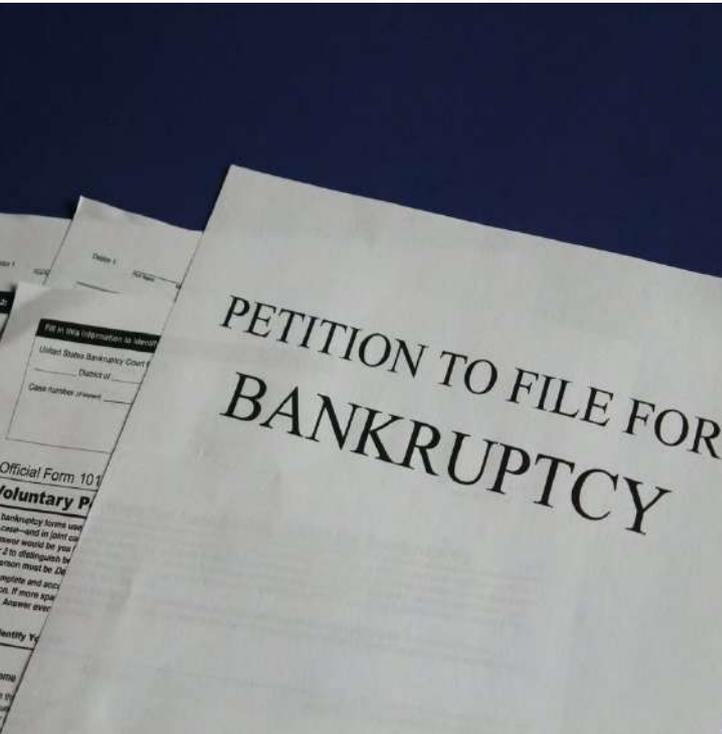
The Supreme Court has held that telecom spectrum cannot form part of the insolvency estate of a telecom service provider and cannot be transferred to a resolution applicant under the Insolvency and Bankruptcy Code, 2016 (Code). The ruling clarifies the boundary between insolvency law and sectoral regulatory regimes, particularly where public resources are involved.

By affirming that spectrum is a sovereign resource held in public trust and that telecom operators possess only a conditional right of use, the Court has reinforced that insolvency proceedings cannot be used to extinguish statutory dues or bypass regulatory conditions governing transfer of such rights. The decision underscores the need for careful structuring of financing, security and restructuring strategies in regulated sectors, as rights that appear commercially valuable may nevertheless remain outside the insolvency estate and subject to overriding statutory controls.

# Simultaneous insolvency proceedings against the borrower and the guarantor are permissible

## ICICI Bank Ltd v. Era Infra Engineering Pvt Ltd

Supreme Court of India | Civil Appeal No. 6094 of 2019



The Supreme Court has clarified that Corporate Insolvency Resolution Process (CIRP) may be initiated simultaneously against both the principal borrower and the corporate guarantor for the same debt under the Insolvency and Bankruptcy Code, 2016 (Code). By recognising the co-extensive nature of guarantor liability, the decision reinforces the ability of creditors to pursue all legally liable entities without being constrained by earlier proceedings against another debtor.

The ruling also resolves the uncertainty created by the National Company Law Appellate Tribunal's (NCLAT) decision in *Vishnu Kumar Agarwal v. Piramal Enterprises Ltd*,<sup>1</sup> which had significantly limited the enforcement of guarantees in insolvency contexts. At the same time, the Court preserved safeguards against double recovery by reiterating that a creditor cannot realise more than the total amount due. The decision strengthens the enforceability of corporate guarantees and underscores the importance of carefully structuring and evaluating guarantee obligations in financing arrangements.

### SUMMARY OF FACTS

ICICI Bank had advanced credit facilities to certain group entities of Era Infra Engineering Pvt Ltd (*Era Infra*), including Era Infrastructure (India) Ltd, secured against corporate guarantees and other contractual undertakings extended by the parent company in favour of the lender.

Upon default in repayment of the restructured facilities, ICICI Bank invoked the guarantees and initiated insolvency proceedings against the guarantor, Era Infra.

Subsequently, ICICI Bank sought initiation of insolvency against the principal borrower as well. However, the National Company Law Tribunal (NCLT) rejected the application, holding that once a claim based on the same debt had been admitted in CIRP against one corporate debtor, a second application against another entity on the same set of facts could not be entertained.

Similar issues arose in the connected appeals involving different borrowers and guarantors, raising a common legal question as to whether simultaneous insolvency proceedings could be initiated against both the principal borrower and the corporate guarantor for the same debt.

### DECISION OF THE COURT

The Supreme Court held that simultaneous proceedings for initiation of CIRP against the principal borrower and the corporate guarantor are maintainable under the Code.

The liability of a guarantor is co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872, and therefore, a financial creditor is entitled to proceed against either or both of them.

The existence of proceedings against one debtor does not bar the initiation of insolvency proceedings against another debtor who is independently liable for the same debt.

The Court rejected the view taken by the NCLAT in *Vishnu Kumar Agarwal*, which had prohibited admission of multiple CIRP applications arising out of the same debt against different corporate debtors. Such a prohibition is inconsistent with the statutory scheme of the Code and the principles governing guarantees.

Although parallel proceedings may be permissible, a financial creditor cannot recover more than the total amount due. Any realisation from one debtor must be duly accounted for in proceedings against the other, thereby preventing double recovery or unjust enrichment.

<sup>1</sup> Company Appeal (AT) (Insolvency) No. 346 of 2018

# Landowner is not liable for construction delays caused by the developer

## Sriganesh Chandrasekaran v. Unishire Homes LLP

Supreme Court of India | 2026 SCC OnLine SC 279

The Supreme Court recently held that a landowner cannot be held liable for construction delays caused by a developer. The judgment is significant as it clarifies the extent of liability in joint development arrangements, which are extremely common in real estate projects. By carefully examining the contractual allocation of responsibilities, the Court reaffirmed the principle that liability for deficiency in service must correspond to the party actually responsible for the relevant obligation. The decision prevents an automatic imposition of liability on landowners merely because they are parties to the development arrangement.

Since landowners in many redevelopment and joint development projects do not participate in construction activities, holding them liable for delays caused entirely by developers could create unjust financial exposure and discourage landowners from entering into such arrangements. Overall, the decision strengthens contractual certainty in real estate transactions by reinforcing that liability must follow the agreed allocation of responsibilities under the terms of the joint development arrangement.

### SUMMARY OF FACTS

The landowners entered into a Joint Development Agreement (JDA) with a developer and executed a General Power of Attorney (GPA) in its favour for the development of a residential project.

Accordingly, the developer obtained a sanctioned plan and a construction licence for the project, and executed Memoranda of Sale Agreements with flat buyers agreeing to handover the possession of flats within 36 months.

The developer defaulted in the timely handover of possession, constraining the flat buyers to approach the National Consumer Disputes Redressal Commission (NCDRC).

Noting that there was a delay of more than 6 years, the NCDRC directed the developer to complete the construction, obtain the occupancy certificate, and handover possession to the purchasers, and to pay interest at 6% per annum on the amounts deposited by the buyers until possession was offered. The landowners were not held liable for the delay.

The flat buyers subsequently sought review, contending that the landowners should also be held jointly and severally liable for the delay compensation along with the developer.

The NCDRC dismissed the review petition, and the matter came up to the Supreme Court, primarily concerning whether the landowners could be held liable for a deficiency in service arising from a delay in construction.

### DECISION OF THE COURT

The Supreme Court upheld the NCDRC's findings that landowners could not be held jointly and severally liable for the delay in handing over possession of the flats.

After carefully examining the terms of the JDA and the GPA, the Court noted the following aspects of the contractual arrangement:

- The responsibility of construction, execution of sale agreements, receipt of consideration, and delivery of possession was exclusively vested with the developer in respect of the developer's share of the flats.
- The JDA contained indemnity clauses which protected the landowners from liabilities arising out of the developer's acts or omissions in the construction and sale process.
- Although the GPA authorised the developer to enter into sale agreements and complete registration formalities in respect of the developer's share, such authorisation did not create a principal-agent relationship that would make the landowners liable for the developer's failure to complete construction within the stipulated time.

Pertinently, the Court observed that there was no allegation that the delay occurred due to any act or omission on the part of the landowners, and the delay was entirely attributable to the developer. Accordingly, liability for payment of delay compensation was rightly imposed only on the developer.

However, the Court affirmed that both the landowners and the developer were jointly responsible for ensuring the transfer of title and execution of sale deeds in favour of the purchasers.

# The State cannot rely on restrictive contractual covenants to deny regularisation to long-serving contractual staff

## Bhola Nath v. State of Jharkhand

Supreme Court of India | 2026 SCC Online SC 129

The Supreme Court has recently reaffirmed that the State cannot indefinitely retain employees on sanctioned posts under the guise of contractual engagements while continuing to benefit from their services by relying on restrictive contractual covenants that deny regularisation. Rather than treating the issue as a purely contractual dispute, the Court framed the matter within the constitutional guarantee of equality under Article 14 and the State's obligation to act as a model employer. The ruling recognises that contractual clauses disclaiming regularisation cannot override constitutional protections, particularly where employees have been appointed through a proper selection process and have rendered long, uninterrupted service against sanctioned vacancies.

Importantly, the judgment acknowledges the structural imbalance in bargaining power between the State and contractual employees, rejecting the notion that acceptance of restrictive contractual terms amounts to a waiver of fundamental rights. The decision thus reinforces the public law principle that the State cannot perpetuate *ad hoc* employment arrangements to avoid its obligations in respect of regular posts, and signals closer judicial scrutiny of long-term contractual engagements within government services.

### SUMMARY OF FACTS

In 2012, the Director of Soil Conservation for the State of Jharkhand sanctioned several posts for Junior Engineers (Agriculture) for the Land Conservation Directorate.

Advertisements inviting applications were issued stipulating that:

- Appointments would be on a contractual basis.
- The State would not be liable for the regularisation of the employees.
- The employment would be for 1 year, and extendable on a performance basis.

The selected employees (Appellants) were granted yearly extensions from time to time. However, apprehending discontinuation of their engagement after the last extension orders issued for 2022-2023, the Appellants approached the High Court sought regularisation of their service, invoking the obligation of the State to act as a model employer.

Owing to the State's inaction, the Appellants approached the High Court seeking a direction on the State to regularise the Appellants' service and absorb them against the vacant sanctioned posts.

The High Court held that the Appellants possessed no legal right to seek renewal or extension of their contractual engagement and that no corresponding obligation was cast upon the State to renew or extend such contractual appointments. Aggrieved, the Appellants approached the Supreme Court of India.

### DECISION OF THE COURT

The Supreme Court of India held that the State cannot keep employees working for long periods on contractual terms against sanctioned posts and then abruptly deny them consideration for regularisation merely by relying on contractual clauses.

Where employees are appointed through a proper selection process and have served continuously for many years on sanctioned vacancies, the State's refusal to regularise them without cogent reasons is arbitrary and violates their right to be treated at par with permanent employees, as guaranteed under Article 14 of the Constitution of India.

Contractual stipulations that prohibit claims for regularisation cannot override constitutional protections, and acceptance of such terms does not amount to waiver of fundamental rights.

The Court further emphasised that the State, as a model employer, must act fairly and cannot exploit the unequal bargaining power between itself and employees by perpetually extending contractual appointments. Long and uninterrupted service pursuant to repeated renewals may create a legitimate expectation that the State will recognise such service in an equitable manner.

The Court therefore directed the State to regularise the services of the Appellants against the sanctioned posts.

# NCLT cannot review benami property attachment orders

## S Rajendran v. The Deputy Commissioner of Income Tax

Supreme Court of India | 2026 SCC OnLine SC 298



The Supreme Court held that authorities under the Insolvency and Bankruptcy Code, 2016 (Code) do not have jurisdiction to adjudicate or interfere with attachment proceedings initiated under the Prohibition of Benami Property Transactions Act, 1988 (Benami Act), an act to curb the use of *benami* transactions, where the property is held by one person but paid for by another to conceal ownership.

The decision clarifies the limits of the insolvency framework when it intersects with specialised penal statutes governing property rights and ownership. By recognising the Benami Act as a self-contained code with its own adjudicatory hierarchy, the Court reinforced that insolvency proceedings cannot be used to challenge sovereign enforcement actions or to convert property held in a fiduciary capacity into assets available for creditor distribution. The ruling underscores the importance of careful due diligence and structuring of ownership arrangements, particularly where assets may be exposed to regulatory or penal proceedings that operate outside the insolvency regime.

### SUMMARY OF FACTS

During income tax investigations under the Benami Act concerning the Patel Group entities (promoters of the corporate debtor Padmaadevi Sugars Ltd), incriminating documents were recovered, indicating that the promoters had negotiated a 100% shareholding transfer to a beneficial owner VK Sasikala, through an intermediary, at a consideration of approximately INR 450 crore.

From the original share certificates of Padmaadevi Sugars Ltd and an unsigned Memorandum of Understanding (MoU) recovered by the authorities, it was evident that while the beneficial owner paid the full consideration and obtained physical possession of the share certificates, the legal title to the shares and the underlying assets, including the sugar plant and machinery, were deliberately not transferred in the records to mask true ownership.

Consequently, the authorities issued a show cause notice and a provisional attachment order under Section 24 of the Benami Act, attaching the immovable properties of the corporate debtor.

Simultaneously, the corporate debtor was subjected to insolvency and, thereafter, liquidation. The appellant-liquidator challenged the provisional attachment orders on the ground that the properties attached under the Benami Act formed part of the liquidation estate. The National Company Law Tribunal (NCLT) held that such a challenge must be brought before the statutory authorities under the Benami Act and not under the Code.

Aggrieved, the liquidator approached the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India.

### DECISION OF THE COURT

The Supreme Court dismissed the appeals and upheld the concurrent findings of the NCLT and NCLAT that the legality and validity of attachment orders passed under the Benami Act cannot be challenged before the statutory authorities under the Code.

Under Section 36 of the Code, the liquidation estate comprises only those assets 'beneficially owned' by the corporate debtor. Property held *benami* is done so in a fiduciary capacity of the real owner, without any beneficial interest. Once the authority under the Benami Act concludes that the corporate debtor is a *benamidar*, beneficial ownership stands negated. Insolvency proceedings cannot be used to convert property held for another into distributable assets for creditors.

While the moratorium under Section 14 of the Code is intended to preserve a debtor's estate for orderly resolution, it does not interdict sovereign proceedings *in rem*, such as the attachment or confiscation under penal laws. Further, Section 32A of the Code, which provides immunity against past offences, is event-based and only triggered upon the approval of a resolution plan or a liquidation sale, and does not retrospectively validate a defective title or convert benami property into assets of the corporate debtor.

The Court concluded that the liquidator's attempt to invoke jurisdiction under the Code to stay Benami Act proceedings was not *bona fide* and constituted an abuse of the legal process, dismissing the appeals with exemplary costs.

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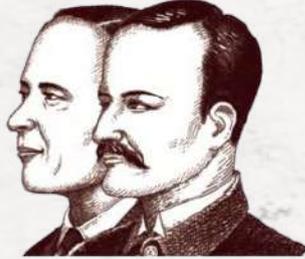


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