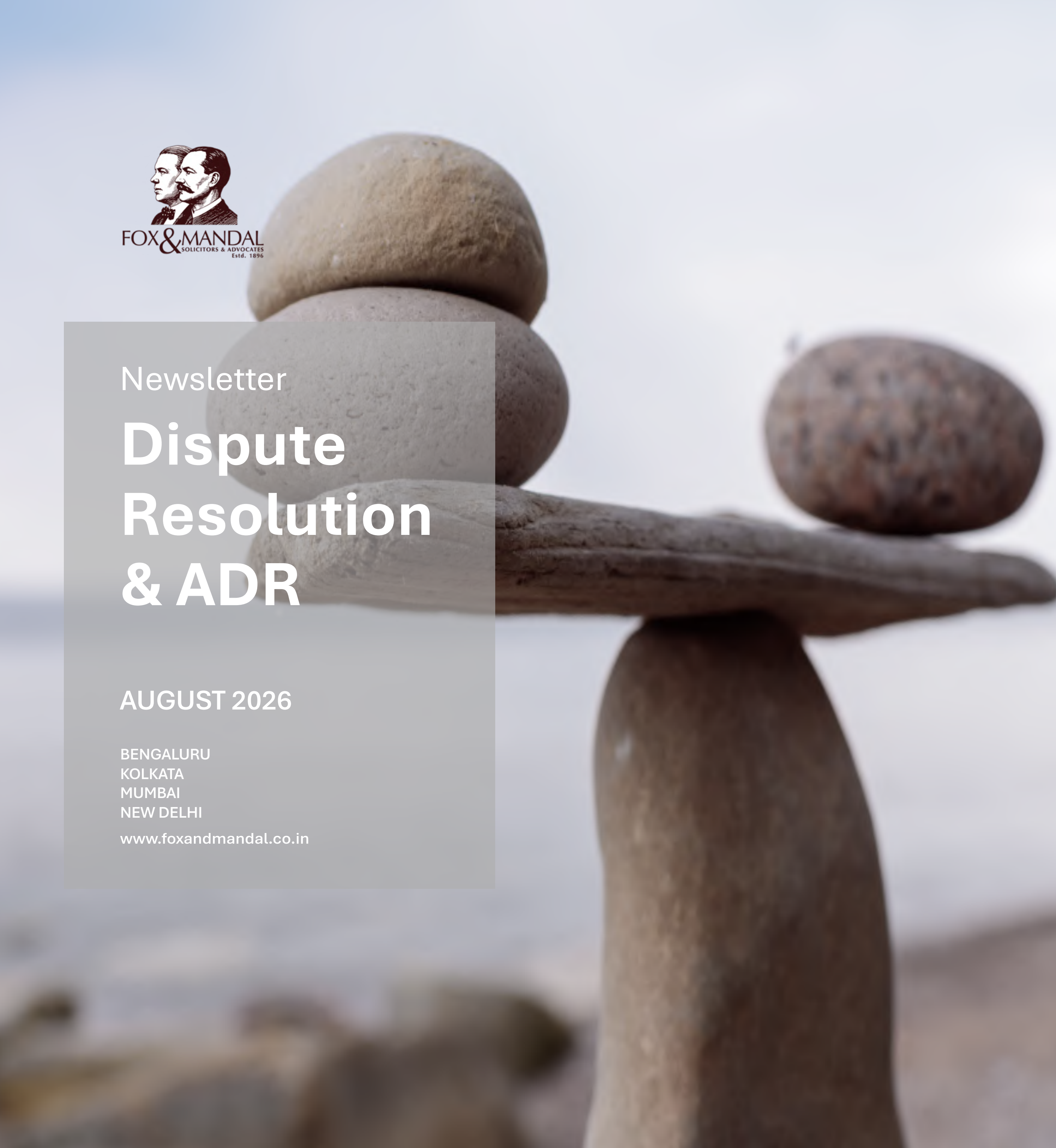

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AUGUST 2026

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Ex post facto environmental clearance is impermissible

Vanashakti v. Union of India

Supreme Court of India | Writ Petition (Civil) No. 1394 of 2023

The Supreme Court has held that the grant of *ex post facto* environmental clearances (ECs) is unconstitutional and against the Environment (Protection) Act, 1986 (EP Act), while preserving the validity of the already-granted *post facto* ECs for existing projects.

This decision signals a decisive shift in judicial attitude toward environmental violations, significantly impacting the real estate, infrastructure, and power sectors, amongst others. Prior EC is now a strict legal requirement, not a *post facto* formality, as violations will not be excused through regularisation. Companies should reinforce internal environmental governance frameworks and engage early with the Environmental Impact Assessment (EIA) process to mitigate legal, financial, and reputational risks. Further relief for projects commenced without prior EC will remain exceptional and can be sustained only upon a demonstrable supervening public interest – the protection of homebuyers or workmen, an essential utility, or an activity which itself abates pollution – and never upon the proponent's own commercial loss.

SUMMARY OF FACTS

On September 14, 2006, the Ministry of Environment, Forest, and Climate Change (MoEFCC) issued a notification mandating prior EC for certain categories of projects and activities, including mining, power generation, material production and processing, manufacturing, transportation, storage, and infrastructure (EIA Notification).

In 2017, another notification was issued enabling the *ex post facto* grant of EC to projects existing as on March 14, 2017, as a 'one-time measure' (2017 Notification).

In 2021, the MoEFCC issued an Office Memorandum (2021 OM) providing a Standard Operating Procedure (SOP) for grant of *ex post facto* EC, providing for demolition of projects that would not have been eligible for grant of prior EC, and temporary closure of projects that would be so eligible until the EC has been granted.

On May 16, 2025, in *Vanashakti v. Union of India* (Vanashakti – I),[1] the Supreme Court of India struck down both the 2017 Notification and the 2021 OM as being contrary to the EP Act, holding that *ex post facto* EC was alien to Indian environmental jurisprudence.

In review petitions against Vanashakti – I, highlighting its impact on ongoing projects and broader economic and public interests, the Supreme Court on November 18, 2025 in *CREDAI v. Vanashakti*,[2] set aside Vanashakti – I and restored the original petitions for fresh consideration, which culminated in the present matter.

DECISION OF THE COURT

The Supreme Court upheld the 2017 Notification, observing that the Central Government was empowered to introduce a narrowly tailored, one-time statutory mechanism to deal with existing violation cases through delegated legislation, while striking down the 2021 OM, holding that an executive instruction cannot create a permanent mechanism for grant of *ex post facto* ECs or alter the statutory scheme under the 2006 Notification.

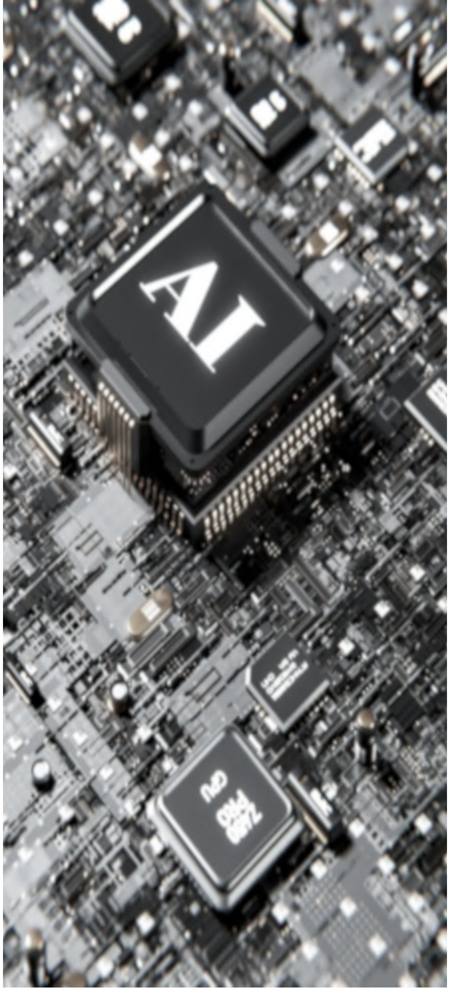
The requirement of obtaining prior EC under the 2006 Notification is mandatory and not directory. For a project commenced without obtaining prior EC, the consequences are not limited to monetary penalties, but may, in appropriate cases, attract closure of the project, demolition of unauthorised works, restoration of the environment, and recovery of remediation costs.

While quashing the 2021 OM, the Court directed that its judgment would operate prospectively in order to avoid disruption to projects already undertaken and to protect overriding public interest. As such, ECs pending adjudication or already granted under the 2017 Notification or the 2021 OM will continue to remain valid unless challenged on their own merits.

The Central Government shall not introduce any future administrative or executive mechanism permitting *ex post facto* EC. A departure from the requirement of prior EC must be introduced only through a valid notification issued under Section 3 of the EP Act.

[1] (2025) 18 SCC 700

[2] (2026) 5 SCC 201



The Delhi High Court's recent decision provides AI developers with significant breathing room by *prima facie* recognising that LLM training on publicly available copyrighted content may fall within the fair dealing framework under Section 52(1)(a) of the Copyright Act, 1957 (**Act**). For AI developers, the decision reduces the immediate uncertainty around using publicly accessible content for training, but does not amount to a blanket clearance for all forms of data use.

The distinction drawn between training and reproduction of source material makes it important for developers to understand how different stages of an AI system's operation may attract different copyright considerations. For content owners, the decision also suggests that restricting access to content and developing commercially viable licensing models may become increasingly important as AI systems become an alternative channel through which their content is accessed. The decision, being *prima facie* and confined to the interim stage, also leaves considerable scope for the position to evolve at trial or through legislative intervention.

AI training on publicly available copyrighted content may constitute fair dealing

ANI Media Pvt Ltd v. OpenAI OpCo LLC

Delhi High Court | IA No. 45300 of 2024 in CS (Comm) No. 1028 of 2024

SUMMARY OF FACTS

ANI Media Pvt Ltd (**ANI**) instituted a copyright infringement suit against OpenAI OpCo LLC (**OpenAI**), alleging unauthorised copying and storage of ANI's copyrighted news content for training the Large Language Models (**LLMs**) underlying ChatGPT, as well as reproduction of ANI's works in ChatGPT-generated responses.

ANI approached the Delhi High Court seeking an interim injunction restraining OpenAI from continuing to use and store its works.

DECISION OF THE COURT

The Court *prima facie* found no infringement and declined interim relief.

On jurisdiction, ANI's registered office and OpenAI's specific targets/subscribers lay within the Court's jurisdiction. Further, the storing and training of ANI's works on the US servers was merely a terminal step in the chain of events which began from access of copyrighted works from India and ended with an output reproduced in India. The Act does not require severance of the chain of events and examination of only the last step.

While public availability does not extinguish copyright, news articles protect only their expression, not underlying facts, which require a higher threshold than creative works. As such, the Court rejected the reproduction/output claim, noting that:

- The cited articles post-dated the LLMs' training cut-off dates and could not establish memorisation.
- ChatGPT's responses were substantially different from the articles.

On the training/storage claim, the Court considered the fair dealing defence (Section 52), which permits private or personal use, including research, through a 2-stage purpose and fairness test. For the purpose test, there is no 'non-commercial' limitation or a requirement for the stored work to be a 'non-infringing copy' where the work is not a computer programme. Further, LLM training was construed to constitute 'research' and 'private use', as research need not be confined to human activity and the training data is not made available to the public.

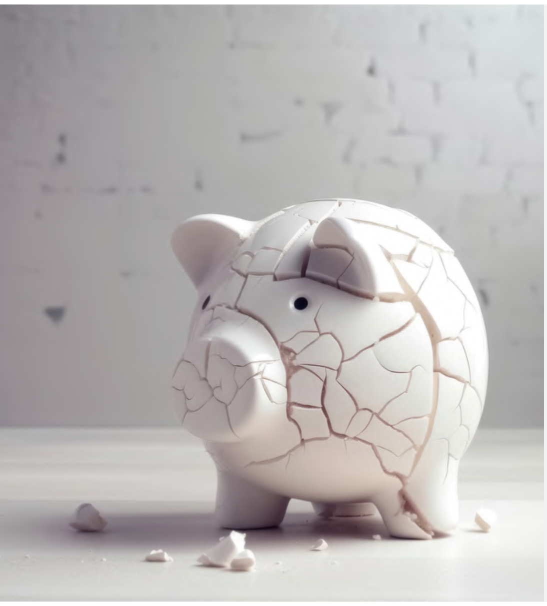
On the fairness test, the Court noted that:

- ANI's works were used only for LLM training and not communicated to the public in natural language or tokenised form (numerical representation of raw data which belongs to ANI).
- ChatGPT's functions did not substitute ANI's news-syndication business, with no demonstrated market loss.
- The broader public interest in AI development, including the impracticability of requiring licences from every copyright holder, favoured OpenAI.

Payment default under a settlement deed is not an operational debt

Silver Collections Pvt Ltd v. Paragon Knits Ltd

National Company Law Tribunal, Delhi | CP (IB) No. 763 of 2024



The NCLT has clarified that breach of a payment term under a settlement agreement does not constitute an operational debt. As such, a settlement between an Operational Creditor (OC) and a Corporate Debtor (CD) may fundamentally alter the character of an underlying operational debt by contractually superseding the original cause of action, potentially taking a claim outside the insolvency framework.

For creditors, the decision highlights the importance of considering the insolvency consequences before entering into a settlement, particularly where fresh payment obligations, revised timelines, or conditional mechanisms replace the original contractual liability. A settlement may provide commercial flexibility for recovery, but it can also affect the creditor's ability to subsequently invoke insolvency on the basis of the original supply transaction. Conversely, for debtors, a properly structured settlement that substitutes the original obligations can provide a basis for resolving the underlying dispute without leaving the original operational debt independently enforceable under the insolvency framework.

SUMMARY OF FACTS

In a commercial arrangement for supply of yarn, cheques issued by the CD towards discharge of liability were dishonoured.

The OC initiated insolvency in respect of the operational debt, during the pendency of which the parties executed a settlement deed wherein the CD acknowledged its liability and issued 24 post-dated cheques, which were also dishonoured.

One of the conditions of the settlement deed was the withdrawal of the insolvency petition.

As the insolvency proceedings had, in fact, not been withdrawn, the National Company Law Tribunal, Delhi (NCLT) was called upon to decide whether, after execution of the settlement deed between the OC and the CD, there continued to exist an operational debt within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016 (Code) to justify admission of the insolvency application.

DECISION OF THE TRIBUNAL

The NCLT held that, unlike the default underlying the original yarn supply transaction (a claim in respect of provision of goods), the default in making payment pursuant to the execution of the settlement deed did not constitute an operational debt as it was not covered by the definition of 'additional debt' under Section 5(21) of the Code.

With the execution of the settlement deed, the enforceable rights and liabilities of the parties came to be governed substantially by the substituted contractual arrangement embodied therein rather than by the original contract involving the supply of yarn. Accordingly, the original cause of action arising from operational transactions could not survive independently and could not be enforced *dehors* the substituted agreement.

Reliance was placed on *Suwarna Buildcon Pvt Ltd v. Sadbhav Engineering Ltd*,[3] wherein the claim could not be treated as a pure and independent operational debt simpliciter arising directly from provision of goods or services under Section 5(21) of the Code in view of the fresh obligations, structured payment schedules, conditional payment mechanism, and supersession clause contained in the settlement agreement.

[3] Company Petition (Insolvency) No. 52 of 2023

Limitation for enforcing foreign award begins on the accrual of right to apply to Indian Courts

Amadeus IT Group SA v. Ebix Cash Ltd

Delhi High Court | OMP (EFA) (COMM) No. 2 of 2025

The Supreme Court has recently held that the limitation period for seeking the enforcement of foreign awards begins upon the accrual of the right to apply, the determination of which is not a straight-jacket formula. The decision reinforces the pro-enforcement approach to foreign arbitral awards, ensuring that hyper-technical objections do not defeat enforcement where the underlying award and liability remain otherwise valid.

The Court's approach to limitation is particularly relevant where enforcement requires multiple intervening steps or proceedings, as it recognises that the right to apply may accrue only when enforcement can meaningfully be pursued, rather than mechanically from the date of the award. The decision also underscores the importance of accurately characterising the underlying commercial arrangement when public policy objections are raised. Parties should therefore preserve a clear documentary trail of the transaction, subsequent arrangements, and steps taken towards enforcement, particularly where these may affect limitation or the characterisation of the underlying liability.

SUMMARY OF FACTS

Based on a ticketing and reservation-services agreement between Ebix Cash Ltd (Ebix India) and Spain-based Amadeus IT Group (Amadeus), an advance was made to Ebix Inc (Ebix India's US-based parent) to invoice Amadeus for incentives found due on specified quarterly volumes on eligible bookings (Agreement).

The advance was repayable if certain booking/acquisition-based conditions were not fulfilled, failing which Amadeus could terminate the agreement and recover the advance. Non-compliance/termination of the agreement led to disputes resolved through arbitration proceedings that culminated into an award in favour of Amadeus (Award).

Subsequently, the following events transpired:

- An order for enforcement of the Award was passed by the United States District Court on June 21, 2023.
- The parties entered into a forbearance agreement, under which certain sums were paid to Amadeus.
- Ebix Inc filed for bankruptcy in the USA, culminating into a plan that clarified the subsistence of any claims by Amadeus against Ebix India.

As such, Amadeus sought enforcement of the Award and payment of unrecovered dues against Ebix India before the Delhi High Court, which was opposed on limitation and public policy.

DECISION OF THE COURT

The Court upheld enforcement of the Award along with interest. On limitation, the 3-year period under the Limitation Act, 1963, would not begin with the date of the Award, but rather on the accrual of the right to apply. As the factual matrix required Amadeus to take multiple steps for execution of the Award, considering the passing date of the Award as the trigger for limitation was untenable. In such cases, there is no straight-jacket formula for calculating the accrual of the right to apply.

The Court also rejected the public policy argument that the transaction underlying the Agreement was a 'factoring transaction' while Amadeus was not registered under the Factoring Regulation Act, 2011.[4]

Per the Agreement, payment was dependent on performance-based conditions and involved the mechanism of repayment in case of unsatisfactory performance. As no assignment was in the form of receivables, it was held to be a purely commercial transaction, and not in the nature of a factoring agreement.

[4] A factoring transaction is a financial arrangement where a business (the assignor) sells or assigns all or part of its trade receivables (unpaid invoices or accounts receivable owed by a buyer/debtor for goods or services) to a third-party financial intermediary (the factor) in exchange for immediate or upfront funds

Adoption of transnational issue estoppel in Indian arbitration landscape

Nagaraj V Mylandla v. PI Opportunities Fund-I

Supreme Court of India | 2026 SCC OnLine SC 1218

The Supreme Court's recognition of the transnational issue estoppel, which prevents re-agitation of issues already decided at the seat, strengthens the finality and predictability of foreign arbitral awards at the enforcement stage in India. For foreign investors and businesses involved in cross-border arbitration, the decision reduces the scope for enforcement proceedings becoming a second opportunity to contest issues already conclusively determined by the Courts at the seat. This should make enforcement strategy more predictable and discourage prolonged challenges across jurisdictions.

Importantly, however, the decision does not diminish the enforcement Court's independent role under Section 48 of the the Arbitration and Conciliation Act, 1996 (Act). Stakeholders should therefore distinguish between forum-neutral issues, which may be precluded once conclusively determined by the seat Court, and forum-specific issues, particularly questions of Indian public policy, which remain for Indian Courts to determine, as this distinction is significant when structuring and defending enforcement proceedings.

SUMMARY OF FACTS

3 institutional investors collectively acquired a majority stake in a company *vide* an agreement, which provided for an exit mechanism to the investors if the company failed to facilitate a Qualified Initial Public Offering within a certain period.

When the company breached this joint condition, arbitration seated in Singapore was invoked, culminating in an award in favour of the investors.

The promoters challenged the award before the seat Court on 2 grounds:

- The tribunal had breached the fair hearing rule.
- The combination of damages with an obligation to surrender shares amounted to an impermissible buy-back of shares.

The challenge was rejected on both grounds, and no appeal was filed. However, the promoters contested the enforcement proceedings before the Madras High Court on the same grounds, which was also unsuccessful, leading to a final challenge before the Supreme Court.

DECISION OF THE COURT

The Supreme Court dismissed the challenge. Noting that the promoters' arguments had been 'conclusively' and 'finally' rejected by the seat Court, the Court expressly recognised the doctrine of transnational issue estoppel as part of Indian arbitration jurisprudence.

Drawing upon English[5] and Singaporean[6] authorities, it was held that where a competent Court at the arbitral seat has conclusively determined an issue arising from a challenge to the award, the same issue cannot ordinarily be re-agitated before the enforcement Court.

While an Indian Court continues to exercise an independent statutory jurisdiction under Section 48 of the Act, that jurisdiction cannot be used to permit repetitive litigation of issues that have attained finality before the supervisory Court/seat Court:

- The objections raised against the violation of natural justice provisions under Section 48(1)(b) were thoroughly examined and dismissed by the Singapore High Court.
- The public policy objection under Section 48(2)(b) was nothing but an attempt to re-examine the facts and laws that have already been examined during the course of arbitration.

The principles of international comity, finality, and consistency mandate giving appropriate respect to the determinations made by the Courts of the arbitral seat in cases.

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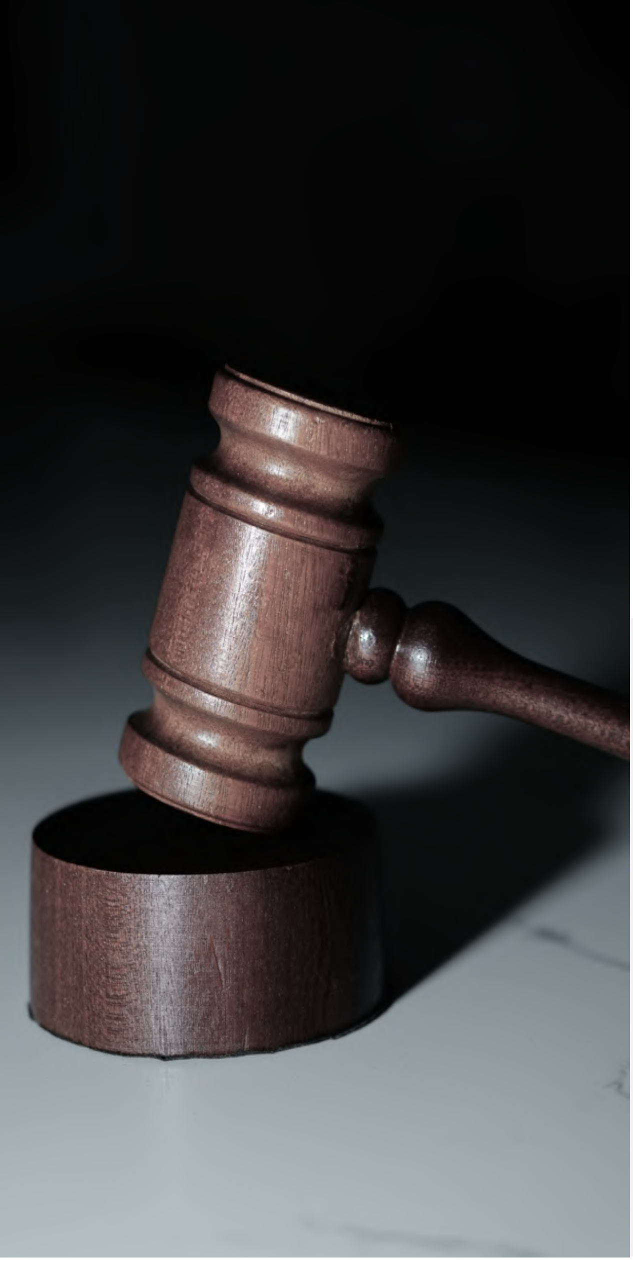
[5] Good Challenger Navegante SA v. Metalexportimport SA, (2003) EWCA Civ 1668
[6] Republic of India v. Deutsche Telekom AG, (2023) SGCA(I) 10



Grant of substantive monetary relief exceeds scope of permissible interim relief in arbitration

India International Convention and Exhibition Centre v. Larsen & Toubro Ltd

Delhi High Court | Arbitration Application (Commercial) No. 35 of 2026

The Delhi High Court has reinforced that Section 17 of the Arbitration and Conciliation Act, 1996 (Act) cannot be used to convert a disputed contractual claim into an immediately payable amount merely because withholding payment creates cash-flow pressures. For contractors and infrastructure businesses, the decision makes the evidentiary position underlying a payment claim particularly important when seeking interim monetary relief. Where entitlement itself depends on unresolved questions concerning performance, delays, variations or contractual obligations, an application under Section 17 is unlikely to provide a substitute for final adjudication. At the same time, the Court has not closed the door on monetary directions altogether, leaving scope for such relief in exceptional cases where the underlying entitlement is sufficiently clear. Parties negotiating and administering long-term contracts should therefore consider whether payment mechanisms and certification processes provide adequate protection during disputes, rather than relying on interim arbitration relief to bridge significant funding gaps.

SUMMARY OF FACTS

In a contract to design, construct, and test the India International Convention and Expo Centre Project at New Delhi between India International Convention and Exhibition Centre (IICEC) and Larsen & Toubro (L&T), stage-wise payments were contemplated after due inspection by IICEC.

Disputes arose with regard to the scope of work, delays in completion, and various *force majeure* events, leading to arbitration involving significant monetary claims by both parties.

L&T filed an application under Section 17 of the Act seeking release of certain stage payments withheld by IICEC. The tribunal partly allowed this application, directing release of INR 227.18 crore, citing that cash flow continuity was vital to prevent irreparable harm.

Aggrieved, IICEC challenged this order under Section 37(2)(b) of the Act.

DECISION OF THE COURT

The High Court set aside the tribunal's order, holding that granting substantial interim monetary relief in contested claims exceeded the scope of Section 17.

Section 17 is preservative in nature and cannot be utilised to grant final monetary remedies unless liability is unequivocally admitted under principles analogous to those under the Code of Civil Procedure, 1908.

The majority's direction to direct the release of INR 227.18 crore amounted to substantive relief and not preservation of the subject matter, and therefore exceeds the scope of interim relief. In fact, the tribunal itself admitted that some of the stage payments would require adjudication and detailed evidence examination.

The Court clarified that while tribunals are not barred from giving interim monetary relief during arbitration, the breadth of this power remains intrinsically linked to preservation and protection pending adjudication.

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