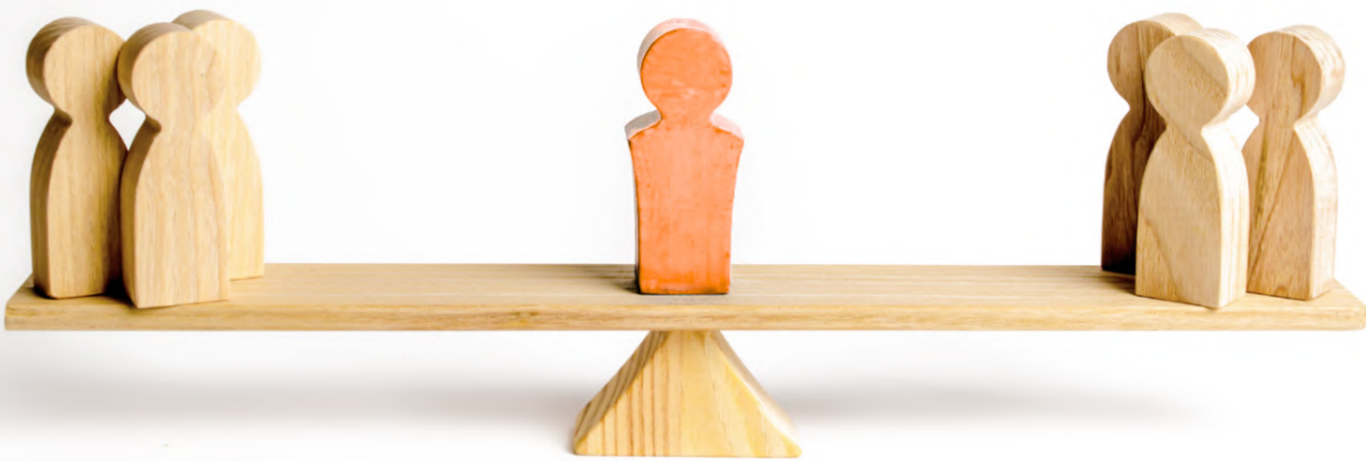
Newsletter

Dispute Resolution & ADR

SEPTEMBER 2026

BENGALURU
KOLKATA
MUMBAI
NEW DELHI

www.foxandmandal.co.in



- F&M secures protection of its legacy: Partnership goodwill belongs to the firm and not individual partners or heirs
- Unadjudicated claims of breach of contract do not constitute operational debt under IBC
- Corporate criminal prosecution does not require arraignment of a natural person
- Unsuccessful party can seek post-award interim protection
- Successful award holders cannot enforce claims not submitted during insolvency resolution
- Banks can invoke SARFAESI for loans acquired from NBFCs not covered by the Act

F&M secures protection of its legacy: Partnership goodwill belongs to the firm and not individual partners or heirs

Fox & Mandal v. Somabrata Mandal

Calcutta High Court | 2026 SCC OnLine Cal 12350

As Fox & Mandal celebrates 130+ years since its establishment in 1896 as one of India's oldest full-service law firms, the Calcutta High Court has rendered a significant decision protecting F&M's legacy and goodwill by restraining unauthorised claims of association with F&M, including the use of its trademarks 'Fox & Mandal', 'Fox and Mandal', or 'F&M', and fraudulent representation as carrying forward F&M's legacy or establishment year of 1896 in relation to legal services.

The ruling holds that the goodwill and reputation built over time continues to vest in the partnership firm as a distinct legal entity and cannot be claimed by individuals merely on the basis of their association or lineage with the partners of that firm. Mere inclusion of a family surname in a firm's name does not, by itself, make it a family mark or create independent rights over the firm's goodwill.

The decision reinforces the importance of protecting brand identity, goodwill, and market reputation as valuable commercial assets independent of the individuals associated with a business. For organisations, particularly longstanding family-founded enterprises, the ruling highlights the need to maintain clear ownership structures, trademark registrations and consistent brand protection strategies. Intellectual property rights should therefore be clearly documented and actively protected against potential misuse, including by parties seeking to rely on historical or familial connections.

The ruling also reiterates the settled position that prior use and the likelihood of confusion in the eyes of the public are sufficient to establish a claim for passing off, even in the absence of proof of actual damage.

(continued)

SUMMARY OF FACTS

Fox & Mandal (F&M) is a partnership firm established in 1896 by John Kerr Fox and Gokul Chandra Mandal. The firm has been providing legal services for 130+ years and is the registered proprietor of the trademarks, 'Fox & Mandal', 'Fox and Mandal', and 'F&M', which have been continuously used since its inception.

Fox Mandal & Associates (FMA) is a separate partnership firm constituted in 1984 and is also engaged in providing legal services. While Somabrata Mandal, a partner of FMA, was the son of an erstwhile partner of F&M, he himself was never a partner or employee of F&M.

F&M contended that FMA and Somabrata Mandal (Defendants) deliberately created the impression of being associated with F&M by publishing articles, brochures, press releases, website content, and other promotional material that claimed a continuing connection with F&M and traced their legacy to its establishment in 1896. As such, F&M filed a trademark infringement suit before the Calcutta High Court seeking appropriate injunctions against the Defendants.

The High Court restrained the Defendants from representing or projecting themselves as being associated with F&M during pendency of the suit.

F&M subsequently sought summary judgment in the suit on the ground that the Defendants had not filed their written statement and had raised no real triable issue in defence.

DECISION OF THE COURT

The Calcutta High Court observed that F&M is undisputedly the prior user of the marks 'Fox & Mandal', 'Fox and Mandal', and 'F&M', having used them continuously since 1896.

The Defendants' use of an old clock displayed on their website, which had been used by F&M since 1896, and their description of themselves as India's original and oldest full-service law firm, created deception and confusion among the public. It was held that the Defendants had misrepresented an association with F&M through publications, website content, and promotional material projecting a continuing connection with F&M and its legacy.

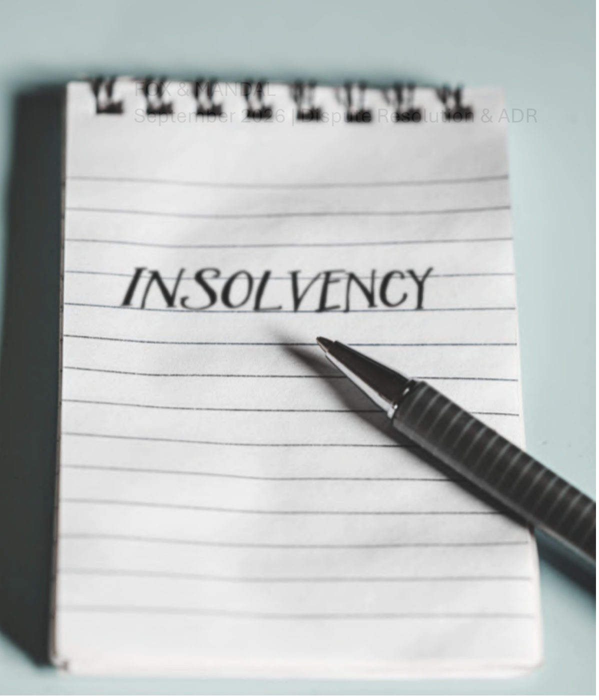
While analysing the ingredients of passing off, the Court observed that the acts of the Defendants were aimed towards creating a kind of deception or confusion and the likelihood thereof as to who is the real 'Fox & Mandal'. These acts were sufficient to establish a claim for passing off.

The Court rejected the Defendants' principal contention that the mark was a family mark and that Somabrata Mandal, as the son of Late Dinabandhu Mandal, had rights in F&M's goodwill. The goodwill and trademarks of F&M are assets of the partnership firm and do not vest in individual partners or their legal heirs. Consequently, no person can acquire any proprietary right in F&M's name or goodwill merely by virtue of lineage.

The Court also rejected the Defendants' contentions relating to shared goodwill, prior trademark registration, delay, acquiescence, and absence of actual damage. It held that prior use and the likelihood of deception or damage govern a passing-off action, and that proof of actual damage is not necessary to grant relief.

Use by third parties cannot be a defence in a passing-off action, and F&M, as the plaintiff, being *dominus litis* (the person filing the lawsuit, who controls and directs the legal proceeding, and bears the benefit/cost of the outcome), is entitled to choose whom to sue.

Accordingly, the Court passed a decree of perpetual injunction restraining FMA and Somabrata Mandal from claiming any association with F&M, using the marks 'Fox & Mandal', 'Fox and Mandal', or 'F&M', or claiming F&M's legacy or establishment year of 1896 in relation to their legal services.



The Supreme Court has held that claims arising from alleged contractual breaches or damages cannot be treated as operational debt under the Insolvency and Bankruptcy Code, 2016 (Code) unless such claims have crystallised into a legally enforceable liability.

The decision reinforces that the insolvency framework is intended for resolution of established defaults and cannot ordinarily be used as a mechanism for adjudicating disputed claims for compensation. For businesses, particularly those engaged in large infrastructure and long-term contractual arrangements, the ruling highlights the importance of clearly defining payment mechanisms, dispute resolution processes and procedures for quantifying additional claims. Creditors should carefully assess whether amounts claimed represent crystallised liabilities or merely disputed compensation before initiating insolvency proceedings. Similarly, corporate debtors may benefit from maintaining contemporaneous records of contractual performance, objections, and disputes to establish the nature of outstanding claims.

Unadjudicated claims of breach of contract do not constitute operational debt under IBC

Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt Ltd

Supreme Court of India | 2026 SCC OnLine SC 1555

SUMMARY OF FACTS

Srinivasa Reddy Velagala (SRV) engaged Sravanthi Infratech Pvt Ltd (SIPL) for setting up a 225 MW gas-based combined cycle power station under an EPC contract providing for completion in 14 months, a milestone-linked payment schedule, and arbitration in case of a dispute.

SRV did not pay the due amount for the 4 milestones. SIPL issued a notice of suspension and subsequently demobilised the site. Notably, neither party terminated the EPC contract.

Following legal notices, SIPL filed an insolvency application under Section 9 of the Code in 2018 claiming an operational debt of INR 1292 crore arising from claims that crystallised in 2012. The application was admitted observing that the EPC contract subsisted and therefore afforded a continuing cause of action. Aggrieved, SRV approached the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court set aside the insolvency proceedings, while granting SIPL liberty to invoke the arbitration clause.

Disputes arising from breach of contract do not give rise to an operational debt until the debt becomes crystallised and legally enforceable. While the milestone-linked payments qualified as operational debt once they became payable, the suspension, idling, and demobilisation charges, arising from the alleged breach of contract, were damages that were not assessed or adjudicated by a competent judicial forum. As such, they could not be treated as operational debt.

The Court also clarified that the contract had not ‘frustrated’ (discharge of contractual obligations by an unforeseen supervening impossibility), as its suspension was self-induced. Without a contractual stipulation that ‘time was of the essence’ (deadlines had to be strictly met), or termination under Clause 14, the contract continued to subsist.

The Court also rejected the presence of a pre-existing dispute. While silence is not, as a general rule, an indicator of the absence of a dispute, after total and consistent silence across multiple legal notices over 7 years, SRV’s defence, raised for the first time in reply to the insolvency application, was an afterthought to resist insolvency exposure.

However, the Court clarified that subsistence of the contract does not create a continuing cause of action for the purpose of determining the limitation period. Default under Section 3(12) of the Code occurs at a singular point in time. Each invoice generates its own date of default, and only those falling within 3 years preceding the insolvency application may be considered. As claims crystallised in 2012, with subsequent legal notices not resetting limitation without SRV’s liability acknowledgement, the application was time-barred and could not have been admitted without condonation of delay.

Corporate criminal prosecution does not require arraignment of a natural person

Sanofi India Ltd v. Central Bureau of Investigation

Supreme Court of India | 2026 INSC 957

The Supreme Court has clarified that a company may be prosecuted for offences requiring a guilty state of mind even where the individual through whom the alleged conduct was undertaken has not been identified or arraigned, provided that the company's liability can ultimately be established through attribution of the individual's conduct and intent.

The decision provides clarity on corporate criminal liability while emphasising that such attribution requires a structured assessment of the individual's authority, delegated responsibility and the nature of the statutory offence. Companies should therefore maintain clear governance frameworks, delegation structures and decision-making records to demonstrate the limits of individual authority and corporate involvement. While the ruling prevents companies from avoiding prosecution solely on procedural grounds, investigating agencies would still need to establish a credible link between individual conduct and the company's culpable intent rather than relying on a general assertion of corporate involvement.

SUMMARY OF FACTS

Sanofi India Ltd (Sanofi) supplied pharmaceutical products to the Rare Materials Project of the Bhabha Atomic Research Centre (BARC) pursuant to tender processes.

The CBI alleged that a BARC official, Dr P Anand, had conspired with Sanofi by falsely classifying certain items as proprietary and excluding competing bidders with lower prices, resulting in wrongful loss to BARC and illegal gratification to Dr Anand from Sanofi.

The chargesheet alleged criminal conspiracy, cheating, illegal gratification, and criminal misconduct. However, no employee or official of Sanofi was arraigned as an accused.

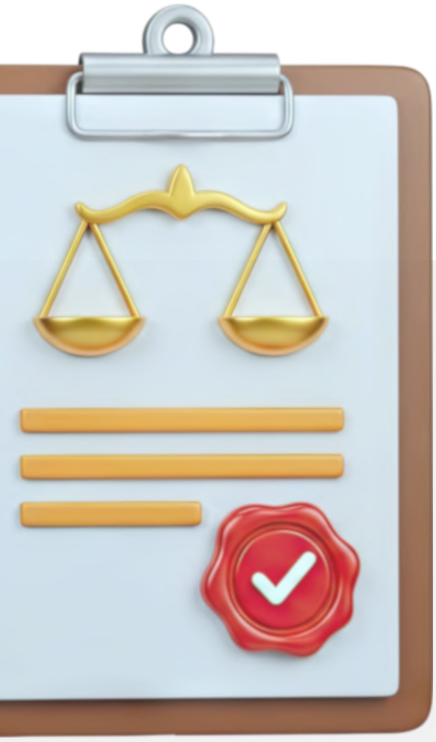
Sanofi sought quashing of the proceedings, principally contending that a company could not be prosecuted for an offence requiring a guilty state of mind (*mens rea*) without identifying and prosecuting the natural person whose acts and state of mind could be attributed to the company. The Karnataka High Court rejected this contention, leading to the appeal before the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that proceedings against a corporation cannot be quashed solely because the natural person through whom it allegedly acted has neither been identified nor arraigned as an accused. The act and state of mind of a person may be attributed to the corporation, either through express authority (MoA/AoA), implied delegation (discretion and independence), or under a statutory rule or principle.

The Court also laid down the following clarifications with respect to the application of the attribution framework:

- Not automatic: The surrounding circumstances may justify treating the individual's act as distinct from that of the corporation, such as where a director commits fraud against the company.
- Transaction-specific: The question is not who generally controls or represents the corporation, but whose act in relation to the particular transaction or matter should be treated as the corporation's own.
- Unidirectional: The company's acts cannot be attributed to determine or affect the individual's own criminal liability, which continues to be governed by ordinary principles of criminal law.
- At least one person: The attribution must be based on the act/state of mind of one natural person, and not by combining the partial states of mind of different individuals.



Unsuccessful party can seek post-award interim protection

NPCC v. Ishvakoo (India) Pvt Ltd

Supreme Court of India | 2026 SCC OnLine SC 1535

The Supreme Court has affirmed that a party which has lost in arbitration, and therefore holds no enforceable award in its favour, is not shut out from seeking interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) at the post-award stage. However, such relief remains exceptional and may be granted only in rare and compelling cases where the ordinary requirements of a prima facie case, balance of convenience, and irreparable prejudice are satisfied.

The decision is particularly relevant for parties dealing with bank guarantees and other forms of security during arbitration, as it confirms that interim arrangements may require appropriate protection even after an award has been rendered, particularly while a challenge to it remains pending. At the same time, parties should not assume that a pending challenge will, by itself, justify continued restraint or recovery of secured amounts. The ruling therefore highlights the importance of carefully structuring interim security arrangements and assessing the potential consequences of their operation following an award.

SUMMARY OF FACTS

Under an agreement for construction of bus terminus and heritage corridor works at Agra, National Projects Construction Corporation Ltd (NPCC) provided a mobilisation advance to Ishvakoo (India) Pvt Ltd (Ishvakoo) against bank guarantees furnished by it.

Disputes arose between the parties, which were referred to arbitration.

In an interim relief petition under Section 9 of the Act prior to the arbitral tribunal's constitution, the Delhi High Court recorded an arrangement under which Ishvakoo was required to keep the bank guarantees alive, while NPCC agreed not to invoke them during the arbitral proceedings. NPCC could encash the guarantees if, upon adjudication, the arbitrator found an amount recoverable by it. Notably, NPCC had not filed any counterclaim in the arbitration.

Before the award was pronounced, Ishvakoo was unable to continue the bank guarantees, and NPCC encashed them. The arbitral award dismissed Ishvakoo's claims.

Pending a challenge to the award, Ishvakoo approached the Delhi High Court seeking return of the amount realised by NPCC under the bank guarantees. The Court directed NPCC to deposit the said amount with the Registry. Aggrieved, NPCC approached the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court dismissed the appeal and upheld the direction to deposit the amount realised under the bank guarantees with the Registry until disposal of the challenge to the award under Section 34 of the Act.

Relying on *Home Care Retail Marts Pvt Ltd v. Haresh N Sanghavi*,[1] the Court reiterated that a party in arbitration is not barred from seeking post-award interim protection under Section 9 of the Act merely because it has no enforceable award in its favour. However, such relief is subject to a higher threshold and should ordinarily be granted only in 'rare and compelling cases', upon satisfaction of the established requirements of a *prima facie* case, balance of convenience and irreparable prejudice.

The Court found that this higher threshold was satisfied in the present instance. In particular, NPCC had filed no counterclaim before the arbitrator; there was, *prima facie*, no finding in the award that Ishvakoo had failed to utilise the mobilisation advance; and the arbitrator appeared to have proceeded without considering that the bank guarantees had already been encashed before the award was delivered. In these circumstances, permitting NPCC to retain the amount during the pendency of the Section 34 challenge could result in unjust enrichment and undermine the efficacy of the challenge proceedings.

---

[1] SLP (Civil) No. 29972 of 2015 (Supreme Court of India)

Successful award holders cannot enforce claims not submitted during insolvency resolution

Mcnally Bharat Engineering Co Ltd v. Metso India Pvt Ltd

Delhi High Court | 2026 SCC OnLine Del 5778

The Delhi High Court held that an award-holder who fails to lodge its claim during the counterparty's insolvency cannot later enforce that award. Further, money deposited in Court by such a counterparty to secure a stay on the award's execution remains the corporate debtor's asset and would be refundable if the underlying claim stands extinguished.

This ruling is a clear call to action for creditors to proactively track insolvency proceedings and comply with prescribed claim submission requirements, irrespective of parallel litigation or pending challenges relating to the underlying dispute. For businesses involved in arbitration and insolvency matters, the ruling highlights that procedural participation in the insolvency process remains critical to preserving recovery rights. Conversely, companies undergoing resolution may consider reviewing pending litigation-related deposits, securities, and Court-held amounts, as such assets may not necessarily be treated as payments made to creditors and could remain available as part of the resolution estate.

SUMMARY OF FACTS

Bharat Heavy Electricals Ltd awarded a turnkey contract for barrel-type blender reclaimers to McNally Bharat Engineering Co Ltd (MBECL). To enable its bid, MBECL received techno-commercial inputs from Metso India Pvt Ltd (Metso), with an understanding to sub-contract the work to Metso.

Disputes arose between MBECL and Metso, which were referred to arbitration, culminating in an award of approximately INR 5.52 crore in Metso's favour.

MBECL challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) before the Delhi High Court and sought a stay on its execution. As a precondition for staying execution, MBECL deposited the awarded sum through an FDR in the name of the Registrar General, Delhi High Court.

Meanwhile, MBECL was admitted into insolvency, and despite public notice, Metso did not submit its claim under the award.

After a resolution plan was approved, MBECL sought dismissal of the Section 34 arbitration petition as infructuous and a refund of the deposited amount, while Metso sought to withdraw the deposited sum.

DECISION OF THE COURT

The Delhi High Court held that the amount awarded to Metso squarely fell within the definition of 'claim' under Section 3(6) of the Insolvency and Bankruptcy Code, 2016 (Code), making Metso a 'creditor' under Section 3(10), irrespective of the award being under challenge. However, as Metso never lodged this claim before the resolution professional as statutorily required, it was not part of the approved resolution plan.

Relying on several Supreme Court rulings, the High Court reiterated the 'clean slate' doctrine that once a resolution plan is approved, all claims not forming part of it stand extinguished and no proceedings can be initiated or continued in respect of such claims. Since Metso's claim was never crystallised into the plan, it stood extinguished, rendering the Section 34 challenge academic.

On the deposit issue, the Court rejected Metso's argument that a Court deposit amounts to payment to the decree-holder, and instead held that funds deposited as security before insolvency commencement remain the corporate debtor's asset, merely held in the Court's custody and must be conserved and eventually returned if the creditor's claim fails to survive the resolution process.

The Supreme Court has held that a loan's eligibility for enforcement under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) depends on the status of the lender seeking enforcement and is not permanently determined by the status of the original lender at the time of creation of the loan.

The decision provides greater certainty to banks and financial institutions involved in acquisition of stressed assets by recognising the broader legislative objective of facilitating expeditious recovery of secured debts and resolution of NPAs. By preserving enforcement rights attached to acquired loan portfolios, the ruling may enhance the commercial viability of such assignments and encourage participation in the stressed asset market. Financial institutions should, however, continue to undertake appropriate due diligence on the enforceability and documentation of acquired assets, while borrowers should remain mindful of the statutory rights available to subsequent lenders following assignment.

Banks can invoke SARFAESI for loans acquired from NBFCs not covered by the Act

Kotak Mahindra Bank Ltd v. Trupti Sanjay Mehta

Supreme Court of India | 2026 SCC OnLine SC 1744

SUMMARY OF FACTS

City Financial Consumer Finance Ltd (**CFCFL**), an NBFC, sanctioned a housing loan for the purchase of a residential flat from Trupti Sanjay Mehta and Sanjay Walchand Mehta (**Mehtas**). At the time, CFCFL was not a notified financial institution under Section 2(1)(m) of the SARFAESI Act, and thus, the loan was not covered by the Act.

Following a default, CFCFL obtained an arbitral award on the loan amount. Kotak Mahindra Bank Ltd (**KMBL**) subsequently took over the loan account and initiated recovery measures under Sections 13(2), 13(4), and 14 of the SARFAESI Act against the mortgaged flat.

The Mehtas challenged the SARFAESI measures, contending that KMBL, as assignee, could not acquire a SARFAESI enforcement right which CFCFL itself did not possess when the loan was originated.

The Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal agreed with the said submissions, constraining KMBL to approach the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court held that a bank's subsequent acquisition of a non-performing secured loan brings the loan within the statutory framework of the SARFAESI Act, even if the original lender was not covered by the Act when the loan was advanced.

The fact that the original lender was outside the SARFAESI framework does not permanently exclude the loan and security from enforcement under the Act. Provisions of the SARFAESI Act can apply to existing loan agreements and debts which are 'owing and live' when the provisions of the Act become applicable.

The Court further held that assignment of the loan to a SARFAESI-covered bank is sufficient to immediately clothe the loan account with the attributes of a secured debt under SARFAESI. It made no difference whether the lender itself subsequently became covered, merged with a covered institution, or transferred the loan to a bank already governed by the SARFAESI Act.

About F&M

Founded in 1896, Fox & Mandal (F&M) is one of India's oldest full-service law firms. Against the backdrop of our 130+ years' heritage, an unyielding and constant focus on evolution, adaptability and change have been the hallmark of our client engagement and service ethos.

The evolving policy and regulatory ecosystem necessitates careful navigation by businesses as well as their promoters and senior management - with a proven track record of effectively leveraging our full-service capabilities to address attendant legal challenges, our specialist teams combine relevant subject-matter, sectoral and jurisdictional knowledge to craft pragmatic, commercially viable and legally enforceable solutions for addressing critical issues along the entire business life cycle.

130+ years' legacy	4 locations DEL, BLR, KOL, MUM
1000+ clients	450+ judgments
24 partners	120+ professionals

FULL SERVICE CAPABILITIES

- Banking & Finance
- Capital Markets & Securities Law
- Corporate & Commercial
- Dispute Resolution & ADR
- Employment & Labour
- Government & Regulatory
- Insolvency & Restructuring
- Management & Consultancy
- Private Client Practice
- Projects, Infrastructure & Energy
- Real Estate

Latest updates and insights

Monthly newsletter

Recent developments in India's corporate and commercial laws

Scan the QR code to download the latest edition

Monthly newsletter

Dispute Resolution & ADR

Scan the QR code to download the latest edition

Scan the QR code to view our latest updates:

Scan the QR code to view our Mondaq profile:

CONTRIBUTORS

Ashutosh Gupta | Partner
ashutosh.gupta@foxandmandal.co.in

Kunal Mimani | Partner
kunal.mimani@foxandmandal.co.in

Kartikey Bhatt | Partner
kartikey.bhatt@foxandmandal.co.in

Parag Chaturvedi | Associate Partner
parag.chaturvedi@foxandmandal.co.in

Mahima Cholera | Principal Associate
mahima.cholera@foxandmandal.co.in

Abhinav Rana | Associate
abhinav.rana@foxandmandal.co.in

Tanish Arora | Associate
tanish.arora@foxandmandal.co.in

Abhinav Jain | Manager
abhinav.jain@foxandmandal.co.in

Akshay Luthra | Associate
akshay.luthra@foxandmandal.co.in

OUR OFFICES

BENGALURU
2nd floor, Nish Manor, 25/2, Norris Rd
Richmond Town, Bengaluru 560 025
Email: bengaluru@foxandmandal.co.in

KOLKATA HO
12, Old Post Office Street
Kolkata 700 001
Email: calcutta@foxandmandal.co.in

KOLKATA
7th floor, 206 AJC Bose Road
Kolkata 700 017
Email: calcutta@foxandmandal.co.in

MUMBAI
1903, B-Wing, Peninsula Business Park
Senapati Bapat Marg, Mumbai 400 013
Email: mumbai@foxandmandal.co.in

NEW DELHI
Fox & Mandal House
D 394, Defence Colony, New Delhi 110 024
Email: newdelhi@foxandmandal.co.in